



MAKING AN IMPACT ON U.S. MANUFACTURING

Hollings MEP General Terms and Conditions

February 2015

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

**MEP • MANUFACTURING
EXTENSION PARTNERSHIP**



TABLE OF CONTENTS

| | |
|---------------------------------------------------------------------------------|----|
| 1. AWARD INSTRUMENT | 2 |
| 2. APPLICABILITY OF AWARD PROVISIONS..... | 2 |
| 3. ORDER OF PRECEDENCE OF TERMS AND CONDITIONS OF AWARD | 2 |
| 4. USE OF COOPERATIVE AGREEMENTS AND STATEMENT OF SUBSTANTIAL INVOLVEMENT | 3 |
| 5. COOPERATIVE AGREEMENT AWARD PERIODS | 4 |
| 6. STATEMENT OF WORK AND REQUIRED PLANS..... | 4 |
| 7. CENTER OVERSIGHT BOARD | 4 |
| 8. SIGNATORY AUTHORITY FOR AWARD DOCUMENTS | 4 |
| 9. NOTIFICATIONS AND PRIOR APPROVALS | 5 |
| 10. INTERACTIONS WITH NIST AND MANUFACTURING EXTENSION PARTNERSHIP CENTERS..... | 7 |
| 11. COST SHARING AND MATCHING | 8 |
| 12. MONITORING OF SUBRECIPIENTS | 10 |
| 13. PROGRAM INCOME | 11 |
| 14. UNEXPENDED FEDERAL FUNDS (UFF) | 12 |
| 15. FINANCIAL AND TECHNICAL REPORTING (CLARIFICATION)..... | 13 |
| 16. PROGRAM PERFORMANCE REVIEWS | 14 |
| 17. POST PROJECT CLIENT FOLLOW-UP | 14 |
| 18. REPORTS, SURVEYS, STUDIES, AND MANUALS | 15 |
| 19. RECORD-KEEPING | 15 |
| 20. AUDITS..... | 15 |
| 21. ENFORCEMENT AND TERMINATION | 15 |
| 22. CLOSEOUT | 15 |

GENERAL TERMS AND CONDITIONS HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP

The General Terms and Conditions set forth below apply to all Recipients of cooperative agreement awards under the Hollings Manufacturing Extension Partnership (MEP) program, 15 U.S.C. Section 278k, 15 C.F.R. Part 290, unless otherwise amended through a Special Award Condition. Failure to comply with any or all of the provisions of the MEP award may be considered grounds for appropriate enforcement action (See Term and Condition 21).

1. AWARD INSTRUMENT

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

2. APPLICABILITY OF AWARD PROVISIONS

Recipients of NIST MEP cooperative agreements are subject to all Federal laws, Federal and Department of Commerce regulations and policies applicable to Federal financial assistance awards, and terms and conditions of the NIST MEP cooperative agreement. In accordance with 2 C.F.R. Section 200.101(b), the terms and conditions of a NIST MEP cooperative agreement apply (i.e., flow down) to subawards made by an MEP Recipient to a subrecipient, unless a particular section of 2 C.F.R. part 200 or the terms and conditions of an MEP cooperative agreement specifically indicate otherwise. See 2 C.F.R. Section 200.331 for the due diligence requirements, flow down provisions and other information that are applicable to or that must be contained as part of a subaward.

3. ORDER OF PRECEDENCE OF TERMS AND CONDITIONS OF AWARD

Where the terms and conditions of the MEP cooperative agreement differ from the Recipient's Operating or other required plans, the terms and conditions of the MEP Cooperative Agreement shall prevail. The terms and conditions of an MEP cooperative agreement shall be applied by NIST in the following order of precedence: Federal laws; Federal and Department of Commerce regulations; special award conditions (SACs); Hollings MEP General Terms and Conditions; Department of Commerce Financial Assistance Award Standard Terms and Conditions; *Federal Register* notice and Announcement of Federal Funding Opportunity pursuant to which the MEP cooperative agreement was originally issued by NIST; Federal and Department of Commerce policies applicable to Federal financial assistance awards, the Recipient's Operating and other required plans; and lastly, the technical plan submitted by the Recipient with its request for NIST MEP funding. The Recipient is obligated to bring to the attention of the NIST Grants Officer any perceived differences between the terms and conditions of the MEP Cooperative Agreement and the Recipient's Operating Plan and/or other required plans submitted by the Recipient.

4. USE OF COOPERATIVE AGREEMENTS AND STATEMENT OF SUBSTANTIAL INVOLVEMENT

In accordance with 31 U.S.C. Section 6305 and 2 C.F.R. Section 200.24, NIST will issue cooperative agreements as the funding instrument for base MEP awards. NIST involvement under base MEP awards may include the types of substantial involvement activities described in Final Office of Management and Budget (OMB) 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 include the activities described in MEP General Term and Condition 10, as well as the following NIST activities:

- Guidelines and assistance in developing required plans;
- Linkages to the National Manufacturing Extension Partnership System (MEP System), which includes both the national NIST MEP Program Office and the national System of NIST MEP-funded Centers;
- Access to standard tools, training, and the experience developed to date by the MEP System;
- Guidance for evaluation of performance and collection of data and information from the Recipient organization;
- Timely response to requests for mandatory approvals;
- Approval of key personnel;
- 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
- Assistance to the Recipient organization to define, understand, and resolve issues pertaining to the successful implementation of the MEP project.

The Recipient shall:

- Develop, submit, and follow required plans and budgets;
- Conduct the tasks necessary to provide the services or complete the objectives described in the Operating and other required plans in a timely and comprehensive manner;
- Prior to development of new tools, products or resources, investigate existing tools, products, or resources available commercially, through NIST MEP, or the MEP network of centers, as appropriate;
- Participate in activities of the MEP System;
- Submit detailed technical and financial reports;
- Participate in Program Reviews; and
- Conform to terms and conditions of this cooperative agreement, including but not limited to applicable laws and regulations.

The specific terms and conditions of the award are detailed in the NIST MEP cooperative agreement.

5. COOPERATIVE AGREEMENT AWARD PERIODS

In accordance with 15 C.F.R. Section 290.4 and 15 C.F.R. Section 290.8, each MEP Center will be funded by NIST under a one-year, annually renewable cooperative agreement (which may be structured as a multi-year award). Annual renewal funding for an existing MEP Center may be awarded without competition contingent upon: successful annual and panel reviews of the MEP Center in accordance with 15 U.S.C. Section 278k(c)(5) and 15 C.F.R. Section 290.8; the Recipient's compliance with the terms and conditions of the MEP award; applicable laws and policies; and the availability of funds.

6. STATEMENT OF WORK AND REQUIRED PLANS

The tasks to be performed by the Recipient under this award are detailed in the approved Operating Plan. Operating Plans shall incorporate strategic planning efforts, and must detail project progress on the previous year's plan and describe planned activities for the following year. The Operating Plan must be consistent in form and substance with the current MEP Operating Plan Guidelines, which may be amended from time to time.

If any modifications are required to the Operating Plan or to other plans during the operating period, these modifications must be submitted to the MEP Federal Program Officer (MEP FPO) and Regional Manager for Strategic Transition (RMST) in writing and are not effective unless and until approved in writing by the NIST Grants Officer. These modifications will be incorporated as amendments to the cooperative agreement.

7. CENTER OVERSIGHT BOARD

Each Center shall establish and maintain an oversight board that is broadly representative of local stakeholders with a majority of board members drawn from local small- and medium-sized manufacturing firms. Members of a Center's oversight board may not concurrently serve on more than one Center's oversight board. If a Center's oversight board does not meet the requirements of this paragraph at any time during the term of an MEP award, the Center must disclose the deficiencies to the MEP FPO and RMST and must submit a detailed plan to the MEP FPO and RMST for bringing its oversight board into compliance with this term within 12 months. Additionally, each Center oversight board shall adopt bylaws governing the operation of the board, including a conflict of interest policy to ensure relevant relationships are disclosed and proper recusal procedures are in place. Upon request, a Center shall provide the MEP FPO and RMST and/or NIST Grants Officer with copies of its organizational documents, including articles of incorporation or charters, ratified by-laws and conflicts of interest policies.

8. SIGNATORY AUTHORITY FOR AWARD DOCUMENTS

The NIST MEP Program does not authorize the delegation of signatory authority by the Recipient to any other organization or to third-party individuals. For purposes of the MEP cooperative agreement, the Recipient's signatory authority must be a duly authorized direct employee of the Recipient or a duly authorized member of the Center's oversight or other governance board that is acting in a fiduciary capacity to the Recipient. Documents and award actions subject to this policy include: 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; SF-425, Federal Financial Report; the Certification Regarding Federal Felony and Federal Criminal Tax Convictions, Unpaid Federal Tax Assessments and Delinquent Federal Tax Returns and all other required forms, agreements, certifications and other documents related to the MEP award executed on behalf of the Recipient. Access to the Center's ASAP account must be limited to a duly authorized direct employee of the Recipient or a duly authorized representative of the Center's oversight or other governance board that is acting in a fiduciary capacity to the Recipient. NIST will return to the Recipient unprocessed any documents it receives that do not comply with this requirement.

9. NOTIFICATIONS AND PRIOR APPROVALS

The Recipient must obtain the prior written approval from the NIST Grants Officer for certain budget and programmatic changes as set forth in 2 C.F.R. Sections 200.308 and 200.407, and in the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014). For program or budget changes requiring prior approval from the NIST Grants Officer, a Center is to work with the NIST MEP FPO/RMST to update, and amend, if necessary, the annual Operating Plan. Changes will become effective via an amendment to the award, signed by the NIST Grants Officer. Program or budget changes requiring prior NIST Grants Officer approval include, but are not limited to, the following items:

- A. Scope/Operating Plan Changes.** 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 Operating Plan and included in the currently approved project budget.
- B. Key Personnel Changes.** 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 in any year by the approved Center Director. Key Personnel include Center Directors and Chief Financial Officers (CFOs) and, as identified as part of a Recipient's Operating Plan or as identified in a special award condition, may also include Managers and Technical Staff whose work on the project directly and materially impact the Recipient's performance under an MEP award.
- C. Equipment Purchases.** 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. Budget Changes, Revisions, Transfers.** Identified in 2 C.F.R. Section 200.308, or in Section B.05 of the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014).
- E. Recipient Changes.** A Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the prior written approval of the NIST Grants Officer. In addition, a Recipient must immediately notify the NIST Grants

Officer in writing concerning any name changes or changes to a Recipient's EIN, DUNS number or unique entity identifier number. (See Section A.07. of the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014).)

- F. Subawards, Contracts, and Third Party Contributor Agreements.** Subawards, contracts, and third party contributor agreements will be reviewed and approved as part of NIST's overall approval of the Recipient's Operating Plan. An explanation of the Recipient's valuation and allocation to the MEP award of cost share contributions in accordance with applicable Federal cost principles must be submitted to NIST as part of the Recipient's Operating Plan. NIST requires that copies of all fully executed subawards, contracts, and third party contributor agreements approved as part of the Recipient's Operating Plan, with budgeted amounts of \$150,000 or more (combined Federal and non-Federal) during the Center's current operating year, including subawards, contracts, and third party contributor agreements to or by the same (or affiliated) entity with a total combined value of \$150,000 or more, be submitted to the NIST Grants Officer and to the MEP FPO and RMST.

In addition, subawards, contracts, and third party contributor agreements **proposed** by the Recipient subsequent to NIST's approval of the Recipient's Operating Plan and having a budgeted amount of \$150,000 or more (combined Federal and non-Federal), including subawards, contracts and third party contributor agreements that when added to the value of prior subawards, contracts or third-party contributions to or by the same (or affiliated) entity within the same Center operating year have a total combined value of \$150,000 or more, shall be subject to the prior written approval by the NIST Grants Officer. 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. See 2 C.F.R. Section 200.308(b)(6), (7).

The Center is responsible for ensuring that all costs charged against, and that all non-Federal contributions credited to, the MEP award adhere to the substantive and documentation requirements set forth in 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as adopted by the Department of Commerce at 2 C.F.R. Section 1327.1, and with the terms and conditions of this cooperative agreement, including the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014). Recipients shall conduct all procurement transactions in accordance with the requirements set forth in 2 C.F.R. Sections 200.110(a) and 200.317-200.326.

- G. MEP Core Management and Oversight Functions.** An MEP Center, as a direct Recipient of Federal financial assistance funds under an MEP cooperative agreement, must possess and maintain, at all times during an MEP award period, accountability to directly manage and execute all functions material and inherent to the successful operation of a Center, which include, but are not limited to, the following:

1. **Budget execution**, including the responsibility for determining and executing budget policy, guidance and strategy, and the determination of program priorities and associated budget or funding requests;

2. **Policy implementation**, including the responsibility for determining the content and implementation of financial and program policies and procedures impacting the Recipient's MEP project;
3. **Human resources management**, including the responsibility for selecting individuals for Center employment and for selecting contractors and the direction, control, and performance management of Center employees and oversight of contractors; and
4. **Strategic planning and project execution and management**, including the responsibility for:
 - a. **Strategic planning functions** such as the following: determination of project requirements, approval of a project implementation strategy, and the development and monitoring of agreements and statements of work with subrecipients, vendors, third-party contributors and other strategic partners; and
 - b. **Project execution and management functions** such as submission of required financial and technical reports, maintenance of a functioning financial management system that satisfies the requirements found in 2 C.F.R. Section 200.302, in order to ensure that costs charged against an MEP award are reasonable, allocable, and allowable under applicable Federal cost principles; and adherence to the terms and conditions of the MEP award.

In extraordinary situations, the NIST Grants Officer may allow a Recipient to temporarily outsource its management and oversight responsibilities under an MEP award. If an applicant is proposing such a structure, the applicant must include with its application a detailed explanation and accompanying documentation (e.g., copies of draft contracts or other agreements) supporting its outsourcing request.

- H. **Unexpended Program Income (UPI)**. Carryover of **unexpended** program income as described in MEP General Terms and Conditions, Section 13.
- I. **Unexpended Federal Funds (UFF)**. Carryover of **unexpended** Federal funds from prior funding period(s), as discussed in MEP General Terms and Conditions, Section 14.
- J. **Foreign Travel**. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. Section 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. Sections 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. Section 301-10.142 if a foreign air carrier is anticipated to be used for any part of foreign travel under an MEP cooperative agreement. See also Section K.03.c. of the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014).

10. INTERACTIONS WITH NIST AND MANUFACTURING EXTENSION PARTNERSHIP CENTERS

It is anticipated that a Center will enter into agreements with other entities such as private companies, 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 to avoid duplication of effort, the Recipient shall cooperate with NIST and the other NIST MEP organizations by participating in coordinated joint program activities. Such activities may include, but are not limited to the following: participation in NIST MEP national and regional meetings, communities of practice, and sharing of expertise, products and resources within the MEP System.

The interactions of NIST MEP 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. MEP may recommend that a Center leverage the expertise or experience of outside consultants or MEP System peers 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.

11. COST SHARING AND MATCHING

The minimum non-Federal cost-sharing ratio required by 15 C.F.R. Section 290.4(b) is at least 50 percent of the total project cost for the first through third years of operation, with an increasing minimum non-Federal cost share contribution beginning in the fourth year of the award as follows:

| Year of Center Operation | Maximum NIST Share | Minimum Non-Federal Share |
|--------------------------|--------------------|---------------------------|
| 1-3 | 1/2 | 1/2 |
| 4 | 2/5 | 3/5 |
| 5 and beyond | 1/3 | 2/3 |

(See Department of Commerce Financial Assistance Standard Term and Condition B.04 for the treatment of cost sharing). Minimum cost share requirements must be met annually; 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.

If a Recipient will not be able to meet the non-Federal cost share amount identified in the award, it must submit a budget modification request to the NIST Grants Officer. The budget modification request must provide for at least the minimum amount of non-Federal cost share identified in the above chart and the Recipient must also include a detailed explanation for the requested reduction to the original amount of non-Federal cost identified in the award. Prior written approval of the NIST Grants Officer is required for any reduction to the amount of non-Federal cost share and may result in a corresponding reduction (based on the Federal/non-Federal cost sharing ratio) to the amount of Federal funds under the award.

Any cost sharing must be in accordance with the Recipient's approved project budget and must

adhere to the “cost sharing or matching” provisions of 2 C.F.R. Section 200.306 and Section B.04 of the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014). Costs included as cost share must be allocable to the project and allowable under the Federal cost principles set forth in 2 C.F.R. part 200, Subpart E.

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.

A. Types of Non-Federal Cost Share

Non-Federal cost share can be contributed by the Center, subrecipients, and third parties. Contractors may not provide any form of cost share. Per 15 C.F.R. Section 290.4(c), the Recipient may, to the extent expended for allowable project costs, count as part of its non-Federal cost share:

- Dollar contributions from State, county, city, industrial, or other sources;
- Revenue from licensing and royalties;
- Fees for services performed;
- [Third party] in-kind contributions of full time personnel;
- [Third party] in-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 Recipient’s annual share.

Non-Federal cost share contributions must satisfy the criteria set forth in 2 C.F.R. Section 200.306, and in 15 C.F.R. Section 290.4 in order to be allowable under an MEP award.

B. Documenting Cash Contributions of Non-Federal Cost Share

For purposes of 15 C.F.R. Section 290.4(c)(1), Centers must have documented evidence of all non-Federal cost share contributions received from any contributor in the form of cash. This evidence may be in the form of a letter from the Center to the contributor acknowledging the contribution, a bank account statement displaying an electronic funds transfer from a cash contributor to the Center’s bank account, or in any other format that would allow the NIST Grants Officer or an auditor to verify such cash contribution. See 2 C.F.R. Section 200.306(b).

C. Documenting Third Party In-kind Contributions:

All third party non-cash contributions are considered “in-kind.” Per 2 C.F.R. Section 200.96, Third-party in-kind contributions means the value of non-cash contributions (i.e., property or services) that (a) Benefit a Federally assisted project or program; and (b) Are contributed by non-Federal third parties, without charge, to a non-Federal entity under a Federal award.

Third party contributions, whether cash or in-kind, are counted towards a Recipient’s non-Federal share contribution in accordance with 2 C.F.R. Section 200.306 and to the extent that such third

party contributions are reflected in the approved project budget. Third party contributions are not subject to Federal reimbursement or payment.

Third Party in-kind contributions must be evidenced by written documentation that is signed by the contributor and the Center that describes the contribution, its value, and when and for what purpose it was donated. For this purpose, a Center may 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>.

Centers must have documented evidence of all third party in-kind contributions to an MEP project, which must be provided to the NIST Grants Officer upon request. In addition, as set forth below, certain information concerning the valuation of third party contributions must be submitted to NIST MEP as part of a Center's Operating Plan:

- A comprehensive listing of all third party in-kind contributions to the MEP project;
- The value of each third party in-kind contribution established in accordance with 2 C.F.R. Section 200.306 and the Federal cost principles set forth in 2 C.F.R. part 200, Subpart E.;
- The allocation method(s) used by the Recipient for purposes of allocating third party in-kind contributions to the MEP award. See 2 C.F.R. Section 200.405; and
- For in-kind contributions of personnel, the percentage of time that such personnel will be dedicated to the MEP Project. If the percentage of time is 100% dedicated to the MEP 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 full time personnel under 15 C.F.R. Section 290.4(c)(4). Therefore, the 50% in-kind limitation under 15 C.F.R. Section 290.4(c)(5), would not apply.

D. Documenting Subrecipient Cost Contributions

Non-Federal cost share contributions by subrecipients must comply with the allowability and documentation requirements set forth in 2 C.F.R. Section 200.306 and with the record access and record retention requirements set forth in 2 C.F.R. Section 200.330(a)(6) and 200.333. At a minimum, the following documents should be maintained by the Center and made available upon request of the Grants Officer or in the event of an audit:

- Subaward Agreement with detailed budget;
- Documentation to support valuation of non-Federal cost share being contributed by the subrecipient; and
- Subrecipient Financial Reporting to the Recipient.

12. MONITORING OF SUBRECIPIENTS

Recipients are required to adhere to the subrecipient monitoring and management standards set forth in 2 C.F.R. Sections 200.330 – 200.332. In particular, pursuant to 2 C.F.R. Section 200.331(d), Centers must monitor the activities of each subrecipient to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

13. PROGRAM INCOME

Program income is defined in 2 C.F.R. Section 200.80, and generally includes gross income earned by a Center or by a subrecipient that is directly generated by a NIST MEP supported activity or earned by the Recipient or by a subrecipient as a result of a NIST MEP cooperative agreement.

A. Program Income Earned by Centers

In accordance with 2 C.F.R. Section 200.307(e), program income earned by a Center during the project period shall be retained by the Center and shall be used by the Center in the following order of priority:

- (1) **First**, to finance the non-Federal share of the project;
- (2) **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 MEP and the Recipient; and must be used for the purposes and under the conditions of the MEP award (commonly referred to as the "additive approach"). Program income to be expended under the additive approach must be explained in detail in the Center's Operating Plan or in a separate written communication to the MEP FPO and RMST and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer; and
- (3) **Third**, any remaining program income (referred to below as UPI) shall be deducted from the total allowable project costs to determine the net allowable program costs upon which the Federal share of project costs is based, in accordance with written instructions from the NIST Grants Officer. See Section 13.G. below concerning requests by Centers for the carry forward of UPI.

B. Program Income Earned by Subrecipients

In accordance with 2 C.F.R. Section 200.307(e), program income earned by a Center during the project period shall be retained by the Center and shall be used by the Center in the following order of priority:

- (1) **First**, to finance the non-Federal share of the subaward;
- (2) **Second**, all program income earned in excess of that required to meet the minimum non-Federal share shall be added to the Federal and non-Federal funds committed to the subaward, and must be used for the purposes and under the conditions of the MEP award as set forth in the terms of the subaward (commonly referred to as the "additive approach"). Program income to be expended under the additive approach must be explained in detail in the Center's Operating Plan or in a separate written communication to the MEP FPO and RMST and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer; and
- (3) **Third**, any remaining program income (referred to below as UPI) generated by a subrecipient must be remitted to the Center by the subrecipient, and must be accounted for and expended by the Center in accordance with the terms and conditions of the MEP award. See Section 13.G. below concerning requests by Centers for the carry forward of UPI.

- C. Recipients and subrecipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period, unless otherwise provided in a special award condition.
- 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 set forth in 2 C.F.R. Sections 200.310 through 200.316, as applicable.
- F. Recipients and subrecipients 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, unless otherwise provided in a special award condition.

G. Unexpended program income (UPI)

- (1) Program income in excess of what is required annually to meet the non-Federal portion of the annual operating budget, and cannot be expended using the additive approach during the operating period, may be carried over by the Center to the subsequent funding period in accordance with the requirements below.
- (2) Requests for carry forward of UPI to a subsequent operating year must be specifically identified and explained within the "revenue section" of the Center's Operating Plan or in a separate written communication to the NIST MEP FPO and RMST and to the NIST Grants Officer, and approved in writing by the Grants Officer.
- (3) The NIST Grants Officer generally will only approve the carry forward of 50% or less of the annual Federal funding amount in UPI with the expectation that the Center will work with its assigned RMST to ensure that it reinvests unexpended and future program income strategically into the project. Based on the explanation provided by a Center, the NIST Grants Officer may approve the carry forward of UPI in an amount greater than 50% of a Center's annual Federal funding amount, although such approvals will generally be limited to cases where large amounts of UPI was reasonably unforeseeable by the Center or in other extraordinary circumstances faced by a Center. The NIST Grants Officer will provide the Recipient with written approval or denial of a request to carry forward UPI.
- (4) Additional NIST MEP funding may be withheld until a Recipient's UPI level is acceptable to NIST.
- (5) Upon close-out of an MEP award, the NIST Grants Officer will provide the Recipient with closeout instructions, including instructions regarding disposition of program income.

14. UNEXPENDED FEDERAL FUNDS (UFF)

NIST MEP does not anticipate Centers having Unexpended Federal Funds (UFF) at the end of an annual funding period; however, if a Center has UFF at the end of the current operating period, it may request that the NIST Grants Officer approve the carry forward of those funds into the next operating year. Requests should be included in the "revenue section" of a Center's Operating Plan

or in a separate written communication to the Federal Program Officer and to the NIST Grants Officer, and is subject to the prior written approval of the NIST Grants Officer. There are two options available for carrying UFF forward, as outlined below.

Option A – Carry Forward Towards Base: If a Center has UFF at the end of its current operating year that it wishes to carry forward **towards** the normal base funding in the new operating year, then the Center's new Federal funding will be reduced by the amount of UFF being carried forward towards base. This offset **cannot** be recovered later in the Operating Year or in a subsequent Operating Year.

Option B – Carry Forward Above Base: If a Center has UFF at the end of its operating year that it wishes to carry forward **above** its annual award amount, then the Center should include in its Operating Plan a request that explains why the funds were not expended in the previous operating year and detail how the UFF will be applied in the new Operating Year to expand the Center's normal scope of operation. A Center wishing to carry forward UFF above its base award amount must also provide the requisite non-Federal cost share attributable to the UFF during the operating year in which the UFF will be expended by the Center.

In both situations, the Center should also submit:

- Revised budget, subrecipient table, and SF-424A for the **prior year** to reflect where the funds were not expended.
- An SF-424 and SF-424A for the **current year** that shows the combined annual base award amount and UFF amount.
- An Operating Plan budget table that includes the UFF dollar amount and reflects the appropriate cost share.
- An Operating Plan budget narrative that includes a description of the use of UFF.

If the NIST Grants Officer, with NIST MEP's recommendation, approves the Center's request, the UFF from the previous operating year will be applied towards the NIST funding for the upcoming operating year, as specifically directed in writing by the NIST Grants Officer.

If there are remaining Federal funds at the end of a five-year award period, these remaining funds will be **de-obligated**.

15. FINANCIAL AND TECHNICAL REPORTING (CLARIFICATION)

Unless otherwise required by a Special Award Condition, the following reporting requirements shall apply to MEP cooperative agreements:

- A. Financial Reports.** The Recipient shall submit an SF-425, Federal Financial Report, into the MEP's Enterprise Information System (MEIS) on a semi-annual basis after the sixth and twelfth month of each operating year. Reports will be due within 30 days after the end of each semi-annual reporting period. The Recipient shall submit a final SF-425 within 90 days after the expiration date of the award.

B. Technical Reports. The Recipient shall submit a Technical Report (completing all required MEIS fields) on a semi-annual basis after the sixth and twelfth month of each operating year. Reports are due in MEIS no later than 30 days following the end of each reporting period. The Recipient shall submit a final Technical/Quarterly report within 90 days after the expiration date of the award. Technical/Quarterly Report details are accessible on the MEIS website (<https://meis.nist.gov/>).

The due dates for semi-annual financial and technical reports set forth in this MEP General Term and Condition apply in lieu of the due dates for semi-annual financial and technical reports referenced in Sections A.01 and B.02 of the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014).

16. PROGRAM PERFORMANCE REVIEWS

Renewal funding for MEP Centers is contingent, in part, upon successful annual evaluations and biennial merit reviews in accordance with 15 U.S.C. 278k(c)(5) and 15 C.F.R. Section 290.8 (collectively, a Program Review). NIST MEP also measures a Center's performance relative to client project follow-up conducted by NIST MEP pursuant to Section 17 of these General Terms and Conditions.

Within the 12-month operating year, NIST MEP will conduct the appropriate Program Review. This review will focus on the Center's strategic alignment to the NIST MEP overall program objectives, the Center's activities, progress and performance in implementing the NIST MEP award, lessons learned, monitoring of subrecipients, 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 communicated to the Recipient and recommendations provided in the Program Review should be incorporated by the Recipient into the Operating Plan for the next year of the project and submitted to NIST MEP for approval prior to the end of the current project year. In accordance with 2 C.F.R. Sections 200.338-200.342, NIST may implement appropriate enforcement action, including but not limited to cost disallowances, suspension, termination, or other enforcement action, if the Recipient does not receive a positive evaluation in any required Program Review, including reviews conducted following the obligation of funds for this award or amendment.

17. POST PROJECT CLIENT FOLLOW-UP

On a quarterly basis, Recipients are required to provide client and project data in the specified format to the organization identified by NIST MEP in order for post-project follow-up data to be obtained (OMB Control Number 0693-0021). For further information regarding the NIST MEP Reporting Process, Recipients may download a copy of the NIST MEP Reporting Guidelines at http://www.nist.gov/mep/ffo_state-competitions.cfm.

18. REPORTS, SURVEYS, STUDIES, AND MANUALS

All reports, plans, surveys, studies, and manuals developed, produced, or distributed under this cooperative agreement shall be submitted to the MEP FPO and RMST. Each item shall consist of an electronic or paper copy, submitted in the format and within the timeframe specified within the cooperative agreement.

19. RECORD-KEEPING

The Recipient shall keep complete and accessible detailed records on administrative and financial matters in accordance with the terms and conditions of the MEP cooperative agreement, including in accordance with the record retention and access requirements set forth in 2 C.F.R. Sections 200.333 through 200.337.

20. AUDITS

Audit requirements applicable to this award are set forth in 2 C.F.R. part 200, Subpart F, Audit Requirements, and in Section F. of the Department of Commerce Financial Assistance Standard Terms and Conditions (December 26, 2014).

21. ENFORCEMENT AND TERMINATION

Failure to perform the work in accordance with the terms of the award and to maintain at least a satisfactory performance rating or equivalent evaluation may result in appropriate enforcement action under an MEP award. Pursuant to 2 C.F.R. Sections 200.338 through 200.342 and Section A.06 of the DOC Financial Assistance Standard Terms and Conditions (December 26, 2014), a Recipient's failure to materially comply with the provisions of an MEP cooperative agreement may be considered grounds for appropriate enforcement actions, including but not limited to:

- Imposition of additional award conditions to address the area(s) of noncompliance (*see* 2 C.F.R. Section 200.207);
- Changing the method of payment under the MEP award from advance to reimbursement only;
- Withholding payment of funds under the MEP award pending corrective action by the Recipient;
- Disallowance of costs and establishment of an account receivable;
- Suspension of the MEP award; and
- Termination of the MEP award.

Depending on the nature and severity, a Recipient's failure to materially comply with the provisions of the MEP cooperative agreement 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 the Department of Commerce.

22. CLOSEOUT

The NIST Grants Office will contact the Recipient with closeout information prior to the end of the MEP award, per 2 C.F.R. Section 200.343.