

Agency and the Office of Naval Research can share lessons learned from administering other TIAs. Program officials can be a source of information when you are determining the reasonableness of proposed funding (*e.g.*, on labor rates, as discussed in §37.520) or establishing observable and verifiable technical milestones for payments (*see* §37.575). Auditors at the Defense Contract Audit Agency can act in an advisory capacity to help you determine the reasonableness of proposed amounts, including values of in-kind contributions toward cost sharing.

RECIPIENT QUALIFICATION

§ 37.510 What are my responsibilities for determining that a recipient is qualified?

Prior to award of a TIA, your responsibilities for determining that the recipient is qualified are the same as those of a grants officer who is awarding a grant or cooperative agreement. Those responsibilities are described in subpart D of 32 CFR part 22. When the recipient is a consortium that is not formally incorporated, you have the additional responsibility described in §37.515.

§ 37.515 Must I do anything additional to determine the qualification of a consortium?

(a) When the prospective recipient of a TIA is a consortium that is not formally incorporated, your determination that the recipient meets the standard at 32 CFR 22.415(a) requires that you, in consultation with legal counsel, review the management plan in the consortium's collaboration agreement. The purpose of your review is to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the research project's chances of success.

(b) The collaboration agreement, commonly referred to as the articles of collaboration, is the document that sets out the rights and responsibilities of each consortium member. It binds the individual consortium members together, whereas the TIA binds the Gov-

ernment and the consortium as a group (or the Government and a consortium member on behalf of the consortium, as explained in §37.1015). The document should discuss, among other things, the consortium's:

- (1) Management structure.
- (2) Method of making payments to consortium members.
- (3) Means of ensuring and overseeing members' efforts on the project.
- (4) Provisions for members' cost sharing contributions.
- (5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.

TOTAL FUNDING

§ 37.520 What is my responsibility for determining that the total project funding is reasonable?

In cooperation with the program official, you must assess the reasonableness of the total estimated budget to perform the research that will be supported by the agreement. Additional guidance follows for:

(a) *Labor*. Much of the budget likely will involve direct labor and associated indirect costs, which may be represented together as a "loaded" labor rate. The program official is an essential advisor on reasonableness of the overall level of effort and its composition by labor category. You also may rely on your experience with other awards as the basis for determining reasonableness. If you have any unresolved questions, two of the ways that you might find helpful in establishing reasonableness are to:

(1) Consult the administrative agreements officers or auditors identified in §37.505.

(2) Compare loaded labor rates of for-profit firms that do not have expenditure-based Federal procurement contracts or assistance awards with a standard or average for the particular industry. Note that the program official may have knowledge about customary levels of direct labor charges in the particular industry that is involved. You may be able to compare associated indirect charges with Government-approved indirect cost rates that exist for many nonprofit and for-profit

organizations that have Federal procurement contracts or assistance awards (note the requirement in § 37.630 for a for-profit participant to use Federally approved provisional indirect cost rates, if it has them).

(b) *Real property and equipment.* In almost all cases, the project costs may include only depreciation or use charges for real property and equipment of for-profit participants, in accordance with § 37.685. Remember that the budget for an expenditure-based TIA may not include depreciation of a participant's property as a direct cost of the project if that participant's practice is to charge the depreciation of that type of property as an indirect cost, as many organizations do.

COST SHARING

§ 37.525 What is my responsibility for determining the value and reasonableness of the recipient's cost sharing contribution?

You must:

(a) Determine that the recipient's cost sharing contributions meet the criteria for cost sharing and determine values for them, in accordance with §§ 37.530 through 37.555. In doing so, you must:

(1) Ensure that there are affirmative statements from any third parties identified as sources of cash contributions.

(2) Include in the award file an evaluation that documents how you determined the values of the recipient's contributions to the funding of the project.

(b) Judge that the recipient's cost sharing contribution, as a percentage of the total budget, is reasonable. To the maximum extent practicable, the recipient must provide at least half of the costs of the project, in accordance with § 37.215.

§ 37.530 What criteria do I use in deciding whether to accept a recipient's cost sharing?

You may accept any cash or in-kind contributions that meet all of the following criteria:

(a) In your judgment, they represent meaningful cost sharing that demonstrates the recipient's commitment to the success of the research project.

Cash contributions clearly demonstrate commitment and they are strongly preferred over in-kind contributions.

(b) They are necessary and reasonable for accomplishment of the research project's objectives.

(c) They are costs that may be charged to the project under § 37.625 and § 37.635, as applicable to the participant making the contribution.

(d) They are verifiable from the recipient's records.

(e) They are not included as cost sharing contributions for any other Federal award.

(f) They are not paid by the Federal Government under another award, except:

(1) Costs that are authorized by Federal statute to be used for cost sharing; or

(2) Independent research and development (IR&D) costs, as described at 32 CFR 34.13(a)(5)(ii), that meet all of the criteria in paragraphs (a) through (e) of this section. IR&D is acceptable as cost sharing, even though it may be reimbursed by the Government through other awards. It is standard business practice for all for-profit firms, including commercial firms, to recover their research and development (R&D) costs (which for Federal procurement contracts is recovered as IR&D) through prices charged to their customers. Thus, the cost principles at 48 CFR part 31 allow a for-profit firm that has expenditure-based, Federal procurement contracts to recover through those procurement contracts the allocable portion of its R&D costs associated with a technology investment agreement.

§ 37.535 How do I value cost sharing related to real property or equipment?

You rarely should accept values for cost sharing contributions of real property or equipment that are in excess of depreciation or reasonable use charges, as discussed in § 37.685 for for-profit participants. You may accept the full value of a donated capital asset if the real property or equipment is to be dedicated to the project and you expect that it will have a fair market value that is less than \$5,000 at the project's