

§ 37.115

§ 37.115 For what purposes are TIAs used?

The ultimate goal for using TIAs, like other assistance instruments used in defense research programs, is to foster the best technologies for future defense needs. TIAs differ from and complement other assistance instruments available to agreements officers, in that TIAs address the goal by fostering civil-military integration (*see* appendix A to this part). TIAs therefore are designed to:

(a) Reduce barriers to commercial firms' participation in defense research, to give the Department of Defense (DoD) access to the broadest possible technology and industrial base.

(b) Promote new relationships among performers in both the defense and commercial sectors of that technology and industrial base.

(c) Stimulate performers to develop, use, and disseminate improved practices.

§ 37.120 Can my organization award or administer TIAs?

Your office may award or administer TIAs if it has a delegation of the authorities in 10 U.S.C. 2371, as well as 10 U.S.C. 2358. If your office is in a Military Department, it must have a delegation of the authority of the Secretary of that Military Department under those statutes. If your office is in a Defense Agency, it must have a delegation of the authority of the Secretary of Defense under 10 U.S.C. 2358 and 2371. Your office needs those authorities to be able to:

(a) Enter into cooperative agreements to stimulate or support research, using the authority of 10 U.S.C. 2358, as well as assistance transactions other than grants or cooperative agreements, using the authority of 10 U.S.C. 2371. The reason that both authorities are needed is that a TIA, depending upon its patent rights provision (*see* appendix B to this part), may be either a cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.

(b) Recover funds from a recipient and reuse the funds for program purposes, as authorized by 10 U.S.C. 2371 and described in § 37.580.

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(c) Exempt certain information received from proposers from disclosure under the Freedom of Information Act, as authorized by 10 U.S.C. 2371 and described in § 37.420.

§ 37.125 May I award or administer TIAs if I am authorized to award or administer other assistance instruments?

(a) You must have specific authorization to award or administer TIAs. Being authorized to award or administer grants and cooperative agreements is not sufficient; a grants officer is an agreements officer only if the statement of appointment also authorizes the award or administration of TIAs.

(b) You receive that authorization in the same way that you receive authority to award other assistance instruments, as described in 32 CFR 21.425 and 21.435 through 21.445.

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

(a) TIAs are explicitly covered in this part and part 21 of the DoD Grant and Agreement Regulations (DoDGARs). Part 21 (32 CFR part 21) addresses deviation procedures and other general matters that relate to the DoDGARs, to DoD Components' authorities and responsibilities for assistance instruments, and to requirements for reporting information about assistance awards.

(b) Two additional parts of the DoDGARs apply to TIAs, although they do not mention TIAs explicitly. They are:

(1) Part 1125 (2 CFR part 1125) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

(2) Part 26 (32 CFR part 26), on drug-free workplace requirements, which applies because it covers financial assistance in general; and

(3) Part 28 (32 CFR part 28), on lobbying restrictions, which applies by law (31 U.S.C. 1352) to TIAs that are cooperative agreements and as a matter of DoD policy to all other TIAs.

(c) Portions of four other DoDGARs parts apply to TIAs only as cited by reference in this part. Those parts of

the DoDGARs are parts 22, 32, 33, and 34 (32 CFR parts 22, 32, 33, and 34).

[68 FR 47160, Aug. 7, 2003, as amended at 70 FR 49477, Aug. 23, 2005; 72 FR 34999, June 26, 2007]

Subpart B—Appropriate Use of Technology Investment Agreements

§ 37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?

You must ensure that you use TIAs only in appropriate situations. To do so, you must conclude that the use of a TIA is justified based on:

- (a) The nature of the project, as discussed in § 37.205;
- (b) The type of recipient, addressed in § 37.210;
- (c) The recipient's commitment and cost sharing, as described in § 37.215;
- (d) The degree of involvement of the Government program official, as discussed in § 37.220; and
- (e) Your judgment that the use of a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used. Your answers to the four questions in § 37.225 should be the basis for your judgment.

§ 37.205 What judgments must I make about the nature of the project?

You must:

- (a) Conclude that the principal purpose of the project is stimulation or support of research (*i.e.*, assistance), rather than acquiring goods or services for the benefit of the Government (*i.e.*, acquisition);
- (b) Decide that the basic, applied, or advanced research project is relevant to the policy objective of civil-military integration (*see* appendix A of this part); and
- (c) Ensure that, to the maximum extent practicable, any TIA that uses the authority of 10 U.S.C. 2371 (*see* appendix B of this part) does not support research that duplicates other research being conducted under existing programs carried out by the Department of Defense. This is a statutory requirement of 10 U.S.C. 2371.
- (d) When your TIA is a type of assistance transaction other than a grant or

cooperative agreement, satisfy the condition in 10 U.S.C. 2371 to judge that the use of a standard grant or cooperative agreement for the research project is not feasible or appropriate. As discussed in appendix B to this part:

(1) This situation arises if your TIA includes a patent provision that is less restrictive than is possible under the Bayh-Dole statute (because the patent provision is what distinguishes a TIA that is a cooperative agreement from a TIA that is an assistance transaction other than a grant or cooperative agreement).

(2) You satisfy the requirement to judge that a standard cooperative agreement is not feasible or appropriate when you judge that execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole.

§ 37.210 To what types of recipients may I award a TIA?

(a) As a matter of DoD policy, you may award a TIA only when one or more for-profit firms are to be involved either in the:

(1) Performance of the research project; or

(2) The commercial application of the research results. In that case, you must determine that the nonprofit performer has at least a tentative agreement with specific for-profit partners who plan on being involved when there are results to transition. You should review the agreement between the nonprofit and for-profit partners, because the for-profit partners' involvement is the basis for using a TIA rather than another type of assistance instrument.

(b) Consistent with the goals of civil-military integration, TIAs are most appropriate when one or more commercial firms (as defined at § 37.1250) are to be involved in the project.

(c) You are encouraged to make awards to consortia (a consortium may include one or more for-profit firms, as well as State or local government agencies, institutions of higher education, or other nonprofit organizations). The reasons are that:

(1) When multiple performers are participating as a consortium, they are more equal partners in the research performance than usually is the case