

§ 37.500

basis. After the five-year period, information may be protected for longer periods if it meets any of the criteria in 5 U.S.C. 552(b) (as implemented by the DoD in subpart C of 32 CFR part 286) for exemption from FOIA disclosure requirements.

Subpart E—Pre-Award Business Evaluation

§ 37.500 What must my pre-award business evaluation address?

(a) You must determine the qualification of the recipient, as described in §§ 37.510 and 37.515.

(b) As the business expert working with the program official, you also must address the financial aspects of the proposed agreement. You must:

(1) Determine that the total amount of funding for the proposed effort is reasonable, as addressed in § 37.520.

(2) Assess the value and determine the reasonableness of the recipient's proposed cost sharing contribution, as discussed in §§ 37.525 through 37.555.

(3) If you are contemplating the use of a fixed-support rather than expenditure-based TIA, ensure that its use is justified, as explained in §§ 37.560 and 37.565.

(4) Address issues of inconsistent cost accounting by traditional Government contractors, should they arise, as noted in § 37.570.

(5) Determine amounts for milestone payments, if you use them, as discussed in § 37.575.

§ 37.505 What resources are available to assist me during the pre-award business evaluation?

Administrative agreements officers of the Defense Contract Management 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

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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 Government 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.