

could be better, more readily available, or less expensive)?

(2) Why would they not participate if an instrument other than a TIA were used? You should identify specific provisions of the TIA or features of the TIA award process that enable their participation.

(b) Will the use of a TIA allow the creation of new relationships among participants at the prime or subtier levels, among business units of the same firm, or between non-Federal participants and the Federal Government that will help the DoD get better technology in the future? If so:

(1) Why do these new relationships have the potential for helping the DoD get technology in the future that is better, more affordable, or more readily available?

(2) Are there provisions of the TIA or features of the TIA award process that enable these relationships to form? If so, you should be able to identify specifically what they are. If not, you should be able to explain specifically why you think that the relationships could not be created if an assistance instrument other than a TIA were used.

(c) Will the use of a TIA allow firms or business units of firms that traditionally accept Government awards to use new business practices in the execution of the research that will help us get better technology, help us get new technology more quickly or less expensively, or facilitate partnering with commercial firms? If so:

(1) What specific benefits will the DoD potentially get from the use of these new practices? You should be able to explain specifically why you foresee a potential for those benefits.

(2) Are there provisions of the TIA or features of the TIA award process that enable the use of the new practices? If so, you should be able to identify those provisions or features and explain why you think that the practices could not be used if the award were made using an assistance instrument other than a TIA.

(d) Are there any other benefits of the use of a TIA that could help the Department of Defense better meet its objectives in carrying out the research project? If so, you should be able to identify specifically what they are,

how they can help meet defense objectives, what features of the TIA or award process enable the DoD to realize them, and why the benefits likely would not be realized if an assistance instrument other than a TIA were used.

§37.230 May I use a TIA if a participant is to receive fee or profit?

In accordance with 32 CFR 22.205(b), you may not use a TIA if any participant is to receive fee or profit. Note that this policy extends to all performers of the research project carried out under the TIA, including any sub-awards for substantive program performance, but it does not preclude participants' or subrecipients' payment of reasonable fee or profit when making purchases from suppliers of goods (*e.g.*, supplies and equipment) or services needed to carry out the research.

Subpart C—Expenditure-Based and Fixed-Support Technology Investment Agreements

§37.300 What is the difference between an expenditure-based and fixed-support TIA?

The fundamental difference between an expenditure-based and fixed-support TIA is that:

(a) For an expenditure-based TIA, the amounts of interim payments or the total amount ultimately paid to the recipient are based on the amounts the recipient expends on project costs. If a recipient completes the project specified at the time of award before it expends all of the agreed-upon Federal funding and recipient cost sharing, the Federal Government may recover its share of the unexpended balance of funds or, by mutual agreement with the recipient, amend the agreement to expand the scope of the research project. An expenditure-based TIA therefore is analogous to a cost-type procurement contract or grant.

(b) For a fixed-support TIA, the amount of assistance established at the time of award is not meant to be adjusted later if the research project is carried out to completion. In that sense, a fixed-support TIA is somewhat analogous to a fixed-price procurement

contract (although “price,” a concept appropriate to a procurement contract for buying a good or service, is not appropriate for a TIA or other assistance instrument for stimulation or support of a project).

§ 37.305 When may I use a fixed-support TIA?

You may use a fixed-support TIA if:

(a) The agreement is to support or stimulate research with outcomes that are well defined, observable, and verifiable;

(b) You can reasonably estimate the resources required to achieve those outcomes well enough to ensure the desired level of cost sharing (see example in § 37.560(b)); and

(c) Your TIA does not require a specific amount or percentage of recipient cost sharing. In cases where the agreement does require a specific amount or percentage of cost sharing, a fixed-support TIA is not practicable because the agreement has to specify cost principles or standards for costs that may be charged to the project; require the recipient to track the costs of the project; and provide access for audit to allow verification of the recipient’s compliance with the mandatory cost sharing. You therefore must use an expenditure-based TIA if you:

(1) Have a non-waivable requirement (e.g., in statute) for a specific amount or percentage of recipient cost sharing; or

(2) Have otherwise elected to include in the TIA a requirement for a specific amount or percentage of cost sharing.

§ 37.310 When would I use an expenditure-based TIA?

In general, you must use an expenditure-based TIA under conditions other than those described in § 37.305. Reasons for any exceptions to this general rule must be documented in the award file and must be consistent with the policy in § 37.230 that precludes payment of fee or profit to participants.

§ 37.315 What are the advantages of using a fixed-support TIA?

In situations where the use of fixed-support TIAs is permissible (see §§ 37.305 and 37.310), their use may encourage some commercial firms’ par-

ticipation in the research. With a fixed-support TIA, you can eliminate or reduce some post-award requirements that sometimes are cited as disincentives for those firms to participate. For example, a fixed-support TIA need not:

(a) Specify minimum standards for the recipient’s financial management system.

(b) Specify cost principles or standards stating the types of costs the recipient may charge to the project.

(c) Provide for financial audits by Federal auditors or independent public accountants of the recipient’s books and records.

(d) Set minimum standards for the recipient’s purchasing system.

(e) Require the recipient to prepare financial reports for submission to the Federal Government.

Subpart D—Competition Phase

§ 37.400 Must I use competitive procedures to award TIAs?

DoD policy is to award TIAs using merit-based, competitive procedures, as described in 32 CFR 22.315:

(a) In every case where required by statute; and

(b) To the maximum extent practicable in all other cases.

§ 37.405 What must my announcement or solicitation include?

Your announcement, to be considered as part of a competitive procedure, must include the basic information described in 32 CFR 22.315(a). Additional elements for you to consider in the case of a program that may use TIAs are described in §§ 37.410 through 37.420.

§ 37.410 Should my announcement or solicitation state that TIAs may be awarded?

Yes, once you consider the factors described in subpart B of this part and decide that TIAs are among the types of instruments that you may award pursuant to a solicitation, it is important for you to state that fact in the solicitation. You also should state that TIAs are more flexible than traditional Government funding instruments and that provisions are negotiable in areas