

is important to define all essential terms in the patent rights provision.

(h) *Foreign access to technology.* You must include a provision, in accordance with § 37.875, concerning foreign access and domestic manufacture of products using technology generated under the award.

(i) *Title to, management of, and disposition of tangible property.* Your property provisions for for-profit and nonprofit participants must be in accordance with §§ 37.685 through 37.700.

(j) *Financial management systems.* For an expenditure-based award, you must specify the minimum standards for financial management systems of both for-profit and nonprofit participants, in accordance with §§ 37.615 and 37.620.

(k) *Allowable costs.* If the TIA is an expenditure-based award, you must specify the standards that both for-profit and nonprofit participants are to use to determine which costs may be charged to the project, in accordance with §§ 37.625 through 37.635, as well as § 37.830.

(l) *Audits.* If your TIA is an expenditure-based award, you must include an audit provision for both for-profit and nonprofit participants and subrecipients, in accordance with §§ 37.640 through 37.670 and § 37.680.

(m) *Purchasing system standards.* You should include a provision specifying the standards in §§ 37.705 and 37.710 for purchasing systems of for-profit and nonprofit participants, respectively.

(n) *Program income.* You should specify requirements for program income, in accordance with § 37.835.

(o) *Financial and programmatic reporting.* You must specify the reports that the recipient is required to submit and tell the recipient when and where to submit them, in accordance with §§ 37.880 through 37.905.

(p) *Assurances for applicable national policy requirements.* You must incorporate assurances of compliance with applicable requirements in Federal statutes, Executive orders, or regulations (except for national policies that require certifications). Appendix D to this part contains a list of commonly applicable requirements that you need to augment with any specific requirements that apply in your particular circumstances (*e.g.*, general provisions

in the appropriations act for the specific funds that you are obligating).

(q) *Other routine matters.* The agreement should address any other issues that need clarification, including who in the Government will be responsible for post-award administration and the statutory authority or authorities for entering into the TIA (*see* appendix B to this part for a discussion of statutory authorities). In addition, the agreement must specify that it takes precedence over any inconsistent terms and conditions in collateral documents such as attachments to the TIA or the recipient's articles of collaboration.

§ 37.1015 How do I decide who must sign the TIA if the recipient is an unincorporated consortium?

(a) If the recipient is a consortium that is not formally incorporated and the consortium members prefer to have the agreement signed by all of them individually, you may execute the agreement in that manner.

(b) If they wish to designate one consortium member to sign the agreement on behalf of the consortium as a whole, you should not decide whether to execute the agreement in that way until you review the consortium's articles of collaboration with legal counsel.

(1) The purposes of the review are to:

(i) Determine whether the articles properly authorize one participant to sign on behalf of the other participants and are binding on all consortium members with respect to the research project; and

(ii) Assess the risk that otherwise could exist when entering into an agreement signed by a single member on behalf of a consortium that is not a legal entity. For example, you should assess whether the articles of collaboration adequately address consortium members' future liabilities related to the research project (*i.e.*, whether they will have joint and severable liability).

(2) After the review, in consultation with legal counsel, you should determine whether it is better to have all of the consortium members sign the agreement individually or to allow them to designate one member to sign on all members' behalf.

§ 37.1020

REPORTING INFORMATION ABOUT THE AWARD

§ 37.1020 What must I document in my award file?

You should include in your award file an agreements analysis in which you:

(a) Briefly describe the program and detail the specific military and commercial benefits that should result from the project supported by the TIA. If the recipient is a consortium that is not formally incorporated, you should attach a copy of the signed articles of collaboration.

(b) Describe the process that led to the award of the TIA, including how you and program officials solicited and evaluated proposals and selected the one supported through the TIA.

(c) Explain how you decided that a TIA was the most appropriate instrument, in accordance with the factors in Subpart B of this part. Your explanation must include your answers to the relevant questions in §37.225(a) through (d).

(d) Explain how you valued the recipient's cost sharing contributions, in accordance with §§37.530 through 37.555. For a fixed-support TIA, you must document the analysis you did (*see* §37.560) to set the fixed level of Federal support; the documentation must explain how you determined the recipient's minimum cost share and show how you estimated the expenditures required to achieve the project outcomes.

(e) Document the results of your negotiation, addressing all significant issues in the TIA's provisions. For example, this includes specific explanations if you:

(1) Specify requirements for a participant's systems that vary from the standard requirements in §§37.615(a), 37.625(a), 37.630, or 37.705(a) in cases where those sections provide flexibility for you to do so.

(2) Provide that any audits are to be performed by an IPA, rather than the DCAA, where permitted under §37.650. Your documentation must include:

(i) The names and addresses of business units for which IPAs will be the auditors;

(ii) Estimated amounts of Federal funds expected under the award for those business units; and

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(iii) The basis (*e.g.*, a written statement from the recipient) for your judging that the business units do not currently perform under types of awards described in §37.650(b)(1) and (2) and are not willing to grant the DCAA audit access.

(3) Include an intellectual property provision that varies from Bayh-Dole requirements.

(4) Determine that cost sharing is impracticable.

§ 37.1025 Must I report information to the Defense Assistance Awards Data System?

Yes, you must give the necessary information about the award to the office in your organization that is responsible for preparing DD Form 2566, "DoD Assistance Award Action Report," reports for the Defense Assistance Award Data System, to ensure timely and accurate reporting of data required by 31 U.S.C. 6101-6106 (*see* 32 CFR part 21, subpart E).

§ 37.1030 What information must I report to the Defense Technical Information Center?

(a) For any TIA, you must give your answers to the questions in §37.225(a) through (d) to the office in your DoD Component that is responsible for providing data on TIAs to the DTIC. Contact DTIC staff either by electronic mail at aq@dtic.mil, by telephone at 1-800-225-3842, or at DTIC-OCA, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060-6218, if you are unsure about the responsible office in your DoD Component. The DTIC compiles the information to help the Department of Defense measure the Department-wide benefits of using TIAs and assess the instruments' value in helping to meet the policy objectives described in §37.205(b) and appendix A to this part.

(b) If the TIA uses the authority of 10 U.S.C. 2371, as described in §37.1035, your information submission to the DTIC under paragraph (a) of this section must include the additional data required for the DoD's annual report to Congress.

(c) If, as permitted under §37.650, the TIA includes a provision allowing a for-