

§ 296.10

the marketing, distribution, or provision by any person who is a party to such joint venture of any product, process, or service, other than the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture, the marketing of proprietary information, such as patents and trade secrets, developed through such venture, or the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture; and

(c) Entering into any agreement or engaging in any other conduct:

(1) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture; or

(2) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

§ 296.10 Third party in-kind contribution of research services.

NIST shall not issue a TIP award to a single recipient or joint venture whose proposed budget includes the use of third party in-kind contribution of research as cost share, and no costs shall be incurred under such a TIP project, until such time as an agreement between the recipient and the third party contributor of in-kind research has been executed by both parties and approved by NIST.

§ 296.11 Intellectual property rights and procedures.

(a) *Rights in data.* Except as otherwise specifically provided for in an award, authors may copyright any work that is subject to copyright and was developed under an award. When claim is made to copyright, the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Federal government sponsorship shall be affixed to the work when and if the work is delivered to the Federal government, is published, or is deposited for registration as a published work in the

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U.S. Copyright Office. The copyright owner shall grant to the Federal government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such works to reproduce, publish, or otherwise use the work for Federal purposes.

(b) *Invention rights.* (1) Ownership of inventions developed from assistance provided by the Program under § 296.3(a) shall be governed by the requirements of chapter 18 of title 35 of the United States Code.

(2) Ownership of inventions developed from assistance provided by the Program under § 296.3(b) may vest in any participant in the joint venture, as agreed by the members of the joint venture, notwithstanding section 202(a) and (b) of title 35, United States Code. Title to any such invention shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such invention. In accordance with § 296.8, joint ventures will provide to NIST a copy of their written agreement that defines the disposition of ownership rights among the participants of the joint venture, including the principles governing the disposition of intellectual property developed by contractors and subcontractors, as appropriate, and that complies with these regulations.

(3) The United States reserves a non-exclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any inventions developed using assistance under this section, but shall not in the exercise of such license publicly disclose proprietary information related to the license. Nothing in this subsection shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(4) Should the last existing participant in a joint venture cease to exist prior to the expiration of the first patent obtained in connection with any invention developed from assistance provided under the Program, title to such patent must be transferred or passed to a United States entity that can commercialize the technology in a timely fashion.

(c) *Patent procedures.* Each award by the Program will include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the recipient through the Interagency Edison extramural invention reporting system (iEdison), including the subject inventions of recipients, including members of the joint venture (if applicable), subrecipients, and contractors of the recipient or joint venture members.

§ 296.12 Reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program evaluation. The purpose of the financial reporting is to monitor the status of project funds. The audit standards to be applied to TIP awards are the "Government Auditing Standards" (GAS) issued by the Comptroller General of the United States and any Program-specific audit guidelines or requirements prescribed in the award terms and conditions. To implement paragraph (f) of § 14.25 of this title, audit standards and award terms may stipulate that "total Federal and non-Federal funds authorized by the Grants Officer" means the total Federal and non-Federal funds authorized by the Grants Officer annually.

Subpart B—The Competition Process

§ 296.20 The selection process.

(a) To begin a competition, the Program will solicit proposals through an announcement in the FEDERAL REG-

ISTER, which will contain information regarding that competition, including the areas of critical national need that proposals must address. An Evaluation Panel(s) will be established to evaluate proposals and ensure that all proposals receive careful consideration.

(b)(1) A preliminary review will be conducted to determine whether the proposal:

- (i) Is in accordance with § 296.3;
- (ii) Complies with either paragraph (a) or paragraph (c) of § 296.5;
- (iii) Addresses the award criteria of paragraphs (a) through (c) of § 296.22;
- (iv) Was submitted to a previous TIP competition and if so, has been substantially revised; and
- (v) Is complete.

(2) Complete proposals that meet the preliminary review requirements described in paragraphs (b)(1)(i) through (v) of this section will be considered further. Proposals that are incomplete or do not meet any one of these preliminary review requirements will normally be eliminated.

(c) The Evaluation Panel(s) will then conduct a multi-disciplinary peer review of the remaining proposals based on the evaluation criteria listed in § 296.21 and the award criteria listed in § 296.22. In some cases NIST may conduct oral reviews and/or site visits. The Evaluation Panel(s) will present funding recommendations to the Selecting Official in rank order for further consideration. The Evaluation Panel(s) will not recommend for further consideration any proposal determined not to meet all of the eligibility and award requirements of this part and the FEDERAL REGISTER notice announcing the availability of funds.

(d) In making final selections, the Selecting Official will select funding recipients based upon the Evaluation Panel's rank order of the proposals and the following selection factors: assuring an appropriate distribution of funds among technologies and their applications, availability of funds, and/or Program priorities. The selection of proposals by the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. This may include requesting that the proposer