units of the same firm, or between non-
Federal participants and the Federal
Government that will foster better
technology? If so:
(1) Why do these new relationships
have the potential for fostering tech-
nology that is better, more affordable,
or more readily available?
(2) Are there provisions of the TIA or
features of the TIA award process that
enable these relationships to form? If
so, the contracting officer should be
able to identify specifically what they
are. If not, the contracting officer
should be able to explain specifically
why the relationships could not be cre-
ated if another type of assistance in-
strument were used. For example, a
large business firm may not be willing
to participate in a consortium or
 teaming arrangement with small busi-
ness firms and nonprofit firms under a
standard cooperative agreement be-
cause those entities have invention
rights under the Bayh-Dole statute
that are not available to large busi-
nesses. A large business firm may be
willing to participate in a consortium
or teaming arrangement only if all
partners are substantially equal with
regard to the allocation of intellectual
property rights.
(c) Will the use of a TIA allow firms
or business units of firms that tradi-
tionally accept Government awards to
use new business practices in the exe-
cution of the RD&D project that will
foster better technology, new tech-
nology more quickly or less expen-
sively, or facilitate partnering with
commercial firms? If so:
(1) What specific benefits result from
the use of these new practices? The
contracting officer should be able to
explain specifically the potential for
those benefits.
(2) Are there provisions of the TIA or
features of the TIA award process that
enable the use of the new practices? If
so, the contracting officer should be
able to identify those provisions or fea-
tures and explain why the practices
could not be used if the award were
made using another type of assistance
instrument.
(d) Are there any other benefits of
the use of a TIA that could help DOE
meet its objectives in carrying out the
project? If so, the contracting officer
should be able to identify specifically
what they are, how they can help meet
the objectives, what features of the
TIA or award process enable DOE to re-
alize them, and why the benefits likely
would not be realized if an assistance
instrument other than a TIA were
used.
§ 603.230 Fee or profit.
The contracting officer may not use
a TIA if any participant is to receive
fee or profit. Note that this policy ex-
tends to all performers of the project,
including any subawards for sub-
stantive program performance, but it
does not preclude participants’ or sub-
recipients’ payment of reasonable fee
or profit when making purchases from
suppliers of goods (e.g., supplies and
equipment) or services needed to carry
out the RD&D.
Subpart C—Requirements for Ex-
penditure-Based and Fixed-
Support Technology Invest-
ment Agreements
§ 603.300 Difference between an ex-
penditure-based and a fixed-sup-
port TIA.
The contracting officer may nego-
tiate expenditure-based or fixed-sup-
port award terms for either types of
TIA subject to the requirements in this
subpart. The fundamental difference
between an expenditure-based and a
fixed-support TIA is:
(a) For an expenditure-based TIA, the
amounts of interim payments or the
total amount ultimately paid to the re-
cipient are based on the amounts the
recipient expends on project costs. If a
recipient completes the project speci-
fied at the time of award before it ex-
pends all of the agreed-upon Federal
funding and recipient cost sharing, the
Federal Government may recover its
share of the unexpended balance of
funds or, by mutual agreement with
the recipient, amend the agreement to
expand the scope of the RD&D project.
An expenditure-based TIA, therefore, is
analogous to a cost-type procurement
contract or grant.
(b) For a fixed-support TIA, the
amount of assistance is established at
the time of award and is not meant to
be adjusted later. In that sense, a fixed-
support TIA is somewhat analogous to a fixed-price procurement contract.

§ 603.305 Use of a fixed-support TIA.

The contracting officer may use a fixed-support TIA if:
(a) The agreement is to support or stimulate RD&D with outcomes that are well defined, observable, and verifiable;
(b) The resources required to achieve the outcomes can be estimated well enough to ensure the desired level of cost sharing (see example in § 603.560(b)); and
(c) The agreement does not require a specific amount or percentage of recipient cost sharing. In cases where the agreement does require a specific amount or percentage of cost sharing, a fixed-support TIA is not practicable because the agreement has to specify cost principles or standards for costs that may be charged to the project; require the recipient to track the costs of the project; and provide access for audit to allow verification of the recipient’s compliance with the mandatory cost sharing. A fixed-support TIA may not be used if there is:
(1) A requirement (e.g., in statute or policy determination) for a specific amount or percentage of recipient cost sharing; or
(2) The contracting officer, in consultation with the program official, otherwise elects to include in the TIA a requirement for a specific amount or percentage of cost sharing.

§ 603.310 Use of an expenditure-based TIA.

In general, the contracting officer must use an expenditure-based TIA under conditions other than those described in § 603.305. Reasons for any exceptions to this general rule must be documented in the award file and must be consistent with the policy in § 603.230 that precludes payment of fee or profit to participants.

§ 603.315 Advantages of a fixed-support TIA.

In situations where the use of a fixed-support TIA is permissible (see §§ 603.305 and 603.310), its use may encourage some commercial firms’ participation in the RD&D. With a fixed-support TIA, the contracting officer can eliminate or reduce some post-award requirements that sometimes are cited as disincentives for those firms to participate. For example, a fixed-support TIA need not:
(a) Specify minimum standards for the recipient’s financial management system;
(b) Specify cost principles or standards stating the types of costs the recipient may charge to the project;
(c) Provide for financial audits by Federal auditors or independent public accountants of the recipient’s books and records;
(d) Set minimum standards for the recipient’s purchasing system; or
(e) Require the recipient to prepare financial reports for submission to the Federal Government.

Subpart D—Competition Phase

§ 603.400 Competitive procedures.

DOE policy is to award a TIA using competitive procedures and a merit-based selection process, as described in 10 CFR 600.6 and 600.13, respectively:
(a) In every case where required by statute; and
(b) To the maximum extent feasible, in all other cases. If it is not feasible to use competitive procedures, the contracting officer must comply with the requirements in 10 CFR 600.6(c).

§ 603.405 Announcement format.

If the contracting officer, in consultation with the program official, decides that a TIA is among the types of instruments that may be awarded, the additional elements described in §§ 603.410 through 603.420 should be included in the announcement.

§ 603.410 Announcement content.

Once the contracting officer, in consultation with the program official, considers the factors described in Subpart B of this part and decides that a TIA is among the types of instruments that may be awarded pursuant to a program announcement, it is important to state that fact in the announcement. The announcement also should state that a TIA is more flexible than a traditional financial assistance agreement and that requirements are negotiable.