

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

# HOLLINGS MEP GENERAL TERMS AND CONDITIONS

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Version 4.0  
February 2012

## GENERAL TERMS AND CONDITIONS

### HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP

This document applies to all Recipients of cooperative agreement awards under the Hollings Manufacturing Extension Partnership Program, 15 U.S.C. §278k, 15 C.F.R. Part 290.

#### 1. ORDER OF PRECEDENCE OF TERMS AND CONDITIONS OF AWARD

Where the terms of the award differ from the Recipient's proposal or from its Operating or other required plans, the terms and conditions of the award shall prevail. The Recipient is obligated to bring to the attention of the Grants Officer any perceived differences between the terms and conditions of the award and the Recipient's proposal, Operating and other required plans.

#### 2. BACKGROUND

This cooperative agreement is a funding instrument that is based upon the cooperative or joint implementation of a manufacturing extension activity. This agreement provides the framework for the joint execution of these activities between the Recipient operator of the Hollings Manufacturing Extension Center, hereinafter referred to as a Center, and the National Institute of Standards and Technology (NIST), Hollings Manufacturing Extension Partnership (HMEP), hereinafter referred to interchangeably as NIST or HMEP.

#### 3. REQUIRED PLANS

The effort covered by this cooperative agreement will proceed based upon the Recipient's original proposal, which will be regularly amended by several plans to be developed by the Recipient with the assistance and approval of HMEP.

These plans will include a Start Up Plan (for new Centers) covering start up activities, budgets, development of the Operating Plan and draft project schedules. The start up schedule shall be developed in accordance with the HMEP Start Up Plan guidelines.

The Start Up Plan will be followed by an Operating

Plan detailing the activities, tasks, resources and milestones on the first year of the project and projections of the second year activities, resources and milestones. HMEP provides Operating Plan Guidelines as part of its collaboration in this effort.

The Recipient shall submit an updated Operating Plan annually detailing project progress on the previous year's plan and providing an Operating Plan for the next year's activities, considering the HMEP Operating Plan guidelines and format. A draft Operating Plan shall be submitted to the HMEP Federal Program Officer for comment, 90 days prior to the end of the current operating year. A final annual Operating Plan must be submitted to HMEP 60 days prior to the end of the current operating year.

Updated Operating plans shall incorporate strategic planning for the next 3-5 years.

#### 4. REPORTS, SURVEYS, STUDIES, AND MANUALS

All reports, surveys, studies, and manuals developed, produced, or distributed under this cooperative agreement shall be submitted to the HMEP Federal Program Officer. Each item shall consist of an electronic or paper copy, submitted in the format specified by the HMEP Federal Program Officer.

#### 5. STATEMENT OF SUBSTANTIAL INVOLVEMENT

NIST will be substantially involved in this cooperative agreement. NIST involvement may include the types of substantial involvement described in Final Office of Management and Budget Guidance Implementing the Federal Grant and Cooperative Agreement Act, 43 Fed. Reg. 36860-65 (Aug. 18, 1978). In addition, NIST involvement in this cooperative agreement may also include the activities in HMEP General Terms and Condition 8 and the following activities:

- guidelines and assistance in developing required plans,
- linkages to the national manufacturing extension system,
- access to standard tools, training, and the experience developed to date by the national extension system,
- guidance for evaluation of performance and collection of data and information from the Recipient organization,
- timely response to requests for mandatory approvals,
- assistance where possible in accessing solutions to technical and managerial problems,
- a framework for performance to high standards and assistance in achieving and maintaining high standards, and
- assisting the Recipient organization to define, understand and resolve issues pertaining to the successful implementation of the HMEP project.

The Recipient is obliged to:

- develop, submit, and follow required plans and budgets,
- conduct the tasks necessary to provide the services or complete the objectives described in the proposal and these plans timely and responsively,
- prior to development of new tools, products or resources, investigate existing tools, products or resources available commercially, through HMEP, or the national system, as appropriate,
- participate in activities of the HMEP national manufacturing extension system,
- submit detailed technical and financial reports,
- Participate in Program Reviews, and
- conform to terms and conditions of this cooperative agreement and applicable regulations and laws.

The specific rights and obligations of the parties involved in this project are detailed in the remaining sections of this cooperative agreement.

## **6. STATEMENT OF WORK**

The tasks to be performed by the Recipient under this award are detailed in the original proposal as amended by the required Operating and other plans. During this period, if any modifications are required to the Operating Plan(s) or to other plans, these modifications must be submitted in writing and are not effective until approved by the NIST Grants Officer in writing. These modifications will be incorporated as an amendment to the cooperative agreement.

## **7. COMPOSITION OF BOARD OF DIRECTORS/TRUSTEES**

HMEP has determined that Centers clearly benefit when a majority (or more) of its Board of Directors /Trustees consist of committed partners representing principally small and medium manufacturing that do not have dual obligations to more than one HMEP Center. Therefore, two-thirds of the members of the Center's oversight board must not be members of any other HMEP Center boards. If the Center does not currently meet this requirement, the Center must submit a detailed plan, including a timeline and dates for establishing within 12 months, an independent Board of Directors/Trustees, at least two-thirds of the members of which are not officers or board members of any other Center.

## **8. INTERACTIONS WITH NIST AND OTHER MANUFACTURING EXTENSION PARTNERSHIP ORGANIZATIONS**

It is anticipated that a Center will enter into agreements with other entities such as private industry, universities, and State governments 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 companies. 15 U.S.C. §278k(c)(3)(C).

To facilitate a more rapid transfer of advanced manufacturing technology on a national scale and avoid duplication of effort, the Recipient shall

cooperate with NIST and the other NIST Manufacturing Extension Partnership organizations by participating in coordinated joint program activities. Such activities include, but are not limited to the following: participation in national and regional meetings, communities of practice, and sharing of expertise, products and resources within the HMEP system.

The interactions of NIST and the HMEP Federal Program Officer under this cooperative agreement include direct involvement in helping the Recipient define, understand, and resolve problems in the organization's operations and promoting continuous improvement. The interactions of NIST and the HMEP Federal Program Officer may include the use of consultants or panelists with special expertise or experience.

NIST may take other appropriate steps, or provide other appropriate assistance, to ensure that the organization operates in a manner which most effectively promotes U.S. manufacturing competitiveness, including initiating and facilitating revision of Operating Plans (or other required plans) as soon as the need for such revisions are identified either by NIST or the Recipient.

## 9. RECORD-KEEPING

The Recipient shall keep complete and accessible detailed records on administrative and financial matters in accordance with the appropriate Federal regulations and OMB Circulars, as indicated on the Financial Assistance Award, Form CD-450, including any amendments thereto, and the terms and conditions of the HMEP cooperative agreement.

## 10. NOTIFICATIONS AND PRIOR APPROVALS

The Recipient must notify and obtain the **prior written approval** from the NIST Grants Officer for those budget and programmatic changes set forth in 15 C.F.R. § 14.25 or 15 C.F.R. § 24.30 (as applicable), and in the Department of Commerce (DOC) Financial Assistance Standard Terms and Conditions, which include but are not limited to the following items:

- a. Changes in the scope or objective of the project even if there is no associated budget revision

requiring prior approval. A change in the scope or objective of the project may occur, for example, based on material changes to the activities to be performed, or contributions to be made, by the Recipient, subrecipients, contractors, or third-party contributors, including but not limited to the development of tools, systems, or other resources not discussed in the Recipient's proposal or Operating Plan (as the case may be) and included in the currently approved project budget.

- b. Additions or changes in Key Personnel or the absence for more than three (3) months or a 25 percent reduction in time devoted to the project by the approved Center Director. Key Personnel include Center Directors, Chief Financial Officer, Managers, and Technical Staff whose expertise or experiences affect the basis of the proposal.
- c. Acquisitions of equipment where prior approval is required under the Federal cost principles applicable to the award, unless the purchase of such equipment is specifically identified in the currently approved project budget.
- d. Start Up, Operating, and other required plans under the award.
- e. Budget revisions identified in 15 C.F.R. § 14.25 or 15 C.F.R. § 24.30 (as applicable), or in Section A.04 of the DOC Financial Assistance Standard Terms and Conditions.
- f. Subawards (including an award made by a subrecipient to a lower-tier recipient), transfer, or contracting out of any work under the award with budgeted amounts of \$100,000 or more, unless such actions are described in the Recipient's proposal, Start Up, or Operating Plan (as the case may be) and incorporated into the currently approved project budget under the award. This provision does not apply to the purchase of supplies, material, equipment or general support services, unless prior approval is otherwise required under the Federal cost principles applicable to the award.

The prior approval of the NIST Grants Officer that is required for contracts of \$100,000 or more extends to a vendor that when added to the value of prior awards to the same (or affiliated) vendors have a total combined value of \$100,000 or more

and all subsequent contracts to that vendor (or affiliated vendors). Upon execution of these contracts, the Recipient is to provide copies to the NIST Grants Officer, NIST MEP Federal Program Officer, and NIST MEP Regional Manager for Strategic Transformation (RMST) of all contracts to that same vendor or affiliated vendors awarded by the Recipient.

- g. Documents pertaining to the valuation of third party cost share contributions over \$100,000.
- h. Carryover of unexpended program income as described in HMEP General Terms and Conditions, Section 17.G.
- i. Carryover of unexpended Federal Funds from prior funding period(s) as discussed in HMEP General Terms and Conditions, Section 19.
- j. Foreign travel. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143. The Recipient must receive prior approval of the NIST Grants Officer in accordance with 41 C.F.R. § 301-10.142 if a foreign air carrier is anticipated to be used for any part of foreign travel under an HMEP cooperative agreement. See also DOC Financial Assistance Standard Terms and Conditions, M.02.

## 11. SIGNATORY AUTHORITY FOR AWARD DOCUMENTS

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. Documents subject to this policy include but are not limited to: CD-450, Financial Assistance Award; CD-451, Amendment to Financial Assistance Award; CD-511, Certification Regarding Lobbying; SF-424, Application for Federal Assistance; SF-424B, Assurance – Non-Construction Programs; and SF-425, Federal Financial Report, and all agreements on behalf of the Recipient. Such documents must be signed by either a duly authorized member of the Fiduciary Board of Directors, or a duly-authorized direct employee of the Recipient. NIST will return to the recipient **unprocessed** any documents it receives that do not comply with this policy.

## 12. FINANCIAL AND TECHNICAL REPORTING SCHEDULE

Detailed Financial and Technical reports shall be submitted in the format and on a scheduled basis as specified in the most current version of the NIST HMEP Management Information Reporting Procedure (This document can be downloaded as a resource for development of the application at <https://meis.nist.gov/>.)

Pursuant to the DOC Financial Assistance Standard Terms and Conditions, A.01, the Recipient shall submit a "Federal Financial Report" (SF-425) on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31, unless otherwise specified in a special award condition.

Reports are due no later than 30 days following the end of each reporting period. A final SF-425 shall be submitted within 90 days after the expiration date of the award.

## 13. PERFORMANCE REVIEWS

Funding for this Recipient is contingent upon positive program evaluations in an annual review, as required by 15 C.F.R. § 290.8, and statutory merit Panel reviews, as required by 15 U.S.C § 278k(c) (5) and performance relative to client project follow-up per General Term and Condition Section 21.

Approximately 120 days prior to the end of each 12-month period, NIST HMEP will conduct the appropriate Program Review. This review will focus on the Center's strategic alignment to the HMEP overall program objectives, the Center's activities, progress and performance in implementing the HMEP award, lessons learned, monitoring of sub-recipients, resource expenditures, activities planned for the next year, and any proposed changes to the project plan or budget.

The Recipient will be provided guidelines on the format for the review approximately 30 days prior to the Program Review.

The results of the Program Review will be incorporated into the Operating Plan for the next year of the project and submitted to HMEP for approval 60 days prior to the end of the current project year.

NIST may implement cost disallowances, suspension, termination, or other enforcement action including the imposition of Special Award Conditions if the Recipient does not receive a positive evaluation in any required reviews, including reviews due prior to obligation of funds for this award or amendment.

#### **14. APPLICABILITY OF AWARD PROVISIONS**

Recipients and sub-recipients are subject to all Federal laws, Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. See also DOC Financial Assistance Standard Terms and Conditions, J.02.

#### **15. ENFORCEMENT AND TERMINATION**

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the Recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions."

Pursuant to 15 C.F.R. §§ 14.14, 14.61, 14.62, 24.12, 24.43, and 24.44, (as applicable) and DOC Financial Assistance Standard Terms and Conditions, B.05, the Recipient's failure to materially comply with any or all of the provisions of the HMEP cooperative agreement may be considered grounds for appropriate enforcement actions, including but not limited to the following:

- A. Imposition of special award conditions to address the area(s) of noncompliance;
- B. Changing the method of payment under the HMEP award from advance to reimbursement only;
- C. Withholding payment of funds under the HMEP award pending corrective action by the Recipient;
- D. Disallowance of costs and establishment of an account receivable;
- E. Suspension of the HMEP award; and

#### **F. Termination of the HMEP award.**

Depending on the nature and severity, a Recipient's failure to materially comply with the provisions of the HMEP award may also result in appropriate enforcement actions under other DOC awards and may also have a negative impact on the receipt of future funding from DOC.

#### **16. COST SHARING AND MATCHING**

The minimum cost-sharing ratio required by 15 C.F.R. §290.4.b. is 66.67% Recipient contribution and 33.33% NIST contribution for the fifth year and beyond. (See DOC Financial Assistance Standard Term and Condition A.03 for the treatment of cost sharing). There can be no carryover of excess cost share from one year to the next.

The Recipient may establish, through its leveraged partnerships, a cost share ratio exceeding the required cost-sharing ratio. The Recipient is responsible for the management of the overall program as defined in the Operating Plan and Budget and will document and report on the entire activity of the project. However, realizing the partnership dynamics of the Recipient, NIST only holds the Recipient responsible for the statutory minimum cost-sharing ratio level for the purposes of drawing down the Federal cost share.

Cost share commitments must be met on an annual basis in accordance with the Recipient's approved budget. Any cost sharing must be in accordance with the "cost sharing or matching" provisions of 15 C.F.R. § 14.23 or 15 C.F.R. § 24.24 (as applicable) and DOC Financial Assistance Standard Terms and Conditions, A.03. Costs included as cost share must be allocable to the project and allowable under the applicable cost principles.

Costs incurred as non-Federal cost share are subject to the same allowability requirements as Federally-funded costs. The disallowance of any contributed costs as a result of an audit could result in a Recipient not meeting its required cost share under the cooperative agreement and a refund being due the Federal Government for the excess Federal share.

#### **Documenting Non-Federal Cost Share**

NOTE: Non-Federal cost share can be contributed by

the Center, sub-recipients, and third parties. Contractors cannot provide cost share in the form of discount or reduced billing rate.

15 C.F.R. Part 290.4(c): Host Contribution. The host organization may count as part of its share, to the extent expended for allowable project costs:

- (1) Dollar contributions from state, county, city, industrial, or other sources;
- (2) Revenue from licensing and royalties;
- (3) Fees for services performed;
- (4) [Third party] in-kind contributions of full time personnel;
- (5) [Third party] 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.

It is extremely important that the non-Federal cost share contributions be documented. Following are some examples of documentation that should be made available to auditors.

Recipients should refer to 15 C.F.R. Part 14.23 or 15 C.F.R. Part 24.24 to review the list of criteria that must be met in order for the non-Federal cost share to be acceptable.

- A. Documenting Contributions under 15 C.F.R. Part 290 4. (c)(1) – (3):

Centers must have documented evidence of all cash received from any contributor. This evidence may be in the form of a letter and a bank account statement displaying an electronic funds transfer from a cash contributor to the Center's bank account.

All sub-recipients must adhere to the same documented evidence requirements as those imposed on the Center.

**Documenting Third Party In-kind Contributions Under 15 C.F.R. Part 290.4(c)(4) and (5):**

**Third Party Contributor (All Third Party Non-cash Contributions Are Considered In-kind)**

Per 15 C.F.R. § 14.2(n), **Third party in-kind contributions** mean the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property, and the value of goods, services, and personnel directly benefiting and specifically identifiable to the project or program. See also 15 C.F.R. 24.3.

Centers must have documented evidence of the third party in-kind contribution from the contributor. This evidence must include documentation from the contributor that contains:

- The value of each third party in-kind contribution established in accordance with the applicable cost principles. (See 15 C.F.R. Part 14.23 or 15 C.F.R. Part 24.24, and the applicable cost principles: 2 C.F.R. Part 220 (replaces OMB Circular A-21), 2 C.F.R. Part 225 (replaces OMB Circular A-87 and 2 C.F.R. Part 230 (replaces OMB Circular A-122).
- The method of valuation of third party in-kind contribution shall be submitted as part of the Center's operating plan and approved by NIST HMEP and the Grants Officer.
- A list of the type of third party in-kind contribution.
- Percentage of time that the contribution was used to support the HMEP Project.

If the percentage of time is 100% dedicated to the HMEP project and personnel is classified as a full-time employee as defined under applicable state labor law, then the individual(s) is considered to be a full time personnel under 15 C.F.R. Part 290.4(c)(4). Therefore, the 50% in-kind limitation under 15 C.F.R. Part 290.4(c) (5), does not apply.

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, when and for what purpose it was donated. The Center must provide an acknowledgement of the

contribution and include all the information required by IRS Instructions for Form 8283. This form can be found at <http://www.irs.gov/pub/irs-pdf/f8283.pdf>.

**Sub-recipient Documentation To Be Maintained By The Center**

At a minimum, the following documents should be maintained by the Center and/or sub-recipient(s) and made available in the event of an audit:

- a. Sub-award Agreement
- b. Documentation to support valuation of third party in-kind contributions
- c. Sub-recipient Financial Reporting
  - Monthly or Quarterly Statement of Revenue, Expenses and Fund Balance
  - Actual vs. Budget Expense Detail Schedule - by account classification and by cash and third party in-kind non-Federal share and Federal cost share
  - Actual vs. Budget Cash Flow Statements
- d. Sub-recipient Program Tracking Documents Monthly or quarterly report of Program Income (list by major types or programs)
- e. Written narrative of technical progress report

**17. PROGRAM INCOME** (as referenced at 15 C.F.R. §. 14.2(a), .22(g), and .24, and 15 C.F.R. §. 24.21(f) and .25)

A. Program income earned during the project period shall be retained by the Recipient and shall be used as follows in the order provided:

*First*, to finance the minimum non-Federal share of the project.

*Second*, all program income earned in excess of that required to meet the minimum non-Federal share shall be added to the funds committed to the project by HMEP and the Recipient and used to further eligible project objectives and activities if declared and explained within the Center's

annual operating plan.

B. The cost sharing requirement shall not apply to program income.

C. Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

D. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

E. Proceeds from the sale of property shall be handled in accordance with the requirements of Property Standards in 15 C.F.R. 14.30 through 14.37 or 15 C.F.R. 24.31 and 15 C.F.R. 24.32.

F. Recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.

G. Unexpended program income. Program income in excess of what is required annually to meet the minimum non-Federal portion of the annual operating budget, and cannot be expended using the additive approach during the operating period, may be carried over to the subsequent funding period or otherwise disposed of, if declared and explained within the Center's annual operating plan and approved in writing by the Grants Officer. Upon close-out of any HMEP awards, the NIST Grants Officer will provide Recipient(s) with close-out instructions, including instructions regarding program income.

**18. COOPERATIVE AGREEMENT AWARD PERIODS**

HMEP awards are Institutional Awards and are made with the intent to maintain a long-term partnership between DOC and the Recipient for those projects established under long term planning goals and objectives common to the research and programmatic needs of both parties (DOC Grants Manual). See also 15 U.S.C. §278k.

As an institutional HMEP award, the project may

continue to be considered for funding without competition based on the recommendation of an independent merit review panel every two years, pursuant to 15 U.S.C. §278k.

If a Recipient is recommended for funding, funds are available, and an award continues successfully, a new cooperative agreement number will be issued every five years.

Funding may be awarded for up to one year, and renewed annually for up to four additional years, contingent upon applicable award terms, laws, policies, and the availability of funding. After five years, if funding will be continued, a new cooperative agreement number will be issued.

## 19. UNEXPENDED FEDERAL FUNDS

NIST HMEP does not anticipate Centers having unexpended Federal funds at the end of an annual funding period, however:

- a. If the Recipient has unexpended Federal funds at the end of a funding period the Recipient may request review and approval to carry the funds into the next funding period.
- b. If there are remaining Federal funds at the end of a five-year award term, these remaining funds will be de-obligated. After program review, NIST HMEP will determine the appropriate disposition of any unexpended Federal funds from a prior five-year award.

## 20. AUDITS

Audit requirements can be found in the Department of Commerce Financial Assistance Standard Terms and Conditions under item D. In addition, the *HMEP Audit & Compliance Guide* is available at <https://meis.nist.gov/> "Source for Centers" to assist Recipients and their auditors in providing a general program overview and guidance in complying with program and government regulations. The Guide is not a compliance supplement and does not conflict with the requirements of OMB Circular A-133.

## 21. POST CLIENT PROJECT FOLLOW-UP

The Recipient shall provide client and project data in the specified format to the organization identified by NIST/HMEP in order for post-project follow-up data to be obtained.