which there is an established license
fee for use of the product. The costs of
the development of the software would
not be a reasonable basis for valuing
its use.

§ 37.555 How do I value a recipient’s
other contributions?

For types of participant contribu-
tions other than those addressed in
§§ 37.535 through 37.550, the general rule
is that you are to value each contribu-
tion consistently with the cost prin-
ciples or standards in § 37.625 and
§ 37.635 that apply to the participant
making the contribution. When valuing
services and property donated by par-
ties other than the participants, you
may use as guidance the provisions of
32 CFR 34.13(b)(2) through (5).

FIXED-SUPPORT OR EXPENDITURE-BASED
APPROACH

§ 37.560 Must I be able to estimate
project expenditures precisely in
order to justify use of a fixed-sup-
port TIA?

(a) To use a fixed-support TIA, rather
than an expenditure-based TIA, you
must have confidence in your estimate
of the expenditures required to achieve
well-defined outcomes. Therefore, you
must work carefully with program offi-
cials to select outcomes that, when the
recipient achieves them, are reliable
indicators of the amount of effort the
recipient expended. However, your esti-
mate of the required expenditures need
not be a precise dollar amount, as illus-
trated by the example in paragraph (b)
of this section, if:

(1) The recipient is contributing a
substantial share of the costs of
achieving the outcomes, which must
meet the criteria in § 37.305(a); and

(2) You are confident that the costs
of achieving the outcomes will be at
least a minimum amount that you can
specify and the recipient is willing to
accept the possibility that its cost
sharing percentage ultimately will be
higher if the costs exceed that mini-
mum amount.

(b) To illustrate the approach, con-
sider a project for which you are con-
dent that the recipient will have to
expend at least $800,000 to achieve
the specified outcomes. You must deter-
mine, in conjunction with program of-

§ 37.565 May I use a hybrid instrument
that provides fixed support for only
a portion of a project?

Yes, for a research project that is to
be carried out by a number of partici-
ants, you may award a TIA that pro-
vides for some participants to perform
under fixed-support arrangements and
others to perform under expenditure-
based arrangements. This approach
may be useful, for example, if a com-
mercial firm that is a participant will
not accept an agreement with all of the
post-award requirements of an expendi-
ture-based award. Before using a fixed-
support arrangement for that firm’s
portion of the project, you must judge
that it meets the criteria in § 37.305.
§ 37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?

(a) If a participant has Federal procurement contracts that are subject to the Cost Accounting Standards (CAS) in part 30 of the Federal Acquisition Regulation (FAR) and the associated FAR Appendix (48 CFR part 30 and 48 CFR 9903.201–1, respectively), you must alert the participant during the preaward negotiations to the potential for a CAS violation, as well as the cognizant administrative contracting officer (ACO) for the participant’s procurement contracts, if you learn that the participant plans to account differently for its own share and the Federal Government’s share of project costs under the TIA. This may arise, for example, if a for-profit firm or other organization subject to the FAR cost principles in 48 CFR parts 31 and 231 proposes to charge:

(1) Its share of project costs as independent research and development (IR&D) costs to enable recovery of the costs through Federal Government procurement contracts, as allowed under the FAR cost principles; and

(2) The Federal Government’s share to the project, rather than as IR&D costs.

(b) The reason for alerting the participant and the ACO is that the inconsistent charging of the two shares could cause a noncompliance with Cost Accounting Standard (CAS) 402. Noncompliance with CAS 402 is a potential issue only for a participant that has CAS-covered Federal procurement contracts (note that CAS requirements do not apply to a for-profit participant’s TIAs).

(c) For for-profit participants with CAS-covered procurement contracts, the cognizant ACO is that the inconsistent charging of the two shares could cause a noncompliance with Cost Accounting Standard (CAS) 402. Noncompliance with CAS 402 is a potential issue only for a participant that has CAS-covered Federal procurement contracts (note that CAS requirements do not apply to a for-profit participant’s TIAs).

§ 37.575 What are my responsibilities for determining milestone payment amounts?

(a) If you select the milestone payment method (see §37.805), you must assess the reasonableness of the estimated amount for reaching each milestone. This assessment enables you to set the amount of each milestone payment to approximate the Federal share of the anticipated resource needs for carrying out that phase of the research effort.

(b) The Federal share at each milestone need not be the same as the Federal share of the total project. For example, you might deliberately set payment amounts with a larger Federal share for early milestones if a project involves a start-up company with limited resources.

(c) For an expenditure-based TIA, if you have minimum percentages that you want the recipient’s cost sharing to be at the milestones, you should indicate those percentages in the agreement or in separate instructions to the post-award administrative agreements officer. That will help the administrative agreements officer decide when a project’s expenditures have fallen too far below the original projections, requiring adjustments of future milestone payment amounts (see §37.1105(c)).

(d) For fixed-support TIAs, the milestone payments should be associated with the well-defined, observable and verifiable technical outcomes (e.g., demonstrations, tests, or data analysis) that you establish for the project in accordance with §§37.305(a) and 37.560(a).

§ 37.580 What is recovery of funds and when should I consider including it in my TIA?

(a) Recovery of funds refers to the use of the authority in 10 U.S.C. 2371 to include a provision in certain types of agreements, including TIAs, that require a recipient to make payments to the Department of Defense or another Federal agency as a condition of the agreement. Recovery of funds is a good