

§ 37.710

(b) You should allow other for-profit participants under expenditure-based TIAs to use their existing purchasing systems, as long as they flow down the applicable requirements in Federal statutes, Executive orders or Governmentwide regulations (see appendix E to this part for a list of those requirements).

(c) If your TIA is a fixed-support award, you need only require for-profit participants to flow down the requirements listed in appendix F to this part.

§ 37.710 What standards do I include for purchasing systems of nonprofit organizations?

(a) So as not to force system changes for any nonprofit participant, your expenditure-based TIA will provide that each nonprofit participant's purchasing system comply with:

(1) 32 CFR 33.36, if the participant is a State or local governmental organization.

(2) 32 CFR 32.40 through 32.49 if the participant is a nonprofit organization other than a GOCO or FFRDC that is excepted from the definition of "recipient" in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards.

(b) If your TIA is a fixed-support award, you need only require nonprofit participants to flow down the requirements listed in appendix E to this part.

Subpart G—Award Terms Related to Other Administrative Matters

§ 37.800 Which administrative matters are covered in this subpart?

This subpart addresses "non-systemic" administrative matters that do not impose organization-wide requirements on a participant's financial management, property management, or purchasing system. Because an organization does not have to redesign its systems to accommodate award-to-award variations in these requirements, a TIA that you award may differ from other TIAs in the non-systemic requirements that it specifies for a given participant, based on the cir-

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cumstances of the particular research project. To eliminate needless administrative complexity, you should handle some non-systemic requirements, such as the payment method, in a uniform way for the agreement as a whole.

PAYMENTS

§ 37.805 If I am awarding a TIA, what payment methods may I specify?

Your TIA may provide for:

(a) *Reimbursement*, as described in 32 CFR 34.12(a)(1), if it is an expenditure-based award.

(b) *Advance payments*, as described in 32 CFR 34.12(a)(2), subject to the conditions in 32 CFR 34.12(b)(2)(i) through (iii).

(c) *Payments based on payable milestones*. These are payments made according to a schedule that is based on predetermined measures of technical progress or other payable milestones. This approach relies upon the fact that, as research progresses throughout the term of the agreement, observable activity will be taking place. The recipient is paid upon the accomplishment of the predetermined measure of progress. Fixed-support TIAs must use this payment method and each measure of progress appropriately would be one of the well-defined outcomes that you identify in the agreement (this does not preclude use of an initial advance payment, if there is no alternative to meeting immediate cash needs). There are cash management considerations when this payment method is used as a means of financing for an expenditure-based TIA (see § 37.575 and § 37.1105).

§ 37.810 What should my TIA's provisions specify for the method and frequency of recipients' payment requests?

The procedure and frequency for payment requests depend upon the payment method, as follows:

(a) For either reimbursements or advance payments, your TIA must allow recipients to submit requests for payment at least monthly. You may authorize the recipients to use the forms or formats described in 32 CFR 34.12(d).

(b) If the payments are based on payable milestones, the recipient will submit a report or other evidence of accomplishment to the program official at the completion of each predetermined activity. The agreement administrator may approve payment to the recipient after receiving validation from the program manager that the milestone was successfully reached.

§ 37.815 May the Government withhold payments?

Your TIA must provide that the administrative agreements officer may withhold payments in the circumstances described in 32 CFR 34.12(g), but not otherwise.

§ 37.820 Must I require a recipient to return interest on advance payments?

If your expenditure-based TIA provides for either advance payments or payable milestones, the agreement must require the recipient to:

(a) Maintain in an interest-bearing account any advance payments or milestone payment amounts received in advance of needs to disburse the funds for program purposes unless:

(1) The recipient receives less than \$120,000 in Federal grants, cooperative agreements, and TIAs per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of \$1,000 per year on the advance or milestone payments; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.

(b) Remit annually the interest earned to the administrative agreements officer.

REVISION OF BUDGET AND PROGRAM PLANS

§ 37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?

If it is an expenditure-based award, your agreement must require the recipient to obtain the agreement administrator's prior approval if there is to be a change in plans that results in a need for additional Federal funding

(this is unnecessary for a fixed-support TIA because the recipient is responsible for additional costs of achieving the outcomes). Other than that, the program official's substantial involvement in the project should ensure that the Government has advance notice of changes in plans.

§ 37.830 May I let a recipient charge pre-award costs to the agreement?

Pre-award costs, as long as they are otherwise allowable costs of the project, may be charged to an expenditure-based TIA only with the specific approval of the agreements officer. All pre-award costs are incurred at the recipient's risk (*i.e.*, no DoD Component is obligated to reimburse the costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover the costs).

PROGRAM INCOME

§ 37.835 What requirements do I include for program income?

Your TIA should apply the standards of 32 CFR 34.14 for program income that may be generated. Note the need to specify whether the recipient is to have any obligation to the Federal Government with respect to program income generated after the end of the project period (the period, as established in the award document, during which Federal support is provided). Doing so is especially important if the TIA includes a provision for the recipient to return any amounts to the Federal Government (see § 37.580).

INTELLECTUAL PROPERTY

§ 37.840 What general approach should I take in negotiating data and patent rights?

(a) You should confer with program officials and legal counsel to develop an overall strategy for intellectual property that takes into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should take into account any intellectual property the Government is furnishing and any pre-existing proprietary information that the recipient is furnishing, as well as data