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§ 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 and inventions that may be generated under the award (recognizing that new data and inventions may be less valuable without pre-existing information). All pre-existing intellectual property, both the Government's and the recipient's, should be marked to give notice of its status.

(b) Because TIAs entail substantial cost sharing by recipients, you must use discretion in negotiating Government rights to data and patentable inventions resulting from research under the agreements. The considerations in §§ 37.845 through 37.875 are intended to serve as guidelines, within which you necessarily have considerable latitude to negotiate provisions appropriate to a wide variety of circumstances that may arise. Your goal should be a good balance between DoD interests in:

(1) Gaining access to the best technologies for defense needs, including technologies available in the commercial marketplace, and promoting commercialization of technologies resulting from the research. Either of these interests may be impeded if you negotiate excessive rights for the Government. One objective of TIAs is to help incorporate defense requirements into the development of what ultimately will be commercially available technologies, an objective that is best served by reducing barriers to commercial firms' participation in the research. In that way, the commercial technology and industrial base can be a source of readily available, reliable, and affordable components, subsystems, computer software, and other technological products and manufacturing processes for military systems.

(2) Providing adequate protection of the Government's investment, which may be weakened if the Government's rights are inadequate. You should consider whether the Government may require access to data or inventions for Governmental purposes, such as a need to develop defense-unique products or processes that the commercial marketplace likely will not address.

§ 37.845 What data rights should I obtain?

(a) You should seek to obtain what you, with the advice of legal counsel, judge is needed to ensure future Government use of technology that emerges from the research, as long as doing so is consistent with the balance between DoD interests described in § 37.840(b). You should consider data in which you wish to obtain license rights