

Department of Energy

§ 603.820

§ 603.705 Standards for purchasing systems of nonprofit organizations.

So as not to force system changes for any nonprofit participant, an expenditure-based TIA should provide that each nonprofit participant's purchasing system comply with:

(a) 10 CFR 600.236, if the participant is a State or local governmental organization.

(b) 10 CFR 600.140 through 10 CFR 600.149, if the participant is a nonprofit organization other than a GOCO or FFRDC that is excepted from the definition of "recipient" in 10 CFR 600.101. If a GOCO or FFRDC is a participant, the TIA must specify appropriate standards that conform as much as practicable with requirements in its procurement contract.

Subpart G—Award Terms Related to Other Administrative Matters

§ 603.800 Scope.

This subpart addresses administrative matters that do not impose organization-wide requirements on a participant's financial management, property management, or purchasing system. Because an organization does not have to redesign its systems to accommodate award-to-award variations in these requirements, TIAs may differ in the requirements that they specify for a given participant, based on the circumstances of the particular RD&D project. To eliminate needless administrative complexity, the contracting officer should handle some requirements, such as the payment method, in a uniform way for the agreement as a whole.

PAYMENTS

§ 603.805 Payment methods.

A TIA may provide for:

(a) *Reimbursement*, as described in 10 CFR 600.312(a)(1), if it is an expenditure-based award.

(b) *Advance payments*, as described in 10 CFR 600.312(a)(2), subject to the conditions in 10 CFR 600.312(b)(2)(i) through (iii).

(c) *Payments based on payable milestones*. These are payments made according to a schedule that is based on predetermined measures of technical progress or other payable milestones.

This approach relies upon the fact that, as the RD&D progresses throughout the term of the agreement, observable activity will be taking place. The recipient is paid upon the accomplishment of a predetermined measure of progress. A fixed-support TIA must use this payment method (this does not preclude use of an initial advance payment, if there is no alternative to meeting immediate cash needs). Payments based on payable milestones is the preferred method of payment for an expenditure-based TIA if well-defined outcomes can be identified.

§ 603.810 Method and frequency of payment requests.

The procedure and frequency for payment requests depend upon the payment method, as follows:

(a) For either reimbursements or advance payments, the TIA must allow recipients to submit requests for payment at least monthly. The contracting officer may authorize the recipients to use the forms or formats described in 10 CFR 600.312(d).

(b) If the payments are based on payable milestones, the recipient will submit a report or other evidence of accomplishment to the program official at the completion of each predetermined activity. If the award is an expenditure-based TIA that includes minimum cost sharing percentages for milestones (see 10 CFR 603.570(c), the recipient must certify in the report that the minimum cost sharing requirement has been met. The contracting officer may approve payment to the recipient after receiving validation from the program manager that the milestone was successfully reached.

§ 603.815 Withholding payments.

A TIA must provide that the contracting officer may withhold payments in the circumstances described in 10 CFR 600.312(g), but not otherwise.

§ 603.820 Interest on advance payments.

If an expenditure-based TIA provides for either advance payments or payable milestones, the agreement must require the recipient to:

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(a) Maintain in an interest-bearing account any advance payments or milestone payment amounts received in advance of needs to disburse the funds for program purposes unless:

(1) The recipient receives less than \$120,000 in Federal grants, cooperative agreements, and TIAs per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$1,000 per year on the advance or milestone payments; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.

(b) Remit annually the interest earned to the contracting officer.

REVISION OF BUDGET AND PROGRAM PLANS

§ 603.825 Government approval of changes in plans.

If it is an expenditure-based award, a TIA must require the recipient to obtain the contracting officer's prior approval if there is to be a change in plans that may result in a need for additional Federal funding (this is unnecessary for a fixed-support TIA because the recipient is responsible for additional costs of achieving the outcomes). Other than that, the program official's substantial involvement in the project should ensure that the Government has advance notice of changes in plans.

§ 603.830 Pre-award costs.

Pre-award costs, as long as they are otherwise allowable costs of the project, may be charged to an expenditure-based TIA only with the specific approval of the contracting officer. All pre-award costs are incurred at the recipient's risk (e.g., DOE is not obligated to reimburse the costs if, for any reason, the recipient does not receive an award, or if the award is less than anticipated and inadequate to cover the costs).

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PROGRAM INCOME

§ 603.835 Program income requirements.

A TIA must apply the standards of 10 CFR 600.314 for program income that may be generated. The TIA must also specify if the recipient is to have any obligation to the Federal Government with respect to program income generated after the end of the project period (i.e., the period, as established in the award document, during which Federal support is provided).

INTELLECTUAL PROPERTY

§ 603.840 Negotiating data and patent rights.

(a) The contracting officer must confer with program officials and assigned intellectual property counsel to develop an overall strategy for intellectual property that takes into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should take into account program mission requirements and any special circumstances that would support modification of standard patent and data terms, and should include considerations such as the extent of the recipient's contribution to the development of the technology; expected Government or commercial use of the technology; the need to provide equitable treatment among consortium or team members; and the need for the DOE to engage non-traditional Government contractors with unique capabilities.

(b) Because a TIA entails substantial cost sharing by recipients, the contracting officer must use discretion in negotiating Government rights to data and patentable inventions resulting from the RD&D under the agreements. The considerations in §§ 603.845 through 603.875 are intended to serve as guidelines, within which there is considerable latitude to negotiate provisions appropriate to a wide variety of circumstances that may arise.

§ 603.845 Data rights requirements.

(a) If the TIA is a cooperative agreement, the requirements at 10 CFR 600.325(d), *Rights in data-general rule*,