United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov

February 5, 2013

Rod Rodrigue
President and Chief Executive Officer
TimeWise Management Systems
1180 Celebration Boulevard
Suite 103
Celebration, Florida 34747

Dear Mr. Rodrigue,

The Hollings Manufacturing Extension Partnership (MEP) is an important taxpayer-funded initiative that helps small and medium-sized manufacturers adopt technologies and practices that increase their productivity and create jobs for the U.S. economy. Through a mix of federal, state, and local support, MEP centers in every region of our country provide the training and education our manufacturers need to gain the full benefit of new and promising innovations.

Over the past few years, the Department of Commerce Inspector General (DOC IG) and the National Institute for Standards and Technology (NIST) have raised troubling questions about your company's practices as a contractor for multiple MEP centers. Audits prepared by these agencies suggest that your company may not be properly accounting for how it spends MEP funds. The audits also suggest that your company takes advantage of management arrangements with multiple MEP centers to engage in self-dealing, duplicative billing, and other conduct that benefits your company at the expense of the MEP program.

Because the MEP program represents one of the federal government's most significant investments in transferring innovative technology to our manufacturers, I am very concerned by these reports. I am therefore writing to request more information about how you manage and account for the federal government dollars your company receives through your business relationships with MEP centers.

Background on the MEP Program

The manufacturing sector is a vital part of the economy, not only in my state of West Virginia, but around the country. Manufacturing accounts for 60 percent of U.S. exports, the largest of any sector, and workers in the manufacturing sector earn more money and have better benefits than service workers.[1] Manufacturing companies are also responsible for over two-

[1] Department of Commerce, *The Competitiveness and Innovative Capacity of the United States*, at 6-1 (Jan. 2012) (online at http://www.commerce.gov/sites/default/files/documents/2012/

thirds of the industrial research and development in our country and employ the majority of our scientists and engineers.[2]

Recognizing the importance of manufacturing to our economy, Congress established "Regional Centers for the Transfer of Manufacturing Technology" in 1988 to "enhance productivity and technological performance in United States manufacturing."[3] The concern motivating the creation of the MEP program was to ensure that small and medium-sized manufacturers had the ability to share in the transfer of advanced manufacturing technology.[4]

MEP centers currently operate in every state and Puerto Rico with over 1,400 technical experts assisting small and medium-sized businesses.[5] Organized as non-profit organizations, MEP centers work with manufacturers in their area to develop new products and processes. Through their relationships with federal government laboratories, universities, businesses, and other regional partners, MEP centers provide the technical and management expertise that manufacturers need to successfully compete in the global marketplace.

NIST estimates that for every dollar of federal investment, MEP centers generate nearly $20 in new revenue, or about $2.5 billion in new sales each year.[6] In FY 2010, the West Virginia MEP's services resulted in an estimated $28.9 million in new and retained sales and 232 jobs created or retained.[7] For example, the West Virginia MEP partnered with Fairmont Tool, a manufacturing company providing machine tooling for the oil and gas industry, as it sought to gain quality management certifications that could help it win new clients. The West Virginia MEP helped to evaluate Fairmont Tool's quality management systems, identified areas for improvement, and worked with the company as it sought to correct its systems before seeking the new certification. With improved quality management systems in place, Fairmont Tool gained the certification and was able to expand it machining capabilities, grow its business, and triple its workforce.[8]

I am a strong supporter of the MEP program and its goals. Led by the Senate Commerce Committee, which I chair, Congress most recently showed its support for the program by authorizing $461.3 million in appropriations for the MEP program from FY 2011 through FY

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january/competes_010511_0.pdf) (accessed Feb. 1, 2013).

[2] *Id.* at 6-2.

[3] Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418 (Aug. 23, 1988).

[4] *Id.*

[5] NIST, *About the Manufacturing Extension Partnership* (Jan. 11, 2013) (online at http://www.nist.gov/mep/about.cfm) (accessed Feb. 1, 2013).

[6] *Id.*

[7] NIST, *West Virginia Manufacturing Extension Partnership*, at 1 (Feb. 2012) (online at http://www.nist.gov/mep/upload/WV-CENTER-MEP12.pdf) (accessed Feb. 1, 2013).

[8] NIST, *Client Successes* (online at http://ws680.nist.gov/mepmeis/SearchSS.aspx?ID=3296) (accessed Feb. 1, 2013).

2013 in the America COMPETES Reauthorization Act of 2010.[9] I hope to make the program even stronger during the process of reauthorizing the COMPETES law this year. As chairman of the Committee that authorizes funds for the MEP program, I also have the responsibility for making sure that these funds are spent in accordance with the law and to advance American manufacturing.

How MEP Cost Sharing Works

While up to one third of MEP centers' budgets may come from the federal government – in the form of a grant from NIST – centers must generate a majority of their resources through work with regional partners. This two-thirds cost share requirement means that for every dollar of federal funds used, the grantee must document two dollars in eligible matching costs and/or program income to be applied as non-federal cost share. To meet this requirement, centers rely heavily on working with regional partners whose expenditures may be claimed as non-federal cost share.

Each year centers submit operating plans to NIST that describe their activities and explain how the centers plan to raise the non-federal share of their budgets. Non-federal portions of the centers' budgets can come from state and local governments, user fees, or contributions from third parties. If and when NIST approves the plans, NIST enters into a "cooperative agreement" with the centers, which set out the scope of the centers' activities and partnerships, and obligate NIST to provide federal funding for the term of the agreement.[10]

Because federal payments to MEP centers are based on the overall size of the centers' budgets, it is very important that the centers follow NIST's accounting guidelines and accurately report their non-federal income and expenses. Improperly inflating the centers' non-federal expenditures or income could result in wasteful, improper overpayments of federal MEP funds to the centers.

Audits Questioning the Business Practices of TimeWise Management Systems

While I am confident that NIST and the MEP centers generally follow the program's rules and use their resources responsibly, I am concerned by the findings of a series of audits performed in recent years by the DOC IG and NIST. In these audits, the DOC IG and NIST have criticized how some MEP centers document their financial activities and spend the federal dollars they receive from NIST. Among other findings, these audits raise questions about your company's business relationship with several MEP centers.

These audits suggest that your company takes advantage of the management contracts it holds with multiple MEP centers to engage in self-dealing, duplicative billing, and other conduct that benefits your company but harms the MEP program. They also suggest that MEP centers

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[9] America Competes Reauthorization Act of 2010, Pub. L. No. 111-358 (Jan. 4, 2011). The legislation authorizes $141,100,000 for the MEP program in FY 2011, $155,100,000 in FY 2012, and $165,100,000 in FY 2013, for a total of $461.3 million.

[10] NIST, *Cooperative Agreement Renewal, Operating Plan Guidelines, Version 3* (Feb. 2012) (online at http://www.nist.gov/mep/upload/2012-MEP-Op-Plan-Guidelines-Final.pdf).

under your management may be inflating the non-federal sides of their budgets to improperly collect federal MEP dollars.

For example, the DOC IG found that in 2005, the Florida MEP paid your company $59,733 per month ($716,796 per year) to perform general management functions, such as tracking the delivery of services and researching new business and grant opportunities.[11] On top of this lucrative "managing agent" contract, the audit found that the Florida MEP entered into four additional management service contracts with TimeWise, totaling $315,000.[12] Both the DOC IG and NIST found that most of the services provided in these four additional contracts duplicated services TimeWise had promised to perform for the Florida MEP in the primary management contract. NIST officials concluded that:

> The four additional contracts entered into between TimeWise and Florida MEP, in large part and possibly entirely, duplicate services required of TimeWise under the primary management project, and that Florida MEP has failed to establish any meaningful distinctions between services to be provided under the primary contract and those called for by any of the four additional contracts.[13]

Another instance of duplicative funding was documented in the DOC IG's 2005-06 audit of the Massachusetts MEP, a center for which TimeWise served as managing agent. In this case, the Massachusetts MEP performed work under grants awarded by the U.S. Departments of Labor and Defense but also claimed the costs it incurred through these contracts as a basis for MEP payments from NIST. As NIST officials commented:

> Allowance of these costs under Massachusetts MEP's NIST cooperative agreement would have the Federal government paying twice for the same services to the extent of the Federal share of that award. Such double-dipping cannot be allowed.[14]

Even more troubling to the NIST officials was the fact that in the case of the Department of Defense grant, the Massachusetts MEP performed the work as a subcontractor to TimeWise; in the case of the Department of Labor grant, it performed the work as a subcontractor to the Maine MEP, another MEP center for which TimeWise served as managing agent. NIST officials observed that, "there is an inherent conflict of interest if a Center enters into a separate contract

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[11] Audit Resolution Determination Letter from George E. Jenkins, Acting Chief, Grants and Agreements Management Division, NIST, to Winifred Grebey, Center Director, Florida Manufacturing Extension Partnership, at 22 (Nov. 20, 2012) (ATL-18568).

[12] *Id.* at 22. By structuring this payment in four separate contracts (all of which were awarded on a single day), the Florida MEP and TimeWise avoided the MEP program requirement that centers obtain prior written approval from NIST before awarding contracts worth more than $100,000. In the opinion of NIST officials, these awards "flouted the award term requiring approval of contracts over $100,000." *Id.* at 35.

[13] *Id.* at 35.

[14] Audit Resolution Determination Letter from George Jenkins, Acting Chief, Grants and Agreements Management Division, NIST, to John Healy, Director of Operations, Massachusetts Manufacturing Extension Partnership, at 24 (Nov. 20, 2012) (DEN-18135).

for goods and services with its managing agent or enters into a contract with an entity that has the same managing agent."[15] They further explained:

> The Center expects and needs to be able to rely on TWMS [TimeWise] for advice, guidance and service upon the assumption that its agent is acting on its behalf and in its best interests. TWMS' ability to act on behalf of, and in the Center's best interests, is obviously and materially compromised when it is either the other contracting party or simultaneously serves as a managing agent to both the Center and the other contracting party. Clearly, these situations present at least the appearance of self-dealing on the part of TWMS.[16]

The DOC IG auditors found additional cases in which TimeWise sold services provided by one of the MEP centers it managed to another MEP center it managed. In 2005, the Florida MEP paid two employees of the Massachusetts MEP $113,748 for services that DOC IG auditors found to be duplicative of the services TimeWise had promised to provide the Florida MEP under its $59,733 per month general management project.[17] TimeWise's role in these contracts and in other contracts in which the Florida MEP paid outside consultants for duplicative services raised "troubling concerns" for NIST officials:

> Regardless of whether these contracts were in the best interests of the Florida MEP Center, they were clearly of significant benefit to TimeWise. The entirety of the circumstances . . . presents an appearance of less than fair and honest dealing on the part of TWMS. More importantly, it also appears that the Center is not simply using TWMS as a managing agent but has in large abrogated and transferred to TWMS its responsibility for the use and expenditure of project funds.[18]

Bankruptcy papers filed last year in Arizona document another case in which a TimeWise-managed MEP center appeared to be purchasing services from another TimeWise-managed MEP. These papers show that when the Arizona MEP declared bankruptcy on February 9, 2012, both TimeWise and the Maine MEP held secured claims against it. TimeWise's claim against the Arizona MEP totaled more than $1.2 million. The bankruptcy filings listed the same address in Augusta, Maine, as the business address for both creditors.[19]

The DOC IG also criticized the way some centers for which TimeWise acted as a managing agent were calculating the portion of their budgets that must come from non-federal sources. In an audit released in 2009, the DOC IG found that a number of entities the Florida

[15] *Id.* at 25.

[16] *Id.* at 25.

[17] Audit Resolution Determination Letter from George E. Jenkins, Acting Chief, Grants and Agreements Management Division, NIST, to Winifred Grebey, Center Director, Florida Manufacturing Extension Partnership, at 27 (Nov. 20, 2012) (ATL-18568).

[18] *Id.* at 37. According to information provided to the auditors by the Florida MEP, the MEP's Board of Directors had given you signature authority for Florida MEP. *Id.*

[19] *In re Arizona Manufacturing Extension Partnership*, Ch. 7 Case No. 2:12-bk-02536-GBN, voluntary petition at 10 (Bankr. D. Ariz. Feb 12, 2012).

MEP claimed as its "subrecipients" could not properly document their MEP-related costs as required under MEP program rules.[20] In addition, seven of the eight subrecipients told the DOC IG that they did not consider themselves "subrecipients" of the Florida MEP program.[21] The DOC IG concluded that the Florida MEP had claimed more than $11 million in unallowable costs, resulting in more than $2 million in improper disbursement of federal grant funds from NIST. In a recent audit review determination letter, NIST agreed with the DOC IG's findings that these entities were incorrectly classified as "subrecipients" and found that, even after the entities were reclassified as third-party in-kind contributions, the $11 million in costs claimed by Florida were not properly documented.[22]

Request for Information

To answer some of the questions raised by these audits and to help the Committee better understand your company's practices, we request that you provide the following information:

1. In addition to TimeWise, please list all other business entities that you own, operate, or with which you are affiliated, that sell or have sold goods or services to MEP centers. "Business entities" includes non- or for-profit corporations, operations under trade names or assumed names, fictitious business names, limited liability companies, unincorporated divisions, joint ventures, partnerships, sole proprietorships, associations, cooperatives, and any other legal entities. In the following interrogatories, "you" and "your business entities" refers to TimeWise and all other business entities you list in response to this question.

2. For the past two years provide a list of all of the MEP centers with which you have been contracted to act as a "managing agent," or to provide any other good or service. For each center you list, please indicate whether you are a "managing agent" for that center.

3. For each of the MEP centers listed in response to request #2, provide a description of each contract you entered into with the centers in the past two years. Each description should include: identifying contract numbers, the date you entered into the contract with the center, the goods or services you provided under the terms of the contract, and the amount you were paid for the goods or services. Provide a copy of each contract you have described in response to this question.

4. To the extent not already described, for the past two years provide a list of all grants, contracts or other awards you have received from federal, state or local governments to provide any good or service.

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[20] U.S. Department of Commerce Office of Inspector General, *Final Audit*, at 2 (March 2009) (ATL-18568). A subrecipient is "the legal entity to which a subaward is made and which is responsible to the recipient for the use of the funds provided." 15 CFR § 14.2(jj).

[21] *Id.* at 4.

[22] Audit Resolution Determination Letter from George E. Jenkins, Acting Chief, Grants and Agreements Management Division, NIST, to Winifred Grebey, Center Director, Florida Manufacturing Extension Partnership, at 3 (Nov. 20, 2012) (ATL-18568).

5. For each of the grants, contracts or other awards listed in response to request #4, provide a description of each grant, contract or other award you entered into for the past two years. Each description should include: identifying grant, contract, or other award numbers, the date you entered into the grant, contract or other award, the goods or services you provided under the terms of the grant, contract, or other award and the amount you were paid for the goods or services.

6. Provide the total number of full-time or part-time employees you employ, and specify what percentage of these employees physically work at MEP center facilities. For your employees physically working at MEP center facilities, please list how many of these employees work at each MEP center facility.

7. Provide copies of all articles of incorporation and amendments, annual or other periodic reports, and audited financial statements for your business entities for the past 5 years.

I ask that you provide this information by Friday, March 1, 2013. The Committee is conducting this investigation under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Jeffrey Zubricki or Ann Zulkosky with the Committee staff at (202) 224-1300.

Sincerely,

Jay Rockefeller

John D. Rockefeller IV
Chairman

Enclosure

cc: John Thune
Ranking Member