

§ 603.230

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 technology 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 created if another type of assistance instrument were used. For example, a large business firm may not be willing to participate in a consortium or teaming arrangement with small business firms and nonprofit firms under a standard cooperative agreement because those entities have invention rights under the Bayh-Dole statute that are not available to large businesses. 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 traditionally accept Government awards to use new business practices in the execution of the RD&D project that will foster better technology, new technology more quickly or less expensively, 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 features 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

10 CFR Ch. II (1–1–10 Edition)

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 realize 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 extends to all performers of the project, including any subawards for substantive 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 Expenditure-Based and Fixed-Support Technology Investment Agreements

§ 603.300 Difference between an expenditure-based and a fixed-support TIA.

The contracting officer may negotiate expenditure-based or fixed-support 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 recipient are based on the amounts the recipient expends on project costs. If a recipient completes the project specified at the time of award before it expends 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-

Department of Energy

§ 603.410

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