

§ 37.535

32 CFR Ch. I (7-1-10 Edition)

(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 end. In those cases, you should value the donation at the lesser of:

(a) The value of the property as shown in the recipient's accounting records (*i.e.*, purchase price less accumulated depreciation); or

(b) The current fair market value. You may accept the use of any reasonable basis for determining the fair market value of the property. If there is a justification to do so, you may accept the current fair market value even if it

exceeds the value in the recipient's records.

§ 37.540 May I accept fully depreciated real property or equipment as cost sharing?

You should limit the value of any contribution of a fully depreciated asset to a reasonable use charge. In determining what is reasonable, you must consider:

- (a) The original cost of the asset;
- (b) Its estimated remaining useful life at the time of your negotiations;
- (c) The effect of any increased maintenance charges or decreased performance due to age; and
- (d) The amount of depreciation that the participant previously charged to Federal awards.

§ 37.545 May I accept costs of prior research as cost sharing?

No, you may not count any participant's costs of prior research as a cost sharing contribution. Only the additional resources that the recipient will provide to carry out the current project (which may include pre-award costs for the current project, as described in § 37.830) are to be counted.

§ 37.550 May I accept intellectual property as cost sharing?

(a) In most instances, you should not count costs of patents and other intellectual property (*e.g.*, copyrighted material, including software) as cost sharing, because:

- (1) It is difficult to assign values to these intangible contributions;
- (2) Their value usually is a manifestation of prior research costs, which are not allowed as cost share under § 37.545; and
- (3) Contributions of intellectual property rights generally do not represent the same cost of lost opportunity to a recipient as contributions of cash or tangible assets. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success.

(b) You may include costs associated with intellectual property if the costs are based on sound estimates of market value of the contribution. For example, a for-profit firm may offer the use of commercially available software for

which there is an established license fee for use of the product. The costs of the development of the software would not be a reasonable basis for valuing its use.

§ 37.555 How do I value a recipient's other contributions?

For types of participant contributions other than those addressed in §§ 37.535 through 37.550, the general rule is that you are to value each contribution consistently with the cost principles or standards in § 37.625 and § 37.635 that apply to the participant making the contribution. When valuing services and property donated by parties other than the participants, you may use as guidance the provisions of 32 CFR 34.13(b)(2) through (5).

FIXED-SUPPORT OR EXPENDITURE-BASED APPROACH

§ 37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?

(a) To use a fixed-support TIA, rather than an expenditure-based TIA, you must have confidence in your estimate of the expenditures required to achieve well-defined outcomes. Therefore, you must work carefully with program officials to select outcomes that, when the recipient achieves them, are reliable indicators of the amount of effort the recipient expended. However, your estimate of the required expenditures need not be a precise dollar amount, as illustrated by the example in paragraph (b) of this section, if:

(1) The recipient is contributing a substantial share of the costs of achieving the outcomes, which must meet the criteria in § 37.305(a); and

(2) You are confident that the costs of achieving the outcomes will be at least a minimum amount that you can specify and the recipient is willing to accept the possibility that its cost sharing percentage ultimately will be higher if the costs exceed that minimum amount.

(b) To illustrate the approach, consider a project for which you are confident that the recipient will have to expend at least \$800,000 to achieve the specified outcomes. You must deter-

mine, in conjunction with program officials, the minimum level of recipient cost sharing that you want to negotiate, based on the circumstances, to demonstrate the recipient's commitment to the success of the project. For purposes of this illustration, let that minimum recipient cost sharing be 40% of the total project costs. In that case, the Federal share should be no more than 60% and you could set a fixed level of Federal support at \$480,000 (60% of \$800,000). With that fixed level of Federal support, the recipient would be responsible for the balance of the costs needed to complete the project.

(c) Note, however, that the level of recipient cost sharing you negotiate is to be based solely on the level needed to demonstrate the recipient's commitment. You may not use a shortage of Federal Government funding for the program as a reason to try to persuade a recipient to accept a fixed-support TIA, rather than an expenditure-based instrument, or to accept responsibility for a greater share of the total project costs than it otherwise is willing to offer. If you lack sufficient funding to provide an appropriate Federal Government share for the entire project, you instead should rescope the effort covered by the agreement to match the available funding.

§ 37.565 May I use a hybrid instrument that provides fixed support for only a portion of a project?

Yes, for a research project that is to be carried out by a number of participants, you may award a TIA that provides for some participants to perform under fixed-support arrangements and others to perform under expenditure-based arrangements. This approach may be useful, for example, if a commercial firm that is a participant will not accept an agreement with all of the post-award requirements of an expenditure-based award. Before using a fixed-support arrangement for that firm's portion of the project, you must judge that it meets the criteria in § 37.305.