the use of the technology will be manufactured substantially in the United States. The provision may further provide that:

(i) In individual cases, the Government may waive the requirement of substantial manufacture in the United States upon a showing by the recipient that reasonable but unsuccessful efforts have been made to transfer the technology under similar terms to those likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(ii) In those cases, the DoD Component may require a refund to the Government of some or all the funds paid under the TIA for the development of the transferred technology.

(c) You may, but are not required to, seek to negotiate a domestic manufacture condition for transfers of nonexclusive rights to use or sell the technology in the United States, to parallel the one described for exclusive licenses in paragraph (b)(2) of this section, if you judge that nonexclusive licenses for foreign manufacture could effectively preclude the establishment of domestic sources of the technology for defense purposes.

§37.890 Must I require a final performance report?

You need not require a final performance report that addresses all major accomplishments under the TIA. If you do not do so, however, there must be an alternative that satisfies the requirement in DoD Instruction 3200.147 to document all DoD Science and Technology efforts and disseminate the results through the Defense Technical Information Center (DTIC). An example

VerDate Mar<15>2010 10:15 Aug 28, 2012 Jkt 226126 PO 00000 Frm 00237 Fmt 8010 Sfmt 8010 Y:\SGML\226126.XXX 226126emcdonald on DSK67QTVN1PROD with CFR
of an alternative would be periodic reports throughout the performance of the research that collectively cover the entire project.

§ 37.895 How is the final performance report to be sent to the Defense Technical Information Center?

(a) Whether your TIA requires a final performance report or uses an alternative means under §37.890, you may include an award term or condition or otherwise instruct the recipient to submit the documentation, electronically if available, either:

(1) Directly to the DTIC; or
(2) To the office that is administering the award (for subsequent transmission to the DTIC).

(b) If you specify that the recipient is to submit the report directly to the DTIC, you also:

(1) Must instruct the recipient to include a fully completed Standard Form 298, Report Documentation Page, with each document, so that the DTIC can recognize the document as being related to the particular award and properly record its receipt; and

(2) Should advise the recipient to provide a copy of the completed Standard Form 298 to the agreements officer responsible for administering the TIA.

§ 37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?

You may tell a participant that:

(a) We may exempt from disclosure under the Freedom of Information Act (FOIA) a trade secret or commercial and financial information that a participant provides after the award, if the information is privileged or confidential information. The DoD Component that receives the FOIA request will review the information in accordance with DoD procedures at 32 CFR 286.23(b) (and any DoD Component supplementary procedures) to determine whether it is privileged or confidential information under the FOIA exemption at 5 U.S.C. 552(b)(4), as implemented by the DoD at 32 CFR 286.12(d).

(b) If the participant also provides information in the course of a competition prior to award, there is a statutory exemption for five years from FOIA disclosure requirements for certain types of information submitted at that time (see §37.420).

§ 37.905 Must I make receipt of the final performance report a condition for final payment?

If a final report is required, your TIA should make receipt of the report a condition for final payment. If the payments are based on payable milestones, the submission and acceptance of the final report by the Government representative will be incorporated as an event that is a prerequisite for one of the payable milestones.

RECORDS RETENTION AND ACCESS REQUIREMENTS

§ 37.910 How long must I require participants to keep records related to the TIA?

Your TIA must require participants to keep records related to the TIA (for which the agreement provides Government access under §37.915) for a period of three years after submission of the final financial status report for an expenditure-based TIA or final programmatic status report for a fixed-support TIA, with the following exceptions:

(a) The participant must keep records longer than three years after submission of the final financial status report if the records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the participant must keep the records until the matter is resolved and final action taken.

(b) Records for any real property or equipment acquired with project funds under the TIA must be kept for three years after final disposition.

§ 37.915 What requirement for access to a for-profit participant’s records do I include in a TIA?

(a) If a for-profit participant currently grants access to its records to the DCAA or other Federal Government auditors, your TIA must include