NOV 20 2012

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Winifred Grebey
Center Director
Florida Manufacturing Extension Partnership
1180 Celebration Blvd., Suite 103
Celebration, FL 34747

RE: Audit Resolution Determination Letter (ARDL)
Cooperative Agreement Number: 70NANB3H2002
Audit Report Number: ATL-18568

Dear Ms. Grebey:

The National Institute of Standards and Technology (NIST) has reviewed the referenced audit report and determined that a $2,006,799 refund is due NIST, within 30 days from the receipt date of this ARDL. Enclosed is a summary of the financial and non-financial findings reported in the audit report and our resolution of them.

The NIST records that support this ARDL are the audit report, your organization's post-audit response, the NIST official award file, and the enclosure to this letter. You have a right to appeal the NIST decision. If you decide to appeal this decision, two (2) copies of your written appeal and supporting documentation must be submitted to NIST and one (1) copy to the Office of Inspector General within 30 days after your receipt of this letter. Your appeal should be mailed to the attention of:

Patrick Gallagher
Director
National Institute of Standards and Technology
100 Bureau Drive
Building 101, Mail Stop 1000
Gaithersburg, Maryland 20899-1000

An additional copy of any appeal should be sent to:

Ann Eilers
Principal Assistant Inspector General for Audit and Evaluation
1401 Constitution Avenue, NW
Rm. 7886B
Washington DC 20230

Your appeal must contain an explanation of your dispute with this Audit Resolution Determination and include any supporting documentary evidence or reference documents previously submitted to NIST. NIST will consider all information submitted in a timely manner. The appeal of this Audit Resolution Determination is your last opportunity to provide available information to support any dispute of the account receivable or any other aspect of this determination. There are no other administrative appeals available in NIST or the Department of Commerce concerning this matter. When a final decision has been rendered on any appeal, you will be notified of that decision by letter.

NIST will bill your organization for the amount owed 30 days post-receipt of this ARDL. The debt should be paid in one lump sum. Any interest earned on the amount owed must also be returned. You are also advised that funds used for payment of the debt must not come from other Federally funded projects or programs. Verification that other Federal funds have not been used may be made during future program visits or audits of your organization.

Failure to pay the debt by the due date will be considered grounds for any or all of the following: withholding payments under any current NIST awards to your organization; termination of any active NIST awards; referral to a debt collection agency or credit reporting bureau; collection through administrative offset; and may have a negative impact on future funding possibilities by NIST.

Appropriate corrective action will be taken retroactively regarding any debt that is established if the Audit Resolution Determination is modified on appeal. If a debt established by an Audit Resolution Determination is subject to administrative offset, receipt of an appeal may stay the offset of funds in accordance with 15 CFR 21.

An appeal does not prevent the establishment of an audit-related debt, nor does it prevent the accrual of interest on the debt. The Federal Claims Collection Standards provide that the rate of interest assessed on the debt shall be the current value of funds to the U.S. Treasury. At this time, that rate is one (1) percent per annum. Interest will continue to be charged until collection or final disposition of the debt.

If your debt becomes delinquent, it will be assessed both as an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge not to exceed six (6) percent per annum on any portion of the debt that is delinquent for more than 90 days.

Please direct any questions regarding this matter to Leon Sampson at 301-975-3086.

Sincerely,

George E. Jenkins
Acting Chief, Grants and Agreements Management Division

Enclosure
cc: J. Dawsey, A. Katsaros

## SUMMARY OF AUDIT RESOLUTION

Florida Manufacturing Extension Partnership
Hollings Manufacturing Extension Partnership (MEP)
Cooperative Agreement Number: 70NANB3H2002
Audit Report Number: ATL-18568

The NIST records that support this audit resolution are the audit report, your organization's post-audit response, the NIST official award file, and the information delineated below.

The Office of Inspector General (OIG), Atlanta Regional Office of Audits, conducted a financial and compliance audit of costs claimed by the Florida Manufacturing Extension Partnership (MEP), the recipient under the subject NIST Cooperative Agreement Number 70NANB3H2002. The audit covered the 21-month period of July 1, 2005, through March 31, 2007, and the OIG examined claimed project costs in the amount of $19,133,115. On April 30, 2009, Florida MEP responded to the final audit report issued by the OIG. All comments were considered when developing this audit resolution.

## FINANCIAL FINDINGS

**1. Brief Statement of Finding and Recommendation (Combined OIG Findings 1 & 4):**

(1) $11,394,824 in Questioned Subrecipient Costs

The OIG questioned $11,394,824 in costs claimed as having been contributed by eight organizations identified as subrecipients because Florida MEP did not have the required documentation and it was therefore not possible to determine if the claimed costs were allocable or allowable under the MEP cooperative agreement. The following table, with amounts as presented in the OIG's "Table 1." in its final audit report, identifies for each of the eight entities the amount of money provided to it by Florida MEP and the amount of costs claimed by Florida MEP as satisfying its cash match obligations. (The OIG also separately questioned $99,738 in third-party in-kind contributions from three organizations and from Florida MEP's Board of Directors.)

**Final Audit Report Table 1. Subrecipients' Costs Claimed by Florida MEP**

| Subrecipients | Funds Provided by Florida MEP Under Subaward | Costs Claimed as Cash Match by Florida MEP |
|---|---|---|
| University of Central Florida | $ 0 | $4,475,455 |
| Economic Development Commission of Florida's Space Coast | 9,000 | 4,482,091 |
| First Coast Manufacturing Association | 11,567 | 1,018,463 |
| South Florida Manufacturing Association | 19,250 | 603,256 |
| Manufacturing Association of Central Florida | 13,575 | 203,483 |
| Bay Area Manufacturers Association | 16,350 | 125,602 |
| Florida Sterling Council | 6,150 | 36,474 |
| University of North Florida | 20,000 | 450,000 |
| **TOTALS** | **$95,892** | **$11,394,824** |

In its final audit report, the OIG found that the eight organizations did not maintain the financial management systems required of subrecipients by 15 CFR Section 14.21, and that, as a result, there was no way to determine whether claims arising from expenses of those organizations were based on actual costs incurred under subaward agreements. For example, none of the eight organizations established separate cost centers in its accounting system to track costs incurred under its agreement with Florida MEP. The final audit report stated that, rather than tracking and reporting actual costs incurred for the MEP project, the organizations simply forwarded financial reports showing their normal operating expenses to Florida MEP. Florida MEP then claimed expenses it identified as allowable and included these costs as part of its matching share on its financial status reports (FSRs) to NIST even though there was no supporting documentation linking subrecipient activities directly to the Florida MEP program. None of the eight organizations had written procedures in place to determine if amounts reported to Florida MEP met allowability criteria established by applicable Federal cost principles and none of the organizations compared outlays with budget amounts, as required under the award.

The OIG found that Florida MEP did not include the following in any of its eight subagreements:

(1) The NIST Catalog of Federal Domestic Assistance (CFDA) number.
(2) A complete flow-down of NIST terms and conditions from Florida MEP.
(3) The required line-item and object-class budget.

According to the OIG, representatives at seven of the eight organizations stated that they did not consider themselves to be subrecipients of Florida MEP. Of the eight organizations, only the University of North Florida (UNF) said they considered the

university a subrecipient. However, the OIG questioned costs claimed by Florida MEP from UNF because it did not have an adequate financial management system.

In its final audit report, the OIG stated that none of the approximately $11.4 million claimed as cash match actually involved cash contributed directly to Florida MEP and thus neither met the criteria for (1) cash match as described in 15 CFR Section 14.2(g); nor (2) fulfilled a special award condition requiring at least one-half of its cost share to be in cash. Finally, when commenting upon Florida MEP's response to the draft audit report, the final audit report states that Florida MEP did not present evidence or documentation to show that claims were based on actual costs under the subaward agreements.

(4) $99,738 in Questioned Third-Party Contributor Costs

The OIG questioned $99,738 in claimed third-party in-kind contributions because of inadequate documentation from Florida MEP. The questioned contributions are from four sources: (1) $59,683 from the Manufacturing Association of Florida (MAF); (2) $26,055 from Technical Research and Development Authority (TRDA); (3) $11,150 from Florida MEP's Board of Director meetings; and (4) $2,850 from Florida Sterling Council.

The OIG noted that the NIST *Hollings MEP General Terms and Conditions,* number 14, states that MEP Centers must have documented evidence of third party in-kind contributions from the contributors including the following:

- A list of the type of third-party in-kind contribution.
- Value of each third-party in-kind contribution.
- If personnel time is being contributed: a list of the personnel; the projects and tasks worked on; the dates and number of hours worked; the hourly salary rate with the allowable fringe benefits paid; and certified time and attendance records.
- Any necessary scopes of work and contracts including cost or price information.
- Percentage of time that the contribution was used to support the MEP project.

The OIG also noted that the NIST *Hollings MEP General Terms and Conditions* require that third-party in-kind contributions be evidenced by written documentation signed by the contributor and MEP Center describing the contribution, its value, and when and for what purpose it was donated. Additionally, the MEP Center must provide an acknowledgement of the contribution.

The OIG found that MAF and TRDA did not maintain the required records nor generate financial reports detailing the value of services directly benefiting and specifically identifiable to the Florida MEP project. The OIG asserted that $85,738 claimed from MAF and TRDA were not for contributions of cash, real property, equipment, supplies, goods, or services, but rather, represented expenses incurred by the organizations for their own day-to-day business operations and found that none of the documentation maintained by Florida

MEP for MAF and TRDA met the requirements applicable to contributed services listed above. The OIG questioned the $2,850 claimed as in-kind cost-share from the Florida Sterling Council because there was no documentation to support it. Accordingly, the OIG questioned the entire amount ($99,738) claimed.

The OIG also questioned $11,150 claimed for Florida MEP's Board of Director contributions because Florida MEP did not follow the required valuation procedures. Florida MEP used a flat rate of $100 to value the board members' time without any of the required supporting documentation showing rates paid for similar work. Furthermore, the OIG stated that the value of the board members' donated services should be allocated across all of Florida MEP cost centers rather than just MEP activities. Florida MEP had two other non-MEP awards during the audited period that were treated as separate cost centers along with a cost center for indirect costs and non-federal expenditures.

- **Recipient's Response:**

(1) $11,394,824 in Questioned Subrecipient Costs

In its response dated April 30, 2009, Florida MEP argued that all questioned subrecipient costs should be allowed. Its contention that the audit report erred is five-fold, as follows:

(1) Florida MEP argues that the eight organizations, or "partners," are not subject to 15 CFR § 14.21 because they are not "subrecipients," and that their contributions to cost share claimed by the auditee should be evaluated instead against the requirements of 15 CFR § 14.23.

(2) Florida MEP contends that § 3003(a)(3)(C) of the America COMPETES Act ("ACA" or "COMPETES Act"), Pub. L. No. 110-69, codified at 15 U.S.C. § 278k(c)(3)(C), a legislative amendment to the MEP program's authorizing statute, requires the government to defer to an MEP Center's determination of the reasonableness and allocability of its own claimed cost share, excepting in the event of something fraudulent or upon a finding that the Center's determination was clearly erroneous.

(3) Florida MEP argues that a documentation requirement regarding contributions of personnel time set forth in General Term and Condition 14 of the cooperative agreement is procedurally defective under 15 CFR § 14.4.

(4) The Center contends that there is no special award condition requiring that at least 50% of the recipient's cost share be in the form of cash.

(5) Florida MEP argues that the applicable documentation standard for third party in-kind contributions is set forth in 14 CFR § 14.23, especially subsections (a) and (h)(5)(i).

Finally, Florida MEP claims that when analyzed in light of the above, adequate supporting documentation for the $11.4 million was provided to OIG during the audit period and with its response to the draft audit report and thus the entire $11.4 million of claimed cost share based upon the expenditures of its eight partners should be allowed.

(4) $99,738 in Questioned Third-Party Contributor Costs

In its response to the final audit report, Florida MEP stated that *"the OIG overlooks the nature of the information provided to Florida MEP and the nature of the relationship between Florida MEP and these third party in-kind contributors."* Further, Florida MEP asserted that

> *". . . the documentation received by Florida MEP does identify the activities of the contributors that benefit MEP, and specifies the value and purposes, in accordance with the requirements. The OIG fails to acknowledge that the activities carried out by each of these contributors are in direct accord with the mission and purpose of the Florida MEP Center. Further, by partnering with these organizations, Florida MEP is allowed to expand its offering of services and to reach new manufacturers, and the associations benefit because their members are able to access the services provided by Florida MEP. Therefore, the contributions provided from such activities take the form of donated time of personnel, materials, and space."*

Florida MEP provided the following responses relevant to each of the four sources that comprised the questioned contributions.

> $59,683 from the Manufacturing Association of Florida (MAF):
>
> *"MAF provided Florida MEP a profit and loss statement that shows its expenditures furthering the MEP mission. Florida MEP reviewed MAF's financial reports and determined that the expenditures of MAF on behalf of manufacturers were 'programmatically reasonable and allocable' and therefore 'includable as a portion of the Center's contribution.'"*
>
> $26,055 from the Technological and Research Development Authority (TRDA):
>
> *". . . the expenses are 'consultant/contractor and operating expenses expended by TRDA for the Investment Initiative for Energy Technologies and Venture Smart Florida, both of which target and are utilized for manufacturers. TRDA provides Florida MEP with financial reports that show its expenditures for the specified IIET and VSF Programs which Florida MEP reviews and determined that the expenditures of TRDA on behalf of manufacturers were 'programmatically reasonable and allocable' and were therefore 'includable as a portion of the Center's contribution.'"*

$11,150 from Florida MEP's Board of Director Meetings

Florida MEP did not address this finding in its response to the final audit report.

$2,850 from the Florida Sterling Council

*"Florida MEP receives from the Board of the Florida Sterling Council ('Sterling Council'), pursuant to the agreement between Florida MEP and Sterling Council, an annual progress report detailing the monthly activities by type, the number of examiner hours invested per examiner, the total hours by manufacturing sector examiners, the amount of money invested by each examiner, the total dollars invested by manufacturing sector examiners and the manufacturing sector related dollars invested by the Sterling Council. In addition, the report shows the pro-rated general marketing expenses for the Sterling Council. The pro-rated percentage is based on manufacturing firm participation in the previous Annual Sterling Conference and the number of manufacturing companies participating on the Sterling Council Board. Florida MEP reviewed the Sterling Council report and supporting documentation and determined that the expenditures of Sterling Council on behalf of manufacturers were 'programmatically reasonable and allocable' and therefore 'includable as a portion of the Center's contribution.'"*

- **Resolution Actions:**

(1) $11,394,824 in Questioned Subrecipient Costs

As discussed below, NIST has determined that the cost claims for the eight entities treated by the OIG as subrecipients properly should have been considered third-party in-kind contributions. After explaining why these eight entities are not subrecipients, we then evaluate their contributions together with and in the same manner as those from the four other sources of questioned third party contributions.

NIST agrees with Florida MEP that the eight organizations with which it partnered were not subrecipients and thus were not required to comply with 15 CFR § 14.21. Rather, these organizations were third party contributors, whose contributions to Florida MEP are subject to the requirements of 15 CFR § 14.23 and the applicable cost principles. NIST disagrees with Florida MEP's contention that § 3003(a)(3)(C) limits governmental review of the Centers' determinations of the reasonableness and allocability of their own matching share cost claims only to instances of fraud or where a Center's determination is clearly erroneous.

NIST also rejects Florida MEP's contentions that the documentation requirements of General Term and Condition 14 are invalid, and in so doing we reject the applicability of the documentation requirements of 15 CFR §14.23(h)(5)(i) to any but third party in-kind contributions of "volunteer services." Finally, while the recipient is correct that there is no special award condition requiring that at least 50% of its cost share obligation be cash, a

program regulation, 15 CFR 290.4(c)(5), which limits in-kind contributions of other than full-time personnel to 50% of its cost share, is applicable. In summary, while we agree that 15 CFR § 14.23(a) applies to third party contributions, we note that such cost share contributions are, nevertheless, also subject to the documentation requirements of the award, the program's regulations, and the applicable cost principles.

We discuss in turn our view of each issue raised by Florida MEP's response to the final audit report, following which we consider the Florida MEP Center's cost share claims in light of that analysis.

a. Subrecipients:

Initially, it appears that the eight organizations whose costs Florida MEP has claimed as satisfying its "cash match" obligations are subrecipients. Florida MEP entered into agreements with each of them that: (1) purport to be subrecipient agreements; (2) provided money to all but one of them; and (3) claimed certain expenses incurred by each as cash match. Nevertheless, a subrecipient relationship in name only is fictive. 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) A subaward is an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the procurement of goods or services, nor does it include any form of assistance which is excluded from the definition of "award" in subparagraph (f) of this section 15 CFR § 14.2(ii). Subparagraph (f) of § 14.2, in turn, excludes *"technical assistance, which provides services instead of money,"* as well as certain other forms of assistance from the definition of "award."

Florida MEP argues that it is inappropriate to categorize its partners as subrecipients because they did not receive Federal funds or other property from Florida MEP. As regards the University of Central Florida (UCF), they are correct. As shown in Table 1 from the final audit report, Florida MEP did not provide any money to UCF and there is no contention or suggestion that it provided UCF with property in lieu of money. UCF therefore is a not a subrecipient under the award made to Florida MEP. However, as Table 1 also shows, Florida MEP did provide funds in amounts ranging from $6,150 to $20,000 to each of the other seven organizations that it claims contributed to its award. This necessarily raises the question of the purpose of those payments because, as § 14.2(ii) instructs, money has to be provided by the recipient as *"an award of financial assistance"* and not for the *"procurement of goods and services."*

NIST therefore examined the nature and purpose of the payments made by Florida MEP to these partners. NIST was informed by OIG that the funds that Florida MEP gave to the seven other partnering organizations were not provided to be used by the partners to carry out program-related activities but were instead Florida MEP's

payment of membership dues in the respective organizations. More importantly, based on this new information, NIST has determined that the relationships between Florida MEP and its eight partner organizations were in fact mischaracterized first by Florida MEP in the agreements that it entered into with those entities and then by the OIG in its final audit report. None of the eight organizations here at issue are subrecipients under the award.

A number of consequences flow from this determination, as follows:

(1) The eight organizations are third-party contributors (TPCs) for purposes of analyzing any cost share claims based on their expenses.
(2) The eight partners are not required to satisfy the standards for financial management set forth in 15 CFR § 14.21; nor are they required to comply with the other provisions of 15 CFR part 14 that are applicable to subawardees under § 14.5.
(3) All expenditures and contributions of these partners that are allowable as matching share program costs are in-kind contributions, excepting only direct contributions of cash to Florida MEP.
(4) Any contributions to Florida MEP from these TPCs are subject to the standards of 14 CFR § 14.23.

NIST also rejects Florida MEP's contention that changes to the program's Operating Plan Guidelines adopted in 2005 required MEP Centers to cast all agreements with their partners as subrecipient agreements and to include the flow-down provisions applicable thereto. Not only is this contention untrue, Florida MEP did not make the flow-down provisions applicable to its partners.

b. Section 3003(a)(3)(C) of the America COMPETES Act (ACA):

In its response to the draft audit report, Florida MEP claimed that a Center's authority, as clarified by the ACA, to determine whether non-Federal costs contributed by third parties are programmatically reasonable and allocable under MEP program procedures, and thus includable as a portion of the Center's cost share, precludes an independent government determination of the reasonableness and allocability of such included costs. In essence, Florida MEP contends that the Federal government is required to allow, apparently as a ministerial function, all non-Federal costs claimed by a Center. OIG rejected Florida MEP's interpretation of § 3003(a)(3)(C) of the COMPETES Act.

The construction of the ACA that Florida MEP advances in response to the final audit report differs somewhat from its previous contention. Florida MEP here contends that the amendment "bestows discretion" upon Centers, to which the government apparently must defer except upon a determination that there was something fraudulent or clearly erroneous. But for this exception for such extreme circumstances, however, Florida MEP reiterates the argument that it initially made to the OIG in its response to the draft audit report.

The OIG correctly rejected Florida's argument that the amendment gave Centers unreviewable final authority to determine the reasonableness or allocability of third party contributions. Florida MEP's proposed construction of the amendment is simply not supported by the provision's text. The critical provision provides that:

> *"All non-federal costs contributed by such entities and determined by a Center as programmatically reasonable and allocable under MEP program procedures are includable as a portion of the Center's contribution."* 15 USC § 278k(c)(3)(C).

Florida MEP's proposed interpretation is overreaching; it ignores entirely the qualifying phrase "under MEP program procedures" and it stretches the meaning of the term "includable" beyond that which makes sense in the context in which the term is employed. Florida MEP in essence argues that the term "includable" means "to be allowed by NIST." Instead, it makes most sense and is most reasonable that the unidentified actor doing the including in the latter part of the sentence is the same actor that is identified in the beginning of the sentence as making the determinations. Also, as the OIG noted, the term "includable" is permissive and not mandatory. Florida MEP in its response to the final audit report questions this analysis, but immediately thereafter states that "A plain reading of the statute [does not require, but] allows MEP Centers to include as their cost contributions those costs that it (sic) deems reasonable and allocable." (Emphasis added.) NIST agrees so long as "those costs" refers to contributed costs incurred by third parties. If a center determines that contributed third party costs are reasonable and allocable they may include them as non-Federal costs that the center claims. They are, of course, not obligated to include all such contributed costs.

Florida MEP's proposed construction would represent a drastic departure from well-established government-wide policies under which the ultimate determination that a recipient of Federal financial assistance made proper use of those monies is made by the agency that dispensed them and not by the recipient that received them. Florida MEP's proposed interpretation of the provision is simply too strained to support such a departure from well-established law. The COMPETES Act did not disturb the principle that the final authority to determine the reasonableness, allocability, and allowability of all costs claimed by recipients of MEP awards rests with the government. Florida's new found exception for instances of fraud and its claim that OIG and NIST are to employ a "clearly erroneous" standard when reviewing Centers' determinations regarding the reasonableness and allocability of their partners' incurred costs further supports our conviction that the construction of the provision that it advocates is wrong. Neither exception has any support in the text of the statute. It appears that they were concocted whole cloth by Florida MEP.

Finally, Florida MEP contends that the OIG's refusal to apply Florida MEP's proposed construction of § 3003(a)(3)(C) in this audit also was premised upon a determination that the provision, which was enacted subsequent to the period of time subject to this

audit, does not apply retroactively. Florida MEP misreads the final audit report. The OIG in fact determined that the statute does apply retroactively. The OIG did not apply Florida's proposed construction of the provision because it rejected that construction. Moreover, as the OIG further explained, had it agreed with Florida MEP's interpretation of the statute, the amendment would not have retroactive applicability because then it would substantively have changed prior law, and it is axiomatic that substantive changes of prior law are not to be given retroactive application by implication.

c. Cost Sharing and Matching General Term and Condition 14:

The award General Term and Condition (GTC) relating to cost sharing and matching for the time period subject to this audit[1] required Centers to provide the following documentation in support of contributions of personnel time:

- Projects/tasks worked;
- Dates worked;
- Number of hours;
- Hourly salary rate and allowable fringe benefits paid; and
- Certified time and attendance records.

GTC 14 also provides that "Third Party In-Kind Contributions must be evidenced by written documentation that is signed by the contributor and Center that describes the contribution, its value, and when and for what purpose it was donated."

Florida MEP claims that under 15 CFR § 14.4 these documentation requirements for contributions of personnel required the approval of the Office of Management and Budget (OMB) because they are "in excess of the matching cost standards set forth in 15 CFR § 14.23." Florida MEP is incorrect. GTC 14 addresses documentation requirements not addressed in 15 CFR § 14.23. It first points to 15 CFR § 14.23(a), which, as Florida MEP notes, sets forth criteria applicable to all cost share contributions, as follows:

(1) Are verifiable from the recipient's records.
(2) Are not included as contributions for any other federally assisted project or program.
(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
(4) Are allowable under the applicable cost principles.

1 There were two sets of GTCs applicable during the audit period. One set, issued by the program in June 2005, applied for the first 12 months of the audit period when it was replaced by a set of GTCs that were issued in April 2006, and which applied for the remainder of the audit period. The GTC relating to cost share and matching in the earlier set of GTC's was numbered 13. The identical term was numbered 14 in the later set of GTCs. The final audit report references GTC 14 when discussing this issue. For convenience, we do so as well in this document.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
(6) Are provided for in the approved budget.
(7) Conform to other provisions of this part [14], as applicable.

While section 14.23(a) establishes criteria applicable to all cost share contributions, including a requirement that they be verifiable from the recipient's records, it does not establish documentation requirements for any particular type of contribution. The Center recognizes as much when it asserts that the applicable documentation requirements are set forth in 15 CFR § 14.23(h)(5)(i).[2] Indeed, nowhere does 15 CFR § 14.23 establish documentation requirements that apply to contributions of personnel. It only says that they shall be documented. 15 CFR §14.23 (h)(5)(ii). And, inasmuch as there can be no dispute but that under § 14.23(a)(1) such costs must be supported by records, the documentation requirements of GTC 14 satisfy an interstitial need not addressed by part 14. They do not provide an exception from and are not inconsistent with that part. Similarly, they combine and are in accord with the applicable cost principles. See 2 CFR Part 230 (A-122) App. B.8.m.

d. The 50% "cash match" requirement:

Florida claims it is unable to locate the special award condition upon which the OIG relies for its assertion that 50% of its cost share must be cash match. Florida MEP is correct. There is no such special award condition. However, there is a regulation with similar effect. 15 CFR § 290.4(c)(5) provides that Centers may count as part of their cost share:

> *"[i]n-kind contributions of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions* ***up to a maximum of one-half of the host's annual share.****"*

The effect of this section is a requirement that at least one-half of a Center's match requirement must be satisfied with cash, revenue from licensing, and royalties, fees for service, or in-kind contributions of full-time personnel, or by some combination thereof. As Florida MEP observes, the program's Operating Plan Guidelines instruct that "cash match" includes the value of personnel employed by third parties who work full-time on MEP projects. However, this directive is not an expansion of the definition of "cash contributions" as set forth in 15 CFR § 14.2(g). Instead, it is a component of a budget and reporting system that ensures compliance with section 290.4(c). As the recipient is aware, the short-hand term "cash match" has come to include contributions

2 While section 14.23(h)(5)(i) does address documentation requirements, its scope is limited; it only applies to contributed "volunteer services." Volunteer services are unpaid services contributed by the volunteer. They are not paid personnel services contributed by a third party employer. Florida MEP is not contending that the claimed services that are here at issue were volunteer services; thus, section 14.23(h)(5)(i) is not applicable.

of full-time personnel for a number of reasons, principally because they are grouped together by section 290.4(c).

We note that in its discussion of the COMPETES Act, Florida MEP claims that "[t]he regulations enacted by the Department of Commerce improperly restricted matching costs under 15 CFR § 290.4 and that clarification was necessary . . . ." To the extent that this is a contention that the section 3003(a) of the COMPETES Act invalidated the regulation, we reject it as without basis.

In sum, while Florida MEP is correct that there is no special award condition requiring that 50% of cost share be cash, there is a regulation to the same effect, excepting that the 50% requirement can be satisfied with cash and/or contributions of full-time personnel.

The OIG's final audit report found, and Florida MEP does not dispute, that none of the approximately $11.4 million in contributions made by any of these eight entities was cash; rather, these costs consisted entirely of non-cash in-kind contributions, and insofar as NIST is able to determine, none of the eight third-parties contributed full-time personnel, and Florida MEP has not asserted that any of these costs relate to such a contribution. Thus, none of their contributions was "cash match," as that term is commonly used when discussing the 50% rule of 15 CFR §14.290.4(c)(5).

e. Allocability:

Even though the eight entities that the OIG considered subrecipients are actually third party in-kind contributors their contributions are nevertheless required to satisfy the documentation requirements of 15 CFR § 14.23; the reporting requirements listed in the entities' agreements with Florida MEP; applicable MEP General Terms and Conditions; and applicable cost principles. We here address certain applicable requirements of allocability as set forth in the cost principles and as clarified in the ACA.

A basic consideration of the cost principles is that *"[t]o be allowable under an award, costs must . . . [b]e reasonable for the performance of the award and allocable thereto . . . ."* 2 CFR Part 230 (A-122), App. A.2.a.

The cost principles further explain the concept of allocability:

A cost is allocable to a particular cost objective such as a grant . . . **in accordance with the relative benefits received**. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

(1) Is incurred specifically for the award.
(2) **Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received**, or
(3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown. Id. at § A.4.a.

In its discussion of third party contributor costs, the OIG discussed third party services that "directly benefit" and are "specifically identifiable to the Florida MEP project." That statement derives from GTC 14, applicable to Florida MEP during the audited period, and from 15 C.F.R. § 14.2(nn).

We note, however, that the COMPETES Act was enacted in the interim, and by specifically addressing the nature of the nexus between third party activity and an MEP award sufficient for such activity to be eligible as a non-federal cost share contribution it clarified the "directly benefit" and "specifically identifiable" allocability components of third party contributions.

Section 3003(a) of the ACA provides that:

> *"In meeting . . . its [cost share] requirements, it is anticipated that a Center will enter into agreements with other entities . . . to accomplish programmatic objectives and access* ***new and existing resources that will further the impact of the Federal investment*** *made on behalf of small- and medium-sized manufacturing companies. All non-Federal costs, contributed by such entities and determined by a Center as programmatically reasonable and* ***allocable under MEP program procedures*** *are includable as a portion of the Center's contribution."*

*Codified at* 15 U.S.C. § 278k(c)(3)(C)

The legislative clarification further provides:

> *"[C]osts incurred means the costs incurred in connection with the activities undertaken to improve the management, productivity and technological performance of small- and medium-sized manufacturing companies."*

*Id.* at § 278k(c)(3)(B)

In short, the ACA clarified that both "new and existing" contributed costs can "benefit" an MEP Center so long as they "further the impact of the Federal investment made [to that Center] on behalf of small- and medium-sized manufacturing companies," are "incurred in connection with the activities undertaken to improve the management, productivity and

technological performance of small- and medium-sized manufacturing companies," and are otherwise "programmatically reasonable and allocable under MEP program procedures." These legislative pronouncements thus require that the contribution must enhance the operation or output of the Center to which it is made and be in compliance with all other award terms and conditions, including, for example, the cost principles' provision that contributions benefitting "both the award and other work" must be distributed "in reasonable proportion to the benefits received."

DISCUSSION

Having determined that the eight entities regarding which Florida MEP has claimed $11,394,824 in expenses were mischaracterized as subrecipients and properly should be considered third party contributors, NIST has reviewed those contributions together with the $99,738 in costs claimed by Florida MEP as third-party contributions from three other entities and from Florida MEP's Board of Directors.[3]

Florida MEP provided documentation in support of these claims.[4] NIST agrees with the OIG that the documentation provided is insufficient and does not satisfy the requirements of GTC 14, the applicable administrative requirement, 15 CFR § 14(a), or the cost principles, 2 CFR Part 230 (A-122), App. A. section A.4. and App. B.section 8.m.

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3 Specifically, Florida MEP claimed as third party contributions $59,683 from the Manufacturing Association of Florida; $26,055 from the Technical Research and Development Authority; $2,850 from the Florida Sterling Council; and $11,150 from its own Board of Directors.

4 See Florida MEP's response dated April 30, 2009, for the following exhibits (numbers in parenthesis represent the location on the exhibit list):

(1) Detail of UCF costs (multiple documents) (#10);
(2) EDC detail of costs (multiple documents) (#13);
(3) Letter from EDC certifying contributions of expenditures related to its MEP activities (#16);
(4) FCMA progress narrative report – sample period April–June 2006 (#20);
(5) Letter from FCMA certifying contribution of expenditures related to its MEP activities (#21);
(6) BAMA progress narrative report – sample period April–June 2006 (#31);
(7) UNF source documentation (#34);
(8) Florida MEP – Knowlogistics, LLC, agreement and sample invoice and summary of activities (#41);
(9) Florida MEP – Trade Dynamics agreement and sample invoice (#42);
(10) Florida MEP – Trident Leasing agreement and sample invoice and summary of activities (#43);
(11) Florida MEP – Downeast Strategies agreement and sample invoice and summary of activities (#44);
(12) Sterling Council cost share breakdown (#49);
(13) American Small Manufacturers Coalition invoices and supporting documentation (#54);
(14) Manufacturers Association of Florida invoice and supporting documentation (#55)
(15) Florida MEP – MAF MOU (#50);
(16) Florida MEP – MAF MOU (#50);
(17) MAF Profit & Loss Statement (#51);
(18) Florida MEP – TRDA Agreement (#52);
(19) Florida MEP Operating Plan at 39;
(20) Sterling Committee Report (#48).

Moreover, NIST is unable to determine how Florida MEP identified and extrapolated specific costs incurred by the contributing third parties as allocable, award-related costs. It appears, as the OIG stated, that Florida MEP simply selected certain costs as allowable after reviewing the financial reports of the third parties' normal operating expenses.

At bottom, Florida MEP is claiming 100% of the operating costs of the contributing entities for activities to the extent that it considers those services consistent with the goals of the MEP program generally. Indeed, it appears that Florida MEP simply backed out costs related to any third party activities that were unquestionably unrelated to small- and medium-sized manufacturers. However, as discussed above, under the cost principles, costs that mutually benefit the recipient and the contributor are allocable only if they can be distributed in reasonable proportion to the benefits received. Assuming for the sake of argument that Florida MEP correctly deducted all costs that are not otherwise allowable and that those services provided some benefit to the Florida MEP award, it is apparent that most, if not almost all, of those costs also benefitted the contributing entities, particularly inasmuch as the claimed expenses were for activities of the donors that pre-existed their relationship with Florida MEP.

Florida MEP states that activities performed by these third party contributors *"are mutually beneficial to the [contributing entity], its members, the MEP Center's clients and the MEP Center,"* and explains that the activities of contributing entities *"reduc[e] . . . duplication of activities"* and *"increase MEP mission effectiveness, penetration, and output."* That may be, but Florida MEP failed to apportion the benefits that it received from the mutually benefitting efforts of its contributors, and has not provided grounds upon which NIST could make such a determination.[5] Florida MEP has not identified any increased costs incurred by its contributors as a result of providing services that benefit Florida MEP's program or explained how and the extent to which those entities either changed their activities or integrated MEP services into their own activities for the purpose of reducing duplication of activities or increasing Florida MEP's mission effectiveness. We reject as simply unreasonable the notion that, but for its relationships with them, Florida MEP necessarily would have provided all the services that its contributors offered, either in addition to, or instead of, the activities that it did undertake. There is no particular formula that would be applicable across-the-board for reasonably proportioning mutually beneficial costs between a Center and its third party contributors. Instead, the distribution of costs will vary depending upon the unique circumstances of each relationship. There are, however, some factors that should be considered in all circumstances. For example, the extent to which any revenue that is generated by the activity of a third party for which costs are claimed is shared with the recipient would be a reasonable reflection of the relative apportionment of the benefits. The benefits of existing resources being used by a contributing third party as they had been prior to its partnering with an MEP Center without additional resources or supplemental effort or other modification necessarily accrue primarily to the contributing entity. The extent to which the recipient of contributed

5 The $11,150 contribution from the recipient's board of directors presumably did not benefit those contributing individuals, but it remains similarly problematic because, as the OIG noted, that contribution also benefitted cost centers of the recipient that were distinct from its MEP project.

services can control the manner and timing of the delivery of those activities is an indication of benefits accruing to it. Predetermined quantitative and mutually agreed upon modifications to either the input or the results of contributed services would be useful indicators of the distribution or redistribution of benefits. Finally, as a general rule the relative proportion of benefits received is likely to vary for different activities undertaken by a contributing third party.

For all the above stated reasons, Florida MEP's third party costs could be disallowed in their entirety. However, NIST's review, and the MEP program office's familiarity with the operation and performance of the Florida MEP Center under its award, convinces us that certain claimed contributed expenses were incurred by at least some of the identified third-parties in performance of activities that benefitted the award. NIST therefore exercises its discretion and, imposing no penalty for the Center's failure to comply with GT&C 14's documentation requirements for donated personnel, recognizes 25%, or $2,873,640, of the claimed total of $11,494,562 as in-kind contributions from these third parties as having been so incurred. Because of inadequate documentation, NIST further disallows 10% of those costs, or $287,364. In short, we disallow $8,908,286 of Florida MEP's claimed subrecipient costs and third party contributions and allow $2,586,276.[6]

- **Financial Summary:**

**(Combined OIG Findings 1 & 4)**

| | |
|---|---|
| A. Costs Questioned: | $ 11,494,562[7] |
| B. Costs to be Allowed: | $ 2,586,276[8] |
| C. Costs to be Disallowed: | $ 8,908,286 |

- **Rationale and/or Legal Basis for Action:**

15 CFR, Section 2(g), *"Definitions,"* states:

> *"(g) Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties."*

6 In so doing we note that, like the in-kind contributions of the eight mischaracterized entities, none of the $99,738 in claimed third party contributions was asserted to have been contributions of either cash or of full-time personnel, and, in light thereof, we are mindful that by application of the 50% rule that $5,038,055 would be the maximum amount of third party costs allowable, based on Federal funds drawn, if Florida MEP had met its cost share requirement.

7 $11,494,562 = $11,394,824 in questioned subrecipient costs + $99,738 in questioned third-party contributions.

8 $2,586,276 = $2,873,640 (25% x $11,494,562) minus $287,364 (10% of allowable costs).

2 CFR Part 230 (A-122), App. B.8.m. states:

> "*m. Support of salaries and wages.*
>
> *(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in subparagraph (2), except when a substitute system has been approved in writing by the cognizant agency. (See subparagraph E.2 of Attachment A.)*
>
> *(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:*
>
> *(a) The reports must reflect an after-the-fact determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.*
> *(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.*
> *(c) The reports must be signed by the individual employee, or by a responsible supervisory official having firsthand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.*
> *(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.*

15 CFR 14.23 states, in part, the following:

> "*(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:*

*(1) Are verifiable from the recipient's records.*
*(2) Are not included as contributions for any other federally assisted project or program.*
*(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.*
*(4) Are allowable under the applicable cost principles.*
*(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.*
*(6) Are provided for in the approved budget.*
*(7) Conform to other provisions of this part, as applicable."*

15 CFR § 290.4 states, in part, the following:

*"(c) Host contribution. The host organization may count as part of its share:*
*(4) In-kind contributions of full-time personnel,*
*(5) In-kind contribution of part-time personnel, equipment, software, rental value of centrally located space (office and laboratory) and other related contributions up to a maximum of one-half of the host's annual share. Allowable capital expenditures may be applied in the award year expended or in subsequent award years."*

2 CFR Part 230 (A-122), App. A. section A.2. states, in part:

*"To be allowable under an award, costs must . . . [b]e reasonable for the performance of the award and allocable thereto under these cost principles . . ."*

2 CFR Part 230 (A-122), App. A, section A.4,a states, in part:

*"A cost is allocable to a . . . grant . . . in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:*

******

*(2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received."*

Section 3003(a)(3)(C) of the COMPETES Act states, in part:

*"All non-federal costs contributed by such entities and determined by a Center as programmatically reasonable and allocable under MEP program procedures are includable as a portion of the Center's contribution."* (15 U.S.C. § 278k(c)(3)(C).)"

§ 14.23(a)(1) states:

> *"(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:*
>
> *(1) Are verifiable from the recipient's records."*

15 CFR § 14.2(ii) instructs, money has to be provided by the recipient as *"an award of financial assistance"* and not for the *"procurement of goods and services."*

15 CFR § 14.2(ii), Subparagraph (f) of § 14.2, in turn, excludes *"technical assistance, which provides services instead of money,"* as well as certain other forms of assistance from the definition of award.

15 CFR § 14.2(jj) states that 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."*

Hollings MEP General Term and Condition (GTC) 14 (June 2005) required Centers to provide the following documentation in support of contributions of personnel time:

- *"Projects/tasks worked;*
- *Dates worked;*
- *Number of hours;*
- *Hourly salary rate and allowable fringe benefits paid; and*
- *Certified time and attendance records."*

**2. Brief Statement of Finding and Recommendation:**

<u>$512,998 in Consultant Costs Questioned as Unsupported and Unreasonable</u>

The OIG questioned $512,998 in claimed consultant costs by Florida MEP because of inadequate supporting documentation and unreasonable duplication of contract services that should have been performed under the existing management contract with TimeWise Management Systems, Inc., d/b/a Manufacturing Extension Partnership Management Services, Inc., (MEP MSI) (referred to in this document hereafter as "TimeWise"). The questioned costs of $512,998 are comprised of the following contracts:

(1) $215,750 under four contracts to TimeWise in addition to its negotiated management contract.
(2) $183,500 under five other consultant contracts and a one-time consultant expense.
(3) $113,748 in two employee share contracts with the Massachusetts MEP.

*(1) $215,750 in Additional TimeWise Contracts*

In 2005, Florida MEP paid TimeWise $716,796 as part of its ongoing management contract. NIST reviewed and provided prior written approval of this management contract, as required by the terms of the cooperative agreement. On February 24, 2005, Florida MEP entered into four additional contracts with TimeWise with a combined value of $315,000. Florida MEP has claimed $215,750 of those costs. Contracts in excess of $100,000 require NIST's prior written approval. See GTC 9(e). While their combined value totaled more than $100,000, each of the four contracts was valued at less than $100,000. The contracts are illustrated below in "Table 2." from the final audit report,

**Final Audit Report Table 2. Annual Contract Amounts with TimeWise**

| Annual Contract Amount | Amount Claimed | Contract Description |
|---|---|---|
| $ 96,000 | $ 88,000 | Supply point web site maintenance |
| 90,000 | 52,500 | State and federal grants and contracts |
| 79,000 | 46,081 | Supply point registry and demand sales |
| 50,000 | 29,169 | Outreach to Florida small manufacturing enterprises |
| $ 315,000 | $ 215,750 | **Total Contract Amount** |

Each of the four contracts required TimeWise to submit invoices along with monthly status reports, which were to include a summary of work performed and results obtained. According to the audit report, the invoices did not contain the contractually required information and Florida MEP provided OIG auditors with the contract agreements as support. The OIG does not consider the contract agreements to be adequate documentation.

The OIG compared the additional contracts' tasks to the management contract's tasks, as summarized below in "Table 3." from the final audit report. The OIG concluded that there was duplication of tasks among the management contract and the four additional contracts with TimeWise.

**Final Audit Report Table 3. TimeWise Contracts**

| Title and Monthly Expense for Additional TimeWise Contracts $26,250 per month | Tasks under Additional TimeWise Contracts | Tasks under TimeWise Management Contract $59,733 per month |
|---|---|---|
| Supply Point Web Site **$8,000 per month** | Create and maintain a Florida MEP Supply Point web site and wizard protocol specific for the Supply Chain initiative. | Development and maintenance of project, time, and client systems; and integration of Supply Point database. |
| State and Federal Grants and Contracts **$7,500 per month** | Pursue state and federal grants and contracts for Florida small to medium-size enterprise suppliers. | Research and identify other state and federal funding sources. |
| Supply Point Registry and Demand Sales **$6,583 per month** | Link Florida Supply Point registered Florida small to medium-sized businesses to national sales efforts for demand contract opportunities. | Assist in identification of business opportunities, track product and services delivery to Florida MEP clients, and sales and support. |
| Outreach to Florida Small to Medium-Size Enterprises **$4,167 per month** | Statewide outreach effort to contact and register Florida small to medium-size businesses in Supply Point. | Development and maintenance of client management systems and track product and services delivery to Florida MEP clients. |

All four contracts, as approved by the Board of Directors, contained a clause stating that Florida MEP cannot use Federal funds for contract fees. During its audit, the OIG found that MEP funds were used to pay TimeWise. According to the final audit report, TimeWise officials stated:

> *"... this clause was later waived by verbal agreement of Florida MEP and TimeWise because it was determined that these costs were allowable."*

However, the OIG found no evidence that the Board of Directors had been informed of the change in the terms of the contract with TimeWise. Accordingly, the OIG concluded that the four additional contracts should not have been claimed under the NIST MEP award.

*(2) $183,500 Unsupported and Unreasonable Consultant Services*

The OIG questioned $183,500 in contract costs for five consultants because of lack of adequate supporting documentation and unreasonable duplication of services for work that should have been performed by TimeWise in accordance with the terms of its management contract. The questioned costs of $183,500 are comprised of five contracts and a one-time consulting arrangement, as follows:

(A) $50,000 for Knowlogistics.
(B) $45,000 for Trade Dynamics.
(C) $37,500 for Trident Leasing Company.
(D) $7,500 for TimeWise Management.
(E) $42,000 for Down East Strategies.
(F) $1,500 for Team-Serv, Inc. (one-time consulting arrangement).

The OIG matched the services from the TimeWise management services contract with the services from contracts (A), (B), (C), (D), and (E), as illustrated below in "Table 4" from the final audit report.

**Table 4. Unreasonable Duplication of Consulting Services**

| Consultant $15,000 per month | Consultant Contract Services | TimeWise Contract Management Services |
|---|---|---|
| **(A) Knowlogistics, LLC** $6,250 per month for 8 months | Identify and secure funding, grants and business opportunities; grant proposal writing; promote Florida MEP and small to medium-size businesses. | Research and identify other state and federal funding sources and grants; assist in identification of business opportunities. |
| **(B) Trade Dynamics, LLC** $3,000 per month for 15 months | Identify and develop funding sources; instruct and train for supply chain. | Research and identify other state and federal funding sources and grants; integration of Supply Point database. |
| **(C) Trident Leasing Company** $2,500 per month for 15 months | Identify funding sources; explore grant opportunities; promote MEP; Department of Defense contract consulting. | Research and identify other state and federal funding sources and grants; assist in identification of business opportunities. |
| **(D) TimeWise Management** $1,250 per month for 6 months | Identify funding sources; explore grant opportunities; promote MEP. | Research and identify other state and federal funding sources and grants; assist in identification of business opportunities. |
| **(E) Down East Strategies, LLC** $2,000 per month for 21 months | Identify opportunities for grant funding; promote small to medium-size business issues. | Research and identify other state and federal funding sources and grants. |

Further, the OIG found that the invoices submitted by the consultants listed above did not include details of the services provided or the specific dates of the services performed, as required by the contract agreements. The invoices only included the monthly requests for contract payments. The OIG found that because the monthly invoices did not provide any supporting detail, they were inadequate to support the claimed consultant costs.

The final audit report cites TimeWise officials as stating the following:

> *". . . the consultants are available on an as-needed basis at the request of Florida MEP and can independently identify the activities that are consistent with the scope of work of their contracts."*
>
> *". . . the monthly requests for payments are the same as the work performance dates."*

The OIG disagreed that consultants should be paid to make their services available if there is no immediate need. Furthermore, the OIG stated that:

(1) The services provided should have been covered by TimeWise in accordance with the original management contract; and
(2) If TimeWise does not possess the staff or expertise to provide the services Florida MEP needs, then TimeWise should be responsible for subcontracting consultants.

*(A) Knowlogistics, LLC*
*(B) Trade Dynamics, LLC*

The OIG questioned the $50,000 contract over eight months with Knowlogistics, LLC, and a $45,000 ongoing contract over 15 months with Trade Dynamics, LLC, because of duplication of services and inadequate supporting invoices, which did not include specific services performed.

*(C) Trident Leasing Company*
*(D) TimeWise Management*

The OIG questioned 21 months of consultant costs ($45,000) paid to a consultant who is both the president of the U.S.-Mexico Chamber of Commerce and the owner of Trident Leasing Company. The OIG questioned $7,500 of the $45,000 claimed because of inadequate supporting documentation. Florida MEP reimbursed TimeWise for payments made on its behalf from August 2005, through January 2006. According to the TimeWise agreement effective May 2005, it has a $5,000 per month consulting agreement with the president of the U.S.-Mexico Chamber of Commerce. TimeWise billed each of the four MEP Centers with which it had a management services contract for one-fourth of the total amount so that each Center, including Florida MEP, was billed $1,250 each for a total of six months. The supporting invoices for the TimeWise contracts did not contain adequate documentation. The questioned amount represents six months of reimbursement costs billed to Florida MEP ($1,250 x 6 = $7,500).

Sometime during the audited period, the president of the U.S.-Mexico Chamber of Commerce started his own consulting company called Trident Leasing Company. Florida MEP began reimbursing consulting fees for the president of the U.S.-Mexico

Chamber of Commerce directly through his new company, rather than through TimeWise Management. In the final audit report, the OIG questioned the remaining $37,500 in reimbursements, which were paid directly to Trident Leasing Company beginning in January 2006, by Florida MEP at a rate of $2,500 per month over a period of 15 months, because (1) supporting invoices were either inadequate and did not include specific services performed; or (2) represented a duplication of services to be performed under the existing TimeWise contract. The OIG noted that supporting invoices for the Trident Leasing Company contract did include a description of some of the work performed during the month but did not include specific details of the services performed, the days the services were performed or time needed, or results of the services.

In all, a total of 21 months of consultant costs ($45,000) paid to the president of the U.S.-Mexico Chamber of Commerce and the owner of Trident Leasing Company are questioned because of inadequate documentation or duplication of services.

*(E) Down East Strategies*

The OIG questioned $42,000 paid over 21 months for an ongoing contract with Down East Strategies, LLC, because of inadequate supporting invoices that did not include specific services performed and duplication of services. In response to the OIG's request for supporting documentation, Florida MEP provided a two-page document from the company that listed service performances over a two-year period from March 2005, through July 2007. This one-time document served as the only support offered for monthly invoices paid by Florida MEP at $2,000 per month. The document listed services performed but did not provide the details of the specific month or day that the services were performed or any results obtained. In addition, the contract covers the same services TimeWise agreed to perform in its contract as managing agent.

*(F) Team-Serv, Inc.*

The OIG questioned $1,500 in one-time consultant costs paid to TimeWise as reimbursement for Team-Serv, Inc., because of inadequate documentation. Team-Serv billed TimeWise $3,000 for services under the Supply Chain program. TimeWise did not provide a contract to support these costs or show why these costs should be divided and charged equally to Florida MEP and Massachusetts MEP. The invoice was supported by a memo stating that a board member (Team-Serv, Inc., is owned by a Florida MEP board member) had conducted various meetings and provided telecommunications support. The OIG did not consider the memo sufficient support to accept an invoice charged to TimeWise and divide the costs between two of its MEP Centers.

*(3) $113,748 in Unsupported and Unreasonable Massachusetts MEP Shared-Employee Contracts*

The OIG questioned $113,748 in consultant costs for two employee-sharing contracts because of inadequate supporting documentation and unreasonable duplication of services (see Table 5 from the final audit report below). The two contracts were between Florida MEP and Massachusetts MEP, which is also managed by TimeWise. Both employee sharing contracts were signed by the TimeWise president / chief executive officer (CEO) representing Florida MEP.

Of the $113,748, the OIG questioned $95,431 for an ongoing contract with Massachusetts MEP. The purpose of the contract was to share an employee's time between two MEP Centers to support the Florida Supply Chain initiative. The contract allowed Massachusetts MEP to charge half an employee's salary, including benefits, to Florida MEP (not to exceed $5,000 per month). Invoices and time sheets submitted by Massachusetts MEP were not supported with specific details of the service performed or the results of those services.

In addition, the OIG questioned an additional $18,317 in consultant and related travel costs under a January 2007, contract for a second Massachusetts MEP employee as duplication of services and unreasonable travel costs. The questioned contract costs covered 20 workdays from February 5, 2007, through March 2, 2007, at $800 per day plus related travel costs. The contract was for Florida MEP to retain an experienced and knowledgeable third-party resource to assist in delivering services under the Department of Labor Advanced Manufacturing H-1B Grant Sustainment Plan. This employee was later hired by Florida MEP on March 1, 2007. However, Massachusetts MEP reimbursements included travel costs claimed for March 1 and 2, 2007, including return airfare from Florida to Maine on March 2, 2007.

**Final Audit Report Table 5. Massachusetts MEP Employee-Sharing**

| Massachusetts MEP | Employee Contract Services | TimeWise Contract Management Services |
|---|---|---|
| **Employee 1**<br>**$95,431**<br>**21 months** | Support the Supply Chain initiative and integration; provide outreach and assistance to machine shops on contract bidding process. | Integration of supply point database; development and maintenance of client management systems; and track product and services delivery to Florida MEP clients. |
| **Employee 2**<br>**$18,317**<br>**20 workdays** | Conduct company assessments; delivery of TimeWise services; outreach to clients; manage client expectations and track results; assist in delivery of Florida MEP services. | Development and maintenance of client management systems; and track product and services delivery to Florida MEP clients. |

- **Recipient's Response:**

In its response to the OIG's final audit report, Florida MEP disagreed with the $512,998 in questioned additional contract costs on the basis that the services provided under the additional contracts were clearly outside the services performed under the TimeWise management contract.

*(1) $215,750 Additional TimeWise Contracts*

In its response to the final audit report, Florida MEP disputed that the four additional contracts with TimeWise represented a duplication of effort of the management services agreement. Florida MEP stated that the TimeWise Management Services Agreement

> *". . . is specific to providing services to Florida MEP under its Cooperative Agreement No. 70NANB3H2002 in the areas of financial management, communications, business planning and governmental relations. These tasks, in turn, are more specifically defined to include twelve service areas. The four MEP MSI contracts relating to the Florida Supply Chain Initiative were executed, per the Florida MEP's Board of Directors directive, to assist Florida MEP with new program initiatives that were clearly outside of the services to be performed under the TimeWise Management Services Agreement."*

Florida MEP asserted that "Table 3." of the final audit report *". . . clearly shows that the additional TimeWise contracts were for specific activities that were not covered by the original TimeWise management contract."* Florida MEP's explanations as to how each of the four contracts is differentiated from and not duplicative of the management services contract are summarized below by contract.

<u>Supply Point Web Site, $8,000 per month</u>

> *". . . the SupplyPoint® website is a specific site for a specific software program, one that is outside of the parameters of the management contract, which is responsible for 'development and maintenance of project, time, and client systems; and integration of the Supply Point® database.' Integration of the SupplyPoint® database is separate from the design and operation of the SupplyPoint® website, nor is SupplyPoint® a client system. Therefore, the additional contract was reasonable and necessary."*

<u>State and Federal Grants and Contracts, $7,500 per month</u>

> The purpose of this contract was to *". . . pursue state and federal grants and contracts for Florida to small to medium-size enterprise suppliers . . ."* and *". . . is a separate effort from research and identify other state and federal funding sources. The 'identification' of other funding sources is a separate activity from*

*'pursuing' those sources. It is commonplace for an organization to identify grants for which it is eligible and then hire a proposal-writer to pursue those grants and contracts. This is exactly the process undertaken by Florida MEP, which hired TimeWise to do the follow-on work."*

Supply Point Registry and Demand Sales, $6,583 per month

Florida MEP states that the purpose of this contract is to *". . . 'link Florida Supply Point registered Florida small to medium-sized businesses to national sales efforts for demand contract opportunities.' The activity covered by the TimeWise management contract was to 'assist in identification of business opportunities, track product and services delivery to Florida MEP clients, and sales and support.'"* Florida MEP states that these *". . . are separate and identifiable tasks, and it is reasonable and necessary to execute a separate contract to cover the additional activity of linking businesses to opportunities that have been identified. Further, the additional contract covered only a specific subset of Florida MEP clients – those that were registered in the Florida SupplyPoint® database. Nor does the additional contract cover sales and support, or the tracking of product and service delivery to clients; tasks only found in the management contract."*

Outreach to Florida Small- to Medium-Size Enterprises, $4,167 per month

Florida MEP states that this contract covers *". . . 'statewide outreach effort[s] to contact and register Florida small to medium-sized businesses in SupplyPoint®.' The management contract covers 'development and maintenance of client management systems and track product and services delivery to Florida MEP clients.' Again, these are distinct activities, and the OIG's interpretation that the contracts are duplicative is without merit. Outreach and registration of clients is separate and more involved than the development and maintenance of client management systems."*

With regard to the four aforementioned contracts with TimeWise, Florida MEP also disputes the OIG's finding that the invoices submitted lacked the required supporting documentation.

*"The final audit report does not, however, address or acknowledge the fact that the members of the Florida MEP Board of Directors were kept informed of expenditures throughout the entire initiative by means of regular telephone conferences, meetings and email updates. Furthermore, during regularly scheduled Board of Directors meetings, MEP MSI management officials made presentations updating the Florida MEP Board of Directors on the progress of the Florida Supply Chain Initiative. Each time a member of the Board of Directors requested additional information, it was provided in a timely manner."*

*(2) $183,500 Unsupported and Unreasonable Consultant Services*

Florida MEP's response to the final audit report stated the following in response to the $183,500 in consultant services the OIG questioned as unsupported and unreasonable:

> *"Based on the strategic initiatives identified in Florida MEP's Strategic Plan for FY 2005–2007 and its 2005 Operating Plan, the Florida MEP identified consultants whose expertise and experience would best assist the Center in reaching its strategic goals. Each consultant possessed a certain area of expertise that was of value to Florida MEP. All rates and amounts were reviewed by the Board of Directors and determined to be reasonable and consistent with all of the services provided. It was reasonably determined by Florida MEP to utilize the specialized services of consultants on a limited basis rather than incurring the expense of finding and hiring as full-time employees individuals to perform similar roles."*

*(A) Knowlogistics, LLC*

Florida MEP reiterated its position that the Knowlogistics, LLC, contract was differentiated from the TimeWise management contract in that

> *"The consultant contract for Knowlogistics is to 'identify and secure funding, grants and business opportunities; grant proposal writing; promote Florida MEP and small to medium-size businesses.' The TimeWise management contract is to 'research and identify other state and federal funding sources and grants; assist in identification of business opportunities.'"*
>
> *"... the identification of grant and contract opportunities and the application for those opportunities are two separate and distinct activities, and it is reasonable and in many cases necessary to hire an expert to apply for such opportunities, once they have been identified."*
>
> *"Knowlogistics assisted Florida MEP by participating in meetings with various military installations, federal agencies, and other entities to discuss the Florida Center for SupplyPoint Integration and the services the Center provides; met with large original equipment manufacturers ('OEMs') to discuss supply chain development and worked with Center staff on goals and objectives to meet the needs of the DOD supply chain; reviewed and commented on Florida MEP grant proposals; kept Florida MEP apprised of new grant solicitations; and participated in discussions regarding workforce training initiatives. In addition, Knowlogistics*

*served as a valuable resource for the Florida MEP in regards to its federal funding partner NIST MEP. Invoices received from Knowlogistics clearly detail the services performed.*

Lastly, relevant to its contract with Knowlogistics, LLC, Florida MEP provided with its response to the final audit report a sample invoice and summary of activities from October 2006, for Knowlogistics, LLC; Ex. 41.

*(B) Trade Dynamics*

Florida MEP stated that:

> *"The consultant contract for Trade Dynamics, LLC is to 'identify and develop funding sources; instruct and train for supply chain.' The TimeWise management contract is to 'research and identify other state and federal funding sources and grants; integration of SupplyPoint® database. It is entirely reasonable and necessary for a company to hire an expert to train its clients on a specific piece of software, like SupplyPoint®."*
>
> *"Trade Dynamics provides learning solutions for supply chain improvement by providing supply chain strategies and extended process improvements. Trade Dynamics worked with Florida MEP staff on training and educating Center staff on SMEs, prime contractors and OEM supply chain improvement and processes for managing their extended enterprise. In addition, Trade Dynamics was a resource for all MEP staff in regards to sharing their extensive knowledge on improving the financial performance of manufacturers involved in supply chain improvement efforts. As a result much of the time spent each month by Trade Dynamics, LLC was answering phone calls and questions from Center staff. The invoices accurately reflect the services provided and are consistent with the written agreement between Florida MEP and Trade Dynamics, LLC."*

*(C) Trident Leasing Company*

> *"The consultant contract for Trident Leasing Company was to 'identify funding sources; explore grant opportunities, promote MEP, [and] Department of Defense contract consulting.' The services described in the TimeWise contract that the OIG alleges are duplicative are to 'research and identify other state and federal funding sources and grants; assist in identification of business opportunities.' Trident Leasing supplemented but did not duplicate the services provided by TimeWise."*

*"Trident Leasing was engaged by Florida MEP to assist the Center in identifying funding opportunities and developing grant proposals that would benefit Hispanic manufacturers and workers in Florida. Specifically, Trident Leasing assisted Florida MEP with developing a proposal for Hispanic Small Manufacturing Initiative for Sun Belt States; attended meetings with Department of Labor officials regarding grant funds available for training Hispanic workers in Florida; participated in meetings with Department of Defense officials to discuss utilizing the Florida Center for SupplyPoint® Integration to identify Hispanic and other minority manufacturers to participate in the Department of Defense supply chain; and worked with Florida MEP on a proposal submitted to the Department of Labor for the Mobile Outreach Skills Training (M.O.S.T.) Program for Hispanic workers.*

Lastly, relevant to the consultant contract with Trident Leasing Company, Florida MEP provided with its response to the final audit report the professional services agreement between Florida MEP and Trident Leasing; Ex. 43.

*(D) TimeWise Management*
*(E) Down East Strategies*

*"The contract with Down East Strategies is to 'Identify opportunities for grant funding; promote small to medium-size business issues.' In contrast, TimeWise was to 'research and identify other state and federal funding sources and grants.'*

*Down East Strategies provided detailed knowledge and technical expertise to formulate a plan to identify very specific federal funding opportunities and drafting successful grant proposals. Down East Strategies was engaged to assist Florida MEP with exploring federal education, training and grant opportunities.*

*Florida MEP management officials were continually updated on the activities performed by Down East Strategies through emails, telephone conferences and periodic meetings. Down East Strategies assisted the Center with the preparation of briefing materials regarding the proposal for the Florida Center for SupplyPoint® Integration; and advised the Center on effective communication strategies and talking points for promotion of supply chain initiative expansion proposal. Downeast Strategies provide specialized services that were not otherwise available within the Florida MEP organization and TimeWise."*

Lastly, relevant to the consultant contract with Down East Strategies, Florida MEP provided "Ex. 44.," with its response to the final audit report, which includes the professional services agreement between Florida MEP and Downeast Strategies, Schedule A, and an overview of Florida MEP work activities – Downeast Strategies.

*(F) Team-Serv, Inc.*

Florida MEP stated that the additional contractors (1) did provide periodic written summaries of activities performed; (2) were in regular communication with Florida MEP officials (via telephone conferences, e-mail, and face-to-face meetings), which was reflected by the supporting invoices; and (3) were determined by Florida MEP to be used on a limited basis. Florida MEP also contended that the contract rates were reviewed and determined to be reasonable and consistent with all of the services provided.

*(3) $113,748 in Unsupported and Unreasonable Massachusetts MEP Shared-Employee Contracts*

Florida MEP reiterated its position that the costs related to the shared-employee contracts with Massachusetts MEP were allowable incurred costs, which were documented by time sheets submitted by two individuals employed by Massachusetts MEP working directly with Florida MEP.

With regard to $95,431 of the total questioned costs of $113,748, Florida MEP stated, in part, the following:

> *"The contract sets forth in detail the scope of work and the nature of the services to be provided by Massachusetts MEP. The time sheets kept by the Massachusetts MEP employees record their activities and time related to the Florida MEP SupplyPoint database and the Supply Chain initiative. Pursuant to the contract and the time sheets, Florida MEP determined that the services were performed, benefit was received, and that the expenses incurred were on behalf of Florida MEP. The time sheets submitted are completed after-the-fact, signed by the employee or another individual with direct knowledge of the work performed, and are prepared at least monthly, meeting the requirements for allowability in OMB Circular A-122, Cost Principles for Non-Profit Organizations. 2 CFR Part 230, App. B(8)(m)(2). On this basis, Florida MEP determined that the expenses for the shared employees were reasonable, allocable and allowable to the MEP Program pursuant to their statutory authority and the terms of the cooperative agreement."*

With regard to the remaining $18,317 in questioned costs related to the Massachusetts MEP shared-employee arrangement, Florida MEP stated that a Massachusetts MEP employee

*". . . was contracted by Florida MEP to assist the Center for a period of twenty (20) days. The services that were provided by the Consultant were directly related to Florida MEP's ongoing client projects. The consultant contract was not work on the Department of Labor Advanced Manufacturing H1B grant as the OIG auditors concluded. The work was related to a client project for AI Trade. The cost for the Consultant was $800 per day for twenty (20) days, totaling $16,000. The services provided by the Consultant were specialty services not covered under the existing TimeWise or any other consultant contract by Florida MEP. Rather than being a duplication of services, the use of a specialized consultant was a proper and reasonable limited expenditure for a specifically identified need.*

*The travel expenses of $2,317 questioned in the Final Audit Report were incurred by the Consultant for travel to Florida MEP to assist the Florida MEP with delivery for the period of February 5, 2007 to February 16, 2007. The travel expenses were paid by Florida MEP directly to Massachusetts MEP. Such costs were incurred on Florida's behalf and were reasonable and necessary for the accomplishment of Florida MEP's programmatic objectives and are therefore allowable. This individual was later hired by Florida MEP on a full-time basis.*

*The expenses for two days mentioned as questioned costs, totaling $377 for March 1, 2007 and March 2, 2007, are from an expense report of costs paid by Massachusetts MEP that had been submitted to Massachusetts MEP in error. The costs for those days should have been charged directly to Florida MEP because the employee's activities for those days were related to his work for Florida MEP, but the expense report was submitted to and paid by Massachusetts MEP. Therefore, it was necessary for Florida MEP to reimburse Massachusetts MEP for the $377. The employee was not paid by both Florida MEP and Massachusetts MEP."*

- **Resolution Actions:**

*(1) <u>$215,750 Additional TimeWise Contracts</u>*

NIST agrees with the OIG that TimeWise did not submit supporting documentation with its invoices as required by its four additional contract agreements with Florida MEP and that Florida MEP paid contract fees to TimeWise with Federal funds in violation of its contractual agreements. Because of the preexisting management contract and the otherwise special relationship[9] between TimeWise and the Center and

9 For example, the Florida MEP Center board delegated signatory authority allowing TimeWise's president to execute contracts obligating the Center.

because these contracts, less than $100,000 individually but totaling $315,000 and all executed on the same day, flouted the award term requiring approval of contracts over $100,000,[10] adherence to their documentation requirements is of particular importance. NIST thus would disallow these costs solely because of Florida MEP's failure to comply with those documentation requirements. Nevertheless, NIST also finds 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 contract, 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.

Under the four additional contracts entered into between Florida MEP and TimeWise, fees for services were to be paid to TimeWise "*...outside of the Center's federal funding resources . . . upon receipt of a monthly invoice and status report from MEP MSI [TimeWise] . . . .*" This statement not only establishes the parties' understanding that federal funds were not to be used to pay these contracts, but also clearly indicates that status reports were to be submitted with the same frequency as invoices as a means of validating work performed by the contractor *prior* to payment.

In its response to the OIG's final audit report dated April 30, 2009, Florida MEP did not provide the requisite status reports to demonstrate that TimeWise had complied with the terms of the contract. Instead, Florida MEP provided minutes and a PowerPoint presentation from Board of Director meetings that occurred on May 19, 2005, and November 8, 2005.

NIST has reviewed the Board of Director meeting minutes as well as the PowerPoint presentation and finds that there is nothing in the documentation that definitively relates the accomplishments referenced in the presentation to work performed under the additional TimeWise contracts. The noted accomplishments could well have resulted from Center activities not attributable to work performed under the additional contracts. Furthermore, the meeting minutes do not identify specific timeframes in which accomplishments were achieved. This information is necessary to validate whether or not sufficient progress was being made toward stated deliverables at the time each payment was made.

In its response, Florida MEP asserts that expenditures were discussed during regular telephone conferences, meetings, and email updates. Florida MEP submitted no supporting documentation that progress on the contracts was discussed in regularly scheduled Board of Directors meetings. NIST concludes that undocumented, informal discussions concerning contract deliverables, as well as presentations at two Board of Director meetings six months apart, are irrelevant to and do not fulfill the monthly reporting requirement stated in the four additional contracts.

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10 GTC No. 8.e (2005)

In its response to the OIG's final audit report, Florida MEP did not address the contract payment clause that appears in all four additional TimeWise contracts prohibiting the payment of contract fees with federal funds. Florida MEP also did not submit any documentary evidence that the contracts had been modified to officially remove this clause. Therefore, NIST finds that this clause was in effect at the time Florida MEP inappropriately paid TimeWise with federal funds for its services.

In sum, NIST finds that: documentation for the services provided under the four additional contracts is insufficient; the contractor services called for by additional contracts duplicate those of the primary management contract; and Florida MEP violated the terms of the four additional TimeWise contracts when it paid with federal funds. Accordingly, NIST disallows $215,750 in additional TimeWise contracts.

*(2) $183,500 in Unsupported and Unreasonable Consultant Services*

NIST agrees with the OIG's finding that the $183,500 in consultant services paid to Knowlogistics, LLC, $50,000; Trade Dynamics, $45,000; Trident Leasing Company, $37,500; TimeWise Management, $7,500; Down East Strategies, $42,000; and Team-Serv, Inc.,[11] $1,500, largely represent unsupported and unreasonable costs. Central to the issues here are the following:

a. There is simply not adequate supporting documentation to substantiate and definitively illustrate that these services were reasonable as standalone tasks outside of the TimeWise contract's scope of work.
b. Florida MEP and its vendors did not comply with provisions of the respective contracts, including provisions related to invoicing and reporting requirements.
c. Florida MEP's attempts to differentiate the contracts' scopes of work from that of the TimeWise managing agent contract are ambiguous and subjective.

Notwithstanding the inadequate documentation and the inability to clearly distinguish the work of these consultants from that required of TimeWise under the primary "managing agent" contract, either of which would justify disallowance in its entirety, it appears that some work provided by Knowlogistics (grant writing) and Trade Dynamics (Supply Point expertise) is likely to have been warranted. Thus, as an exercise of discretion, NIST will reinstate 25% of the costs related to Knowlogistics, LLC, ($50,000) and Trade Dynamics ($45,000), or $23,750 ($50,000 + $45,000 = $95,000 * 25% = $23,750), of the claimed total as having been so incurred. Because of inadequate documentation NIST further disallows 10% of those costs, or $2,375 ($23,750 - $2,375 = $21,375).

11 The contract with Team-Serv, Inc., also presents conflict of interest concerns because that vendor is owned by a member of the Center's Board of Directors, See 15 CFR § 14.42; 2 CFR Part 230, App. A, section A.3.b.

In summary, NIST reinstates $21,375 of the $183,500 in questioned costs and disallows the balance of $162,125.

*(3) $113,748 in Unsupported and Unreasonable Massachusetts MEP Shared-Employee Contracts*

In the absence of detailed written summaries illustrating the specific work performed by the Massachusetts MEP on Florida MEP's behalf, NIST finds that these costs are not adequately documented and, therefore, cannot be definitively identified as non-duplicative of the TimeWise management services contract. Accordingly, NIST is disallowing the $113,748 of questioned costs, which are comprised of the $95,431 in costs associated with an ongoing contract related to the Florida Supply Chain initiative, and the $18,317 in consultant and related travel costs.[12]

Moreover, the role of TimeWise and of Center management in all of these contracts presents troubling concerns. TWMS is the managing agent for both Florida MEP and Massachusetts MEP and was instrumental in securing the apparently unnecessary and largely duplicative Knowlogistics, Trade Dynamics, Trident, Down East Strategies, and Team-Serv, Inc., contracts for Florida MEP. TimeWise is obligated to act on behalf of Florida MEP identifying, screening, recommending and negotiating contracts and the Center needs to be able to rely upon its managing agent for advice, guidance, and service that is not compromised by that agent placing its own interests before those of the Center. Regardless of whether these contracts were in the best interests of the Florida MEP Center, they clearly were of significant benefit to TimeWise. The entirety of the circumstances here, including the disallowed expenditures for storing TimeWise produced training materials (see Discussion relating to Findings and Recommendations concerning direct costs relating to training materials) 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.

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12 Florida MEP included the following in its response to the OIG's questioning of $512,998 consultant costs:

*"The Final Audit Report also notes that the TimeWise management contract with Florida MEP limits its subcontract expenditures to $5,000 a month, and then alleges that TimeWise has exceeded that limit by more than $40,000 a month. Final Audit Report at 12. The contracts were not made by TimeWise; they were made by Florida MEP. The contracts are signed by the president / CEO of TimeWise who was given signature authority for Florida MEP by Resolution of the Board of Directors of Florida MEP. There is no limitation on the contracts that Florida MEP can execute or pay on a monthly basis."*

The OIG's assertion regarding the cap on Timewise's authority to engage in contracts under its management contract was not a factor in NIST's determination of this finding. *The Hollings MEP General Terms and Conditions* subsequently have been revised to limit the delegation of signatory authority by a Center. The most recent version, states: *"The NIST HMEP program does not authorize the delegation of signatory authority by the Recipient to any other organization or to any individual who is not a Recipient's Board Member or employee."*

- **Financial Summary:**

| | |
|---|---|
| A. Costs Questioned: | $ 512,998 |
| B. Costs to be Allowed: | $ 21,375 |
| C. Costs to be Disallowed: | $ 491,623 |

- **Rationale and/or Legal Basis for Action:**

OMB Circular A-122, "Cost Principles for Non-Profit Organizations," Attachment A, Section A(2)(g) states:

> *"1. Factors affecting allowability of costs. To be allowable under an award, costs must meet the following general criteria . . .*
>
> *g. Be adequately documented."*

OMB Circular A-122, "Cost Principles for Non-Profit Organizations," Attachment A, Section A(3) states:

> *"3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. . . . . In determining the reasonableness of a given cost, consideration shall be given to:*
>
> ****
>
> *b. The restraints or requirements imposed by such factors as . . . arms length bargaining . . . ."*

15 CFR 14.42 states, in part, the following:

> *"The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award."*

Four additional TimeWise Contracts: Supply Point Web Site, State and Federal Grants and Contracts, Supply Point Registry and Demand Sales, and Outreach to Florida Small

and Medium Size Enterprises, dated February 24, 2005, paragraph 2.1(a) of each contract states:

> *". . . The Fee, to be paid outside of the Center's federal funding resources, is due upon receipt of a monthly invoice from MEP MSI by the Center or at such other time as may be mutually agreed to by the Parties."*

**3. Brief Statement of Finding and Recommendation:**

$164,836 in Questioned Other Direct Costs

In the final audit report, the OIG questioned $164,836 in other direct costs because of the unreasonableness of the claimed expenses. Of the $164,836, the OIG questioned $133,000 for the purchase of excess training materials; $12,961 for the unreasonable purchase of T-shirts for Center employees; $10,875 in unallowable bad debt costs; and $8,000 in unreasonable rental space costs. OMB A-122, *Cost Principles for Non-Profit Organizations*, Attachment A, Section A (3) states, *"a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person..."*

(1) $133,000 in Excess Training Materials Costs

The OIG questioned $133,000 in training materials as unreasonable. Florida MEP's training materials inventory increased from $89,000, as of April 30, 2006, to $133,000, as of April 30, 2007. OMB A-122, Cost Principles for Non-Profit Organizations, Attachment A, Section 28 states *". . . Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained . . ."* The majority of training materials were purchased directly from TimeWise, Florida MEP's managing agent.

Florida MEP officials informed the OIG that these inventory levels are maintained because it typically takes two weeks for TimeWise to deliver training materials. Officials also stated training materials purchased from other vendors are usually delivered in less than two days, and ordering the training materials in bulk from TimeWise does not reduce the price. The OIG did not accept this explanation as adequate support for maintaining the excess inventory.

(2) $12,961 in Unreasonable T-Shirt Purchases

The OIG also questioned $12,961 in T-shirt and related clothing purchases for Florida MEP employees as unreasonable. Florida MEP officials stated that T-shirts are provided to employees to use as a uniform for identification when visiting clients and partners and attending events. The OIG reviewed Florida MEP's claimed personnel costs for September 2005, March 2006, and January 2007, which revealed an average of 24 employees per month. When the OIG compared the amount of clothing

purchases for this same time period, the average was almost $540 per employee spent on T-shirts ($12,961 / 24 = $540). The OIG considered this an unreasonable and excessive amount for T-shirt expenses.

(3) $10,875 in Unallowable Bad Debts

The OIG also questioned $10,875 for bad debt expenses as unallowable costs. These bad debt costs represent three uncollected accounts receivable that Florida MEP claimed against the NIST award. OMB A-122, Cost Principles for Non-Profit Organizations, Attachment B, Section 3, states that bad debts are unallowable. Florida MEP's claimed bad debts included $4,875 from Quinn Precision Engineering; $3,000 from Pelican Bay, Ltd.; and $3,000 from Wheeled Coach Industries.

The OIG added that Florida MEP claimed another $31,500 in bad debt expenses on June 30, 2007. Although this expense occurred outside the scope of the current audit, the OIG stated that Florida MEP must adjust its claim for that quarter.

(4) $8,000 in Unreasonable Rental Space Costs

The OIG questioned $8,000 in unreasonable rental space costs claimed as dues and subscriptions. The money was paid to TimeWise as a reimbursement for a rental agreement between TimeWise and the U.S.-Mexico Chamber located in Washington, DC.

Under the rental agreement, TimeWise paid the Chamber of Commerce $2,000 per month for use of office space in Washington, DC. The monthly rental costs were then charged by TimeWise to the five MEP Centers with which it had contracts at the time of this audit: Florida MEP, Arizona MEP, Maine MEP, Massachusetts MEP, and New Hampshire MEP. Each MEP Center was charged $400 per month. The OIG stated that it was not convinced of the need for Florida MEP to pay to maintain office space in Washington, DC.

- **Recipient's Response**

(1) $133,000 in Excess Training Materials Costs

Florida MEP stated that it maintained two off-site storage facilities for training materials, one on the west coast of Florida and the other in the southeast part of the state. Training materials were maintained in the two separate locations so that they would be more accessible to staff working in various locations throughout the state, normally at the client's site. It was Florida MEP's policy to allow project managers to request needed training materials for up to a six-week period.

Florida MEP decided that the off-site storage locations would be phased out in 2007 and all ordering and handling of training materials would be processed through the main office. The training materials previously kept in off-site storage were

transferred to the main office. Florida MEP also returned forty-five (45) Lean 101 student guides from incomplete kits for credit. The process changes allowed the Center to reduce its on-hand inventory and remain flexible and capable of handling last minute orders based on late-scheduled training events. MEP stated all training materials have been and continue to be utilized in performance of the Florida MEP cooperative agreement.

Florida MEP further stated that it was reasonable for a prudent person running a business to keep an inventory of products that may be needed on short notice, which he or she might not otherwise have access to on demand. Florida MEP disputes the OIG's assessment that the inventory is either excessive or unreasonable.

(2) $12,961 in Unreasonable T-Shirt Purchases

Florida MEP stated the clothing apparel expense questioned by the OIG was for Florida MEP branded shirts, similar to a uniform, provided for employees to wear when visiting clients and attending events. This benefits Florida MEP because it allows clients and attendees to identify and recognize the employee as associated with Florida MEP. The average of $540 per employee calculated by the OIG and reported in the final audit report actually represents the initial startup costs for 2005. According to Florida MEP, after factoring in initial startup costs, the apparel costs are $250 per employee. Florida MEP determined that this was a reasonable and necessary expense to the accomplishment of its statutory objectives and allowed it to be recognizable among the manufacturing community as an important provider of services. Therefore, according to Florida MEP, the costs should be allowed.

(3) $10,875 in Unallowable Bad Debts

Florida MEP did not express disagreement with the OIG's finding regarding the unallowable bad debt expense claimed totaling $10,875.

(4) $8,000 in Unreasonable Rental Space Costs

Florida MEP indicated that the United States-Mexico Chamber of Commerce assists Florida MEP and its Hispanic manufacturing clients; and the United States-Mexico Chamber of Commerce assists Florida MEP in providing services to its Hispanic manufacturing clients by providing guidance relating to minority workforce development, potential grant opportunities, and other manufacturing improvement issues. Florida MEP continues to submit proposals to multiple Federal agencies seeking funding to serve all manufacturers in Florida and the decision to lease office space from the United States-Mexico Chamber of Commerce was the most cost effective means of utilizing office and meeting space needs for Florida MEP representatives while in Washington, DC, to work on proposals, meet with Federal officials, and conduct other Florida MEP business.

Florida MEP further stated in its Strategic Plan FY 2005-2007, that serving the Hispanic manufacturing community was identified as one of its key strategies. Its Board of Directors determined that Florida's Hispanic population was the fastest growing segment in Florida and it needed to address the needs of both Hispanic-owned manufacturing companies and the Spanish-speaking workforce. The Board likewise decided that the best way to reach the Hispanic manufacturing community and the Spanish-speaking workforce was through a partnership with the U.S.-Mexico Chamber of Commerce. This particular strategic thrust was also discussed in the 2005 Operating Plan. Florida MEP disagrees with the OIG that reserving office space with the U.S.-Mexico Chamber of Commerce was an unreasonable or unnecessary expense.

- **Resolution Actions:**

NIST agrees with the OIG that the $164,836 in costs claimed by Florida MEP for maintaining excess training materials, T-shirt purchases, bad debts, and rental space in Washington, DC, were unreasonable because there was insufficient documentation or other evidence to support the level of costs claimed.

(1) <u>$133,000 in Excess Training Materials Costs</u>

The OIG questioned the reasonableness of $133,000 in training materials inventory, specifically, in light of the fact that this amount represented an increase of approximately $40,000 from the prior year. While Florida MEP asserted that it maintained inventory levels consistent with internal policy, it did not provide any documentation to support this claim. Rather, the only supporting documentation it provided was a training materials spreadsheet, which showed an inventory status as of May 1, 2007, and December 31, 2007.

While reviewing this document, which was used to track ordering and processing of training materials and kits from May 1, 2007, through December 31, 2007, NIST noted the spreadsheet reflected that at least 23 kits were disposed of or destroyed. This contradicted a statement in Florida MEP's response to the final audit report, which stated *"all training materials have been and continue to be utilized in performance of the Florida MEP cooperative agreement."* The training materials and kits reflected an individual cost of approximately $1,980 and $5,000, respectively. NIST noted Florida MEP's statement that in early 2007 it ceased its practice of maintaining two storage locations in separate parts, which reduced its on hand inventory while still meeting the needs of the Center.

NIST is of the view that some amount of training materials costs, including a limited inventory, likely would be allowable with regard to materials that were utilized. However, the documentation provided does not provide a sufficient basis upon which to make even an educated estimate of what that amount might be. Our reluctance to estimate and allow any such reasonable amount of training material cost is further

supported by concerns, which arise because of an apparently less than arms-length transaction with TimeWise, which also was the Center's managing agent. As a result, it is the determination of NIST that unused inventory should not be charged as a direct cost to the award pursuant to OMB Circular 2 CFR 230, Appendix B, Section 29 which states, *"Only Materials and supplies actually used for the performance of a Federal award may be charged as a direct cost."*

(2) $12,961 in Unreasonable T-Shirt Purchases

The OIG questioned the reasonableness of $12,961 in clothing purchases for Florida MEP employees as the unit cost per employee averaged approximately $540 for the period reviewed. Florida MEP did not dispute this figure; rather, it reported the unit cost less initial start-up expenses as $250. Florida MEP described the clothing apparel as branded shirts in the nature of a uniform common in the manufacturing community that it services that make its employees identifiable to clients. NIST is in agreement with the OIG, as there was no additional documentation provided to justify the need for branded shirts for staff at a cost of either $250 or $540, on average, per employee. However, if the branded apparel was used by employees for the purposes Florida MEP stated, NIST agrees that a reasonable amount of expense would be acceptable. Therefore, as an act of discretion, NIST is reinstating a portion of the questioned costs. While the OIG determined that 24 employees, on average, were on staff during the audit period, not all of these employees were field staff. Accordingly, all 24 employees did not require branded apparel. NIST will reinstate $2,500 of the $12,961 in questioned clothing purchases, calculated as follows: $125 per employee * 20 employees = $2,500.

(3) $10,875 in Unallowable Bad Debts

In the final audit report, the OIG questioned $10,875 in unallowable bad debts. In its response to the OIG, Florida MEP did not contest this finding. Accordingly, NIST is disallowing these costs in accordance with *OMB Circular 2 CFR 230 (formerly A-122), Cost Principles for Non-Profit Organizations,* which states *"Bad debts are unallowable costs."*

(4) $8,000 in Unreasonable Rental Space Costs

The OIG questioned the reasonableness of $8,000 in rental space costs claimed as dues and subscriptions as it was not convinced of the need for Florida MEP to pay to maintain office space in Washington, DC. Florida MEP indicated the space was needed due to its ongoing relationship with the United States-Mexico Chamber of Commerce, which assists the Florida MEP with its Hispanic manufacturing client base. It further stated that the rental space was the most cost effective means of utilizing office and meeting space needs for Florida MEP representatives while in Washington, DC, to work on proposals, meet with Federal officials, and conduct other Florida MEP business. NIST is in agreement with the OIG. We are hard

pressed to perceive a need for the Florida MEP Center to maintain rented office space in Washington, DC, and Florida MEP has not shown such costs to be reasonable.

- **Financial Summary:**

| | |
|---|---|
| A. Questioned Costs: | $ 164,836 |
| B. Costs to be Allowed: | $ 2,500 |
| C. Costs to be Disallowed: | $ 162,336 |

- **Rationale and/or Legal Basis for Action:**

(1) $133,000 in Excess Training Materials Costs

OMB Circular 2 CFR 230 (A-122), *Cost Principles for Non-Profit Organizations,* Appendix A, Section A states, in part, the following:

> *"3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:*
>
> *b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award."*

OMB Circular 2 CFR 230 (A-122), *Cost Principles for Non-Profit Organizations,* Appendix B states, in part, the following:

> *"28.(c) Only materials and supplies actually used for the performance of a Federal award may be charged as direct costs."*

15 CFR 14.42 states, in part, the following:

> *"The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of*

*his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award."*

(2) $12,961 in Unreasonable T-Shirt Purchases

OMB Circular 2 CFR 230 (A-122), *Cost Principles for Non-Profit Organizations*, Attachment A, Section A(3) states

*"A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person . . ."*

(3) $10,875 in Unallowable Bad Debts

OMB Circular 2 CFR 230 (A-122), Cost Principles for Non-Profit Organizations, Appendix B, Section 5 states

*"Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable."*

(4) $8,000 in Unreasonable Rental Space Costs

OMB Circular 2 CFR 230 (formerly A-122), Cost Principles for Non-Profit Organizations, Appendix B, Section 21 b states

*"The costs of idle facilities are unallowable."*

**4. Brief Statement of Finding and Recommendation:**

$99,738 in Questioned Third-Party Contributions

This finding, cited as Finding 4 in the OIG's final audit report, is addressed above in this audit resolution in conjunction with Finding 1.

**5. Brief Statement of Finding and Recommendation:**

$57,760 in Questioned Lobbying Costs

The OIG questioned $57,760 in claimed costs as unallowable lobbying expenses. The questioned costs involve membership dues for two lobbying organizations, the American Small Manufacturers Coalition (ASMC) and the Manufacturers Association of Florida (MAF), and related travel.

$21,600 American Small Manufacturers Coalition (ASMC)

The OIG found that Florida MEP paid a total of $54,000 ($27,000 per year for two years) in membership dues to ASMC. Florida MEP claimed $21,600 of the $54,000 as direct costs to the NIST project. The remaining balance of $32,400 was charged as nonfederal as part of the $294,000 described in a separate finding within the OIG's final audit report. (See "Incorrect and Misleading Calculations Used to Report Excess Program Income" of this audit resolution.)

The ASMC advocates for legislative and programmatic resources that allow small manufacturing clients to better compete in the global marketplace. ASMC and its members do this by increasing awareness of the importance of American small manufacturers, the challenges they face, and the Federal legislation and programs that affect them. Among other activities undertaken by ASMC are yearly "Hill Day" events in Washington, DC, where its staff, members, and clients advocate for support for the MEP program from Congress during the Federal appropriations process.

The OIG notes that Section B.30 of OMB Circular A-122 provides that the costs of an organization's membership in a business, technical, or professional organization are allowable. Section B.25(a) of A-122, notwithstanding any other provision of the circular, states that costs associated with certain types of lobbying activities (including attempts to influence the introduction of Federal or state legislation, the enactment or modification of pending Federal or state legislation through communication with any member or employee of the Congress or State legislature, or any government official or employee in connection with a decision to sign or veto enrolled legislation) are unallowable. The OIG stated in its audit report that it could not tell from the ASMC invoices which portion of the dues paid supports prohibited lobbying activities and which portion funds activities that might be allowable under A-122. Thus, the OIG questioned $21,600 in ASMC membership dues paid as unallowable lobbying costs.

$20,000 Manufacturers Association of Florida (MAF)

The OIG stated in its final audit report that Florida MEP claimed a total of $20,000 ($10,000 per year for two years) in membership dues it paid to MAF. The Florida MEP Board of Directors approved this membership when MAF was formed in 2006. The OIG stated that when the membership was approved by the Florida MEP Board, one of the board members (who was also the president of MAF) said that MAF's board members were lobbying for Florida manufacturing interests and meeting with the Governor's office on a weekly basis. According to the OIG, MAF also sponsors an annual "Manufacturers Day at the Capitol" event in Tallahassee, Florida. This event allows MAF members and manufacturers to meet with state legislators. During its audit, the OIG found that Florida MEP's

check for membership dues was made payable to the executive director of MAF, who is a registered lobbyist with the state of Florida.

Similar to its finding with ASMC, the OIG stated that although Section B.30 would ordinarily allow the Federal government to accept the costs of dues paid to a business, professional, or technical organization like MAF, even though MAF engages in the type of lobbying activities that are prohibited by Section B.25(a) of OMB Circular A-122, in this case, the Federal government cannot allow these costs because the OIG could not distinguish between which portion of the dues paid to MAF supported prohibited lobbying activities and which portion funded activities that might be allowable under Circular A-122. As a result, the OIG questioned the entire $20,000 in membership dues paid to MAF as unallowable lobbying costs.

$10,000 ASMC Public Relations Campaign

In its audit report, the OIG also questioned $10,000 that Florida MEP claimed to ASMC as a public relations campaign expense in February 2007. According to the OIG, ASMC received funds from Florida MEP and three other TimeWise-managed MEP Centers including Arizona, Massachusetts, and New Hampshire, to lobby against a proposal to change the national MEP system. However, the proposal was cancelled, and ASMC returned the funds in May 2007, (after the period covered by the OIG's current audit).

$6,160 Lobbying Travel Costs

The OIG found that Florida MEP claimed $6,160 in travel costs for expenses incurred by the former Center Director and former and current board members who attended lobbying events sponsored by ASMC in Washington, DC, and "Manufacturers Days at the Capitol" sponsored by MAF at the Florida State Capital in Tallahassee, Florida. Since the OIG questioned membership dues paid to both ASMC and MAF, it also questioned travel costs incurred by Florida MEP officials to attend these lobbying events.

- **Recipient's Response:**

$57,760 in Questioned Lobbying Costs

Florida MEP asserts that, regarding the questioned lobbying costs, that "*all of the costs the final audit report questioned are costs associated with activities that do not meet the definition of lobbying or constituted an allowable lobbying cost.*" Florida MEP provided responses specific to each of the activities questioned as unallowable lobbying costs:

$21,600 American Small Manufacturers Coalition (ASMC)

*"Although ASMC has a lobbying component to its activities, lobbying is not its sole purpose. Membership dues are divided such that a member can opt to pay separate dues to support the lobbying activities. Florida MEP has obtained a letter from ... the Executive Director of ASMC, which denotes the amounts of the dues paid by Florida MEP that were used to support lobbying activities."*

$20,000 Manufacturer's Association of Florida (MAF)

*"The Manufacturers Association of Florida ('MAF') operates similarly to ASMC, only on the local level. It is a trade association for manufacturers in Florida. While MAF does conduct some local lobbying activities, including a Capitol Day in Tallahassee, that does not represent the entirety of its efforts or activities."*

$10,000 ASMC Public Relations Campaign

*"The Final Audit Report notes in the finding that the funds were returned to Florida MEP after the campaign was cancelled. Thus any proposed disallowance regarding these funds is moot. Any error that the OIG may have found with this transaction has been corrected and Florida MEP was made whole."*

$6,160 Lobbying Travel Costs

*"Despite the fact that the other costs related to educating the members of Congress and the Florida legislature were allowable, Florida MEP does not disagree that travel costs associated with these education efforts should be disallowed."*

- **Resolution Actions:**

NIST is disallowing the total questioned lobbying costs of $57,760 since it agrees with the OIG that Florida MEP has not provided documentation supporting its claim that the membership dues paid to ASMC and MAF were not used for lobbying activities. (The travel costs of $6,160 associated with the disallowed lobbying costs are included in the total ($57,760) disallowed costs.) As stated in the final audit report:

*"At a minimum, the grantee should provide financial records from both ASMC and MAF that demonstrate the membership dues from Florida MEP were accounted for separately from other revenues collected and that the use of the membership dues was restricted to nonlobbying activities."*

While the recipient's response to the final audit report stated that *"Florida MEP has obtained a letter from ... the Executive Director of ASMC, which denotes the amounts of the dues paid by Florida MEP that were used to support lobbying activities,"* the letter was not provided to NIST by the recipient.

Lastly, NIST acknowledges that, after the audit period, ASMC returned the $10,000 paid by Florida MEP for the public relations campaign, which was cancelled. For the purposes of this audit resolution, NIST is disallowing the $10,000 since that amount must be deducted from the total amount of costs claimed ($19,133,115), as reflected in the OIG's final audit report.

- **Financial Summary:**

| | |
|---|---|
| A. Questioned Costs: | $ 57,760 |
| B. Costs to be Allowed: | $ 0 |
| C. Costs to be Disallowed: | $ 57,760 |

- **Rationale and/or Legal Basis for Action:**

OMB Circular A-122, *Cost Principles for Non-Profit Organizations,* Attachment B, Section 25 (a)(3) through (5) states the following:

> *"(3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;*
>
> *(4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or*
>
> *(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying."*

6. **Brief Statement of Finding and Recommendation:**

$7,188 in Questioned Travel Costs

The OIG stated in its audit report that Florida MEP claimed travel expenses for both a former Massachusetts MEP employee hired by Florida MEP and a Florida MEP board member who did not have a written consultant agreement with the company. The OIG questioned a total of $7,188 in claimed travel costs as unreasonable.

$4,750 Former Massachusetts MEP Employee

The OIG found that Florida MEP reimbursed $4,750 for travel costs to a former Massachusetts MEP employee who was under a consultant contract and later hired by Florida MEP. Florida MEP hired the employee on March 1, 2007, but continued to reimburse the employee for travel costs, including weekly airfares back and forth from Maine to Florida, until April 5, 2007. The OIG also questioned the consulting contract with the same former Massachusetts MEP employee (see Finding 2, "$512,998 in Consultant Costs Questioned as Unsupported and Unreasonable").

$2,438 Board Member's Consulting Contract

The OIG found that Florida MEP reimbursed $2,438 in travel costs to Team-Serv, Inc., which is owned by a Florida MEP board member. The OIG notes in its audit report that there was no formal written consultant contract in place and that the supporting travel voucher supplied by Florida MEP listed the contract number as verbal approval from TimeWise's president / CEO. The OIG also questioned additional travel costs to this board member as lobbying costs (see Finding 5, "$57,760 in Questioned Lobbying Costs").

- **Recipient's Response:**

$4,750 – Former Massachusetts MEP Employee

Florida MEP did not provide a response to the OIG final audit report regarding the questioned costs totaling $4,750 with regard to the relocation expenses of a former Massachusetts employee that was hired by Florida MEP on March 1, 2007.

$2,438 – Board Member's Consulting Contract

Florida MEP did not provide a response to the OIG final audit report regarding the questioned costs totaling $2,438, however, the Grantee Response section of the final audit report, indicated Florida MEP agreed with the questioned travel costs for the Florida MEP board member in the amount of $2,438.

- **Resolution Actions:**

Florida MEP did not provide any new information or documentation in response to this finding included in the OIG's final audit report. Furthermore, the final audit report indicated Florida MEP was in agreement with the questioned travel costs totaling $2,438 associated with a board member's consulting contract.

The OIG questioned the travel costs for an employee previously employed by the Massachusetts MEP. Florida MEP's response to the draft report indicated the costs were associated with the relocation of this employee. However, the OIG noted the questioned travel costs were for trips from Portland, Maine, to Ft. Lauderdale, Florida, although the individual was an employee of Massachusetts MEP, not Maine MEP, and the Florida MEP is located in Orlando rather than Ft. Lauderdale. It is the determination of NIST, in the absence of sufficient justification or relevant supporting documentation, including adequate policies and procedures, the travel costs totaling $7,188 are disallowed.

- **Financial Summary:**

| | |
|---|---|
| A. Questioned Costs: | $ 7,188 |
| B. Costs to be Allowed: | $ 0 |
| C. Costs to be Disallowed: | $ 7,188 |

- **Rationale and/or Legal Basis for Action:**

OMB Circular A-122, *"Cost Principles for Non-Profit Organizations,"* Attachment A, Section A(3) states:

> *"3. Reasonable costs. A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs."*

OMB Circular A-122, *"Cost Principles for Non-Profit Organizations,"* Attachment B, Section 39 states:

> *"Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable . . . when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government."*

7. **Brief Statement of Finding and Recommendation:**

$386,133 in Questioned Indirect Costs

In its audit report, the OIG questioned a total of $742,782 in direct costs that were used as the basis for charging indirect costs on the financial status reports submitted to NIST. As a result, the OIG also questioned $386,133 in indirect costs associated with the questioned direct costs. The amount of indirect costs questioned is based on the percentage used in Florida MEP's claims to NIST for reimbursement of indirect costs (see Table 6 from the final audit report).

**Final Audit Report Table 6. Questioned Indirect Costs**

| | For the Period July 1, 2005, Through December 31, 2006 | For the Quarter Ending March 31, 2007 | Total During the Audited Period |
|---|---|---|---|
| Questioned direct costs | $470,710 | $272,072 | $742,782 |
| Indirect cost rates used on the financial status report submitted to NIST | x59.49%[13] | x39.00%[14] | |
| Questioned indirect costs based on questioned direct costs | $280,025 | $106,108 | $386,133 |

- **Recipient's Response:**

Florida MEP stated in its response to the final audit report that it contested all the direct costs questioned by the OIG in the final audit report. It also contested the $386,133 of indirect costs questioned by the OIG.

- **Resolution Actions:**

NIST's review found that Florida MEP did not have approved indirect cost rates for Fiscal Years 2005, 2006, and 2007. NIST therefore reviewed Florida MEP's financial status reports (FSRs) for the audit period to determine whether indirect costs were reported in accordance with the indirect cost rates Florida MEP proposed for the audit period. Table 6.A. shows the indirect cost rate that Florida MEP proposed for each of the seven quarters of the audit period and, for comparison, the rate it actually claimed per quarter.

13 For the periods ending 9/30/2006 and 12/31/2006, the financial status reports (FSRs) showed the indirect cost rate as 59.49%, however, the rate actually charged was lower. For the purpose of the report, the OIG used the stated billing rate since its audit did not encompass the entire fiscal year and adjustments to actual had not yet been made.
14 For the period ending 3/31/07, the FSR showed an indirect cost rate of 39%, however, the rate actually charged was higher. For the purpose of the report, the OIG used the stated billing rate since its audit did not encompass the entire fiscal year and adjustments to actual had not yet been made.

**Table 6.A. NIST's Comparison of Florida MEP's Proposed Versus Actually Claimed Indirect Cost Rates (IDCRs)**

| Quarter Ended | Proposed Rate | Actual Rate Claimed |
|---|---|---|
| 09/30/2005 | 59.49% | 59.49% |
| 12/31/2005 | 59.49% | 59.49% |
| 03/30/2006 | 59.49% | 59.49% |
| 06/30/2006 | 59.49% | 59.49% |
| 09/30/2006 | 59.49% | 57.65% |
| 12/31/2006 | 59.49% | 56.12% |
| 03/31/2007 | 39.00% | 54.82% |

As Table 6.A. demonstrates, Florida MEP actually applied the 59.49% proposed rate for the first four quarters of the audit period. For the fifth and sixth quarters, Florida MEP reported indirect costs of slightly less than the 59.49% proposed rate: 57.65% and 56.12%, respectively. For the final quarter of the audit period, Florida MEP reported significantly more (54.82%) indirect costs than its proposed rate of 39.00%. While it is not addressed in this audit resolution, it should be noted that Florida MEP's calculation of its indirect costs for the quarter ended March 31, 2007, resulted in $1,282,802 in indirect costs claimed in excess of the proposed rate of 39.00%.

In the absence of approved indirect cost rates for 2005, 2006, and 2007, in order to calculate the amount of indirect costs associated with the direct costs disallowed by NIST in conjunction with this audit resolution, we adjusted the OIG's Table 6 to reduce the amount of questioned costs by the costs reinstated by NIST. For the period July 1, 2005, through December 31, 2006, we averaged the actual indirect cost rate applied for each of those six quarters. (The fact that less than the proposed rate was applied by Florida MEP in the last two of the six quarters reduced the average rate applied to determine disallowed indirect costs for that period.) For the quarter ended March 31, 2007, we used the rate actually applied (54.82%) by Florida MEP. Because the percentage actually claimed for the quarter ended March 31, 2007, exceeded the proposed rate significantly, NIST's calculation increases the amount of disallowed indirect costs for that quarter, as compared to the OIG's calculation. Across the entire audit period, NIST found that $411,245 in indirect costs are associated with disallowed direct costs and are, therefore, also disallowed. This represents a net increase of $25,112 in disallowed indirect costs compared to the total amount of indirect costs questioned by the OIG ($411,245 - $386,133).

**Table 6.B. NIST's Calculation of Disallowed Indirect Costs**

| | For the Period July 1, 2005, Through December 31, 2006 | For the Quarter Ending March 31, 2007 | Total During the Audited Period |
|---|---|---|---|
| Questioned direct costs | $470,710 | $272,072 | $742,782 |
| Reinstated direct costs: | | | |
| • Branded Apparel | ($ 2,500) | ($ 0) | ($ 2,500) |
| • Knowlogistics, LLC | ($ 7,031) | ($ 4,219) | ($ 11,250) |
| • Trade Dynamics | ($ 10,125) | ($ 0) | ($ 10,125) |
| Total disallowed direct costs: | $451,054 | $267,853 | $718,907 |
| Indirect cost rates used on the financial status reports submitted to NIST | x 58.62% | x 54.82% | |
| Disallowed indirect costs based on disallowed direct costs | $264,408 | $146,837 | $411,245 |

- **Financial Summary:**

A. Questioned Costs: $ 386,133

B. Costs to be Allowed: $ 0

C. Costs to be Disallowed: $ 411,245

- **Rationale and/or Legal Basis for Action:**

As a result of the disallowance by NIST in this audit resolution of direct costs totaling $718,907, we have calculated the corresponding amount of unallowable indirect costs claimed during the audit period to be $411,245, as illustrated in Table 6.B.

8. **Brief Statement of Finding and Recommendation:**

Incorrect and Misleading Calculations Used to Report Excess Program Income

In its audit report, the OIG stated that although Florida MEP did not have excess program income, it incorrectly reported excess program income on its financial status reports to NIST and inaccurately reported the same funds as "unrestricted net assets" in its financial statements. An unrestricted asset is an asset that is not restricted by donor imposed stipulations either permanently or temporarily, such as the restrictions normally imposed by NIST on excess program income. Florida MEP's independent public accountant told the OIG that unrestricted net assets were used to pay costs identified by Florida MEP as unallowable for reimbursement by the federal government.

Program income, as defined in 15 CFR, Section 14.2(aa), represents revenue generated by a financial assistance recipient as a result of performing work under its award. A common source of program income in MEP Centers includes fees paid by manufacturers for services provided by MEP staff or contractors. NIST's general practice is to allow MEP Centers to use program income to fund the nonfederal share of project costs.

According to the OIG, Florida MEP primarily earned its program income from services to clients. According to its quarterly profit and loss statements, Florida MEP earned $2,846,055 in program income during the seven quarters audited by the OIG. According to its financial status reports, Florida MEP used $2,810,970 of the program income earned to meet its matching share for the award, $35,085 less than what it had earned (i.e., $2,846,055 program income earned minus $2,810,970 program income claimed on financial status reports to NIST). The OIG states that Florida MEP did not provide an explanation as to why it did not claim the full amount of program income earned as matching share.

The OIG performed its own independent calculation of excess program income based on Florida MEP's requirement for cash outlays and after accounting for questioned project costs and determined that all of the program incomes earned could have been used to meet the matching cost share requirement of the award with no excess to carry over (see Table 7 from the OIG's audit report).

**Final Audit Report Table 7. Analysis of Program Income**

| **PROGRAM INCOME ANALYSIS**<br>**For the period July 1, 2005, through March 31, 2007** | |
|---|---|
| Cost incurred according to Florida MEP | $ 19,133,115 |
| Costs questioned | 12,623,477 |
| Costs accepted | 6,509,638 |
| Nonfederal cost-share ratio in approved budget | x 66.67% |
| Nonfederal share of accepted costs/cash requirement for program income | $ 4,339,976 |
| Program income earned | $ 2,846,055 |
| Excess program income | -0- |

The OIG also conducted an independent analysis of Florida MEP's calculations of program income in order to understand the discrepancy between what the OIG found to be the correct amount of program income earned versus what Florida MEP reported on its financial status reports to NIST. The OIG summarized its analysis in Table 8 of the audit report included below.

**Final Audit Report Table 8. Analysis of Excess Program Income Florida MEP Reported to NIST**

| Florida MEP Award August 1, 2003, through March 31, 2007 | Total Excess Program Income Calculated by Florida MEP | NIST Share of Excess Program Income (1/3 of total excess) | Florida MEP's Share of Excess Program Income (2/3 of total excess) |
|---|---|---|---|
| Year ending 6/30/2004 | $869,681 | $289,894 | $579,787 |
| Year ending 6/30/2005 | 1,076,937 | 358,979 | 717,958 |
| Audit Period | | | |
| Qtr ending 9/30/2005 | 102,840 | 34,280 | 68,560 |
| Qtr ending 12/31/2005 | 177,778 | 59,259 | 118,519 |
| Qtr ending 3/31/2006 | 175,341 | 58,447 | 116,894 |
| Qtr ending 6/30/2006 | 152,208 | 50,736 | 101,472 |
| Qtr ending 9/30/2006 | 243,015 | 81,005 | 162,010 |
| Qtr ending 12/31/2006 | 408,845 | 136,282 | 272,563 |
| Qtr ending 3/31/2007 | 91,521 | 30,507 | 61,014 |
| Total during audit period | $1,351,548 | $450,516 | $901,032 |
| For the award period beginning August 1, 2003, through March 31, 2007 | $3,298,166 | $1,099,389 | $2,198,777 |

The OIG's analysis shows that Florida MEP recorded a total of $3,298,166 in excess program income for the award period August 1, 2003, through March 31, 2007. According to Florida MEP's "Schedule of Undisbursed Program Income,"[15] Florida MEP considered NIST's share to be one-third of the total amount or $1,099,389, and the Center's share to be the remaining two-thirds or $2,198,777. For the seven quarters audited by the OIG, the total amount of undisbursed program income was $1,351,548, of which Florida MEP considered $450,516 as NIST's one-third share and the remaining $901,032 to be the Center's two-thirds share. The OIG in its audit report states that Florida MEP kept the $901,032 as an unrestricted net asset.

The OIG learned from Florida MEP's independent public accountant that the source of cash Florida MEP used to pay expenses included in the "nonfederal" cost center was the funds it called excess program income. Over the seven quarters audited by the OIG, Florida MEP incurred $294,000 in nonfederal costs and used the funds characterized as excess program income to cover costs that otherwise would not be allowable under any federal award. The remainder of the funds characterized as excess program income was reported in the financial statements as unrestricted net assets. As of April 30, 2007, the last audited financial statements available, the OIG found that Florida MEP had reported a total of $1,029,543 in unrestricted net assets.

[15] Undisbursed program income and excess program income are used synonymously by Florida MEP.

Florida MEP spent funds on nonfederal activities and also maintained a growing balance in an asset account it believed had no federal restrictions. For the seven quarters audited by the OIG, Florida MEP had more money coming into the organization than it needed to pay actual expenditures (see Table 9 from the OIG's audit report, included below).

**Final Audit Report Table 9. Comparison of Funds Received and Expended for the Audited Period**

| Category | Amount |
|---|---|
| Program income earned | $ 2,846,055 |
| Total MEP (federal funds) disbursed | 5,038,055 |
| Total MEP income | $ 7,884,110 |
| Total MEP expenditures | 7,511,047 |
| Total MEP income not needed to pay cash expenditures | $ 373,063 |

The OIG stated in its audit report that Florida MEP drew down federal funds to pay for costs it reported to NIST but these costs were not expenditures requiring cash, such as subrecipient and in-kind costs. By drawing down more federal funds than needed for cash expenditures, Florida MEP was able to grow a reserve account that was used to inappropriately pay $294,000 in nonfederal costs during the seven quarters audited by the OIG, with the remainder classified as an unrestricted net asset.

The OIG recommends in its final audit report that NIST require Florida MEP to file corrected financial status reports to show that all program income earned was used to meet its cost share requirement under the award and that it has no excess program income. The OIG also recommends that Florida MEP's financial statements from April 30, 2006, forward be evaluated to determine how they should be reissued so that the balance of funds that is currently characterized as unrestricted net assets is changed to restricted net assets with a corresponding liability to NIST.

The OIG states that if subrecipient and in-kind costs are not fully disallowed, Florida MEP should reimburse the Manufacturing Extension Partnership program the $294,000 spent on nonfederal activities during the audited period.

- **Recipient's Response:**

Florida MEP disagreed with the OIG's finding regarding its calculation of "excess" program income. Florida MEP contends that the final audit report rejects the concept that the Center could generate any "unrestricted" excess program funds and it disputes that rejection. It also asserted that it relied on specific instructions provided by NIST through Operating Guidelines, Audit and Compliance Guides, Terms and Conditions, formal presentations at MEP conferences, written and verbal communications, and postings on the MEP intranet on generating and retaining "unrestricted" funds.

Florida MEP proceeded upon the assumption that, after properly accounting for the expenditure of federal and state funds, program income, and the reasonable, allowable, and

allocable cost contributions of partnering entities, the non-federal share of any remaining funds at the end of the annual funding period were "unrestricted" and could be used for capacity building, as a reserve for "maintenance of effort," and for other expenditures. Florida MEP further asserts, this position was consistent with the long-stated position that if a grant has "excess" program income, those funds may be spent on expenses that are "not otherwise permissible as charges to federal funds" citing Anchorage Neighborhood Health Center, U.S. Health and Human Services Departmental Appeals Board Decision, DAB No. 561 (August 6, 1984).

Florida MEP referenced guidance that it received from NIST, which indicated MEP Centers could retain unexpended program income as "reserves" that should be maintained to support the Center during periods of inadequate funding or to accommodate cash flow. Florida MEP also stated that its understanding that any reimbursement funds remaining after a Center accounted for partner cost share contributions and program income were "unrestricted" to the extent of the non-federal share was in accord with NIST instructions, and referenced a letter regarding "unrestricted" reserves and a presentation on program income provided by NIST MEP officials.

It also claimed reliance upon a prior version of the *Hollings MEP General Terms and Conditions,* directing that "program income be retained by recipient and shall be used to finance any non-Federal share of the project" and an October 2006 amendment to the General Terms and Conditions that allowed Centers to carry over excess program income without prior approval from NIST so long as that carry-over and its use were declared and explained in the Center's annual operating plan. Florida MEP also claimed that a draft 2001 Compliance Guide supported its handling of "excess" program income in that this draft guide explained that excess or "undisbursed" program income "temporarily increases the restricted net assets of the organization." The Guide provided a method for calculating excess program income that reduced total program expenses by all sources of cost share, (including federal, state, and other cash, "cash match, and in-kind cost share) to arrive at "expenses available to be financed by program income." Florida MEP contends that this calculation showed that program income is to be used only to the extent required to meet the non-federal portion of the award, and further contended that if the non-federal portion of the award was met entirely with cost share, there was no obligation to use the "non-federal" portion of program income in support of the award. Florida MEP asserted subsequent guidance provided to MEP Centers in 2005 and 2006 did not alter the 2001 Compliance Guide's calculation, it thus concluded, the Guide provided the controlling language.

Florida MEP also stated the OIG's position overstated the payment requirement at 15 CFR 14.22[16] and conflicted with:

16 Florida MEP noted that the NIST Chief of the Grants Office and Legal Counsel were of the view that 15 CFR 14.22(g) and 15 CFR 14.24(b)(2) were not in conflict, but rather operated together, and that 15 CFR 14.22(g) did not require a recipient to use program income to fund the recipient's cost share requirement. Florida MEP also claimed that by its own terms § 14.22(g) applied "to the extent feasible." In this it erred: the prefatory phrase of § 14.22(g) states that "to the extent [it is] available" program income is to be expended before seeking disbursement of federal

- A NIST MEP position paper on the treatment of program income; and
- Correspondence issued to Centers by a program income working group established in May 2006.

Finally, Florida MEP complained that the audit report's analysis was premised upon the erroneous view that program income must be applied to satisfy a recipient's cost share obligation before any other type of cost share can be so used.

- **Resolution Actions:**

Florida's analysis of the audit report's statements regarding program; NIST's view on various issues related to program income; and the import of applicable award terms and conditions regarding a Center's obligations as to income generated by activities performed under an award, including the Uniform Administrative Guidelines, are either mischaracterizations or erroneous. In most regards they are also irrelevant.

First, neither the audit report nor NIST reject the concept that Florida MEP could generate excess program income that at some point becomes "unrestricted." Second, NIST documents and pronouncements regarding the requirements for carrying over and maintaining program income in excess of the amount necessary to meet cost share and other program obligations into the next program year do not say that any portion of that undistributed money becomes "unrestricted." Third, neither the audit report nor NIST presume that program income must be applied to satisfy cost share obligations before other types of match can be so applied. NIST rejects any claim that any portion of program income in excess of that applied to the award in the operating year earned, whether an amount proportionate to the two-thirds nonfederal share of an award or otherwise, is somehow "unrestricted" and that a Center needs account for, either as carry forward or as a deduction from total award costs, only the amount of undistributed program income that is proportionate to the federal share of the award. Program income in its entirety is no more "unrestricted" than are contributed nonfederal award funds; both are committed to the award. There are specific directions for handling excess program income in 15 CFR Sec. 14.24, which codifies OMB Circular A-110 for the Department of Commerce. NIST augmented these directions with MEP-specific policy in general terms and conditions for MEP awards. There is no provision in either the OMB or NIST policy that directs recipients to report only a percentage of the excess program income to the government.

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funds. Similarly, it is Florida MEP's gratuitous addition of the phrase "to the extent of the federal share of excess program income" to the referenced statement in the Compliance Guide that undistributed program income "temporarily increases the restricted net assets of the organization" that creates the misleading impression that the Guide recognized unrestricted excess program income. In any event, NIST instructions related to program income are clear that any undisbursed program income remains with the institutional funding of the MEP center and must be available for MEP program center activities so long as the cooperative agreement remains in place. "Capacity building" with respect to program income always referred directly to the expansion of the FL MEP award-related efforts—more services to manufacturers using these funds as part of the FL MEP program.

Florida's response misapprehends that in important respects the audit report's analysis of the Center's use of program income was premised upon its questioning claimed subrecipient and third party costs that eliminated their availability as cost share, leaving program income as its only available source of matching funds. In that respect, not only could Florida MEP have used all of its program income, both reported and unreported and including "excess," as cost share, its program income had to be so used. Florida MEP also ignores the audit report's determination that the Center drew down federal funds for costs that were not expenditures requiring cash for, or in anticipation of, reimbursement, but rather drew down federal funds against subrecipient costs and in-kind contributions and then placed those funds in a cash reserve and treated a portion of them as unrestricted net assets.

Table 7 of the final audit report shows that Florida's cost share obligation for the accepted total costs of $6,509,638 was $4,339,976, which is $107,288 more than the combination of its reported program income of $2,846,055, its reported share of "excess" program income of $450,516, its unreported share of "excess" program income of $901,032 and the unexplained $35,085 in program income earned during the audit period, which together total $4,232,688.

Table 9 of the audit report shows that the combination of Florida MEP's draw down of federal funds and its "earned" program income during the audit period–that is not even taking into account any "excess" program income–exceeded its expenditures during that same period by $373,063.

As these figures show, there was no excess program income for Florida MEP to retain either as unrestricted net assets or otherwise. Rather, Florida MEP drew down federal funds that were not used for cash expenditures but to grow a reserve account that totaled more than $1 million as of April 30, 2007. Moreover, the Center considered this account "unrestricted" by any obligation to the program and used it to cover $294,000 in costs that, according to the audit report, "would not be allowable under any federal award."[17]

Florida MEP's response also fails to address the second large issue regarding program income: that it's omission from its financial status reports of two-thirds of its program income was inaccurate and misleading. Carrying undistributed program income forward does not serve to release any of it from its obligations to the program. Moreover, as this instance clearly demonstrates, such omissions result in a misleading presentation of a Center's financial status and its handling of federal and non-federal program funds.

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17 Florida's bald statement that the $294,000 was "spent on activities in furtherance of the MEP mission" is rejected as both unsupported and beside the point of whether it was spent in furtherance of its award. The audit report recommended that Florida MEP be required separately to reimburse the $294,000 if NIST does not fully disallow subrecipient and in-kind costs. Notwithstanding NIST's partial allowance of subrecipient and in-kind costs, the $294,000 is nevertheless fully recaptured in the calculation of the refund due NIST set forth in the "Combined Summary of Financial Resolution" of this audit resolution.

Therefore, Florida MEP is required to file corrected financial status reports for the audited period, which reflect all program income earned, such that they show no excess program income earned during that timeframe. Additionally, for any period of time subsequent to April 30, 2007, up to the present for which Florida MEP omitted from its reporting any program income on the grounds that it was nonfederal, it must file similarly corrected financial statements.

Finally, because of the size of the debt owing; fundamental errors in applying applicable award terms and conditions, regulations, and cost principles; and the likelihood that corrected financial statements will result in significant additional monies owed to NIST, Florida MEP will be designated high risk until all errors in its financial reports are corrected and rectified.

- **Financial Summary:**

| | |
|---|---|
| A. Questioned Costs: | $ N/A |
| B. Costs to be Allowed: | $ N/A |
| C. Costs to be Disallowed: | $ N/A |

- **Rationale and/or Legal Basis for Action**

15 CFR Section 14.22 states in part the following:

> *"(b) . . . . Advances of funds to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of advances of funds shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs."*
>
> *"(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional payments."*

Pursuant to the *Department of Commerce Financial Assistance Standard Terms and Conditions,* January 2005, Section A.02:

> *d. Recipient's "advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period."*

## COMBINED SUMMARY OF FINANCIAL RESOLUTION

| | | |
|---|---|---|
| Total Federal Funds Disbursed: | | $ 5,038,055 |
| Costs Incurred: | $ 19,133,115 | |
| Less: Costs Questioned OIG: | ($12,623,477) | |
| Costs Accepted Per Audit Report: | $ 6,509,638 | |
| Audited Costs Reinstated by NIST: | $ 2,610,151 | |
| Less: Additional Costs Disallowed by NIST: | ($ 25,112) | |
| Costs Accepted by NIST: | $ 9,094,677 | |
| Federal Cost Share Ratio: | 33.33% | |
| Less: Federal Funds Earned: | | ($ 3,031,256) |
| **Refund Due NIST:** | | **$ 2,006,799** |

When making payment of the Refund Due NIST, please make check payable to National Institute of Standards and Technology, indicate the award number and "Audit Refund" on the check and mail the payment to:

ATTN: Julie Weiblinger
Finance Division
National Institute of Standards & Technology
100 Bureau Drive
Building 101, Room A809, Mail Stop 1624
Gaithersburg, MD 20899-1624

Please note that the recipient's Appeal does not preclude NIST from its collection efforts of "Refund Due NIST" amount, 30-day post receipt date of the ARDL by the recipient.