

## Department of Energy

## § 603.530

not formally incorporated, the contracting officer has the additional responsibility described in § 603.515.

### § 603.515 Qualification of a consortium.

(a) A consortium that is not formally incorporated must provide a collaboration agreement, commonly referred to as the articles of collaboration, which sets out the rights and responsibilities of each consortium member. This agreement binds the individual consortium members together and should discuss, among other things, the consortium's

- (1) Management structure;
- (2) Method of making payments to consortium members;
- (3) Means of ensuring and overseeing members' efforts on the project;
- (4) Provisions for members' cost sharing contributions; and
- (5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.

(b) If the prospective recipient of a TIA is a consortium that is not formally incorporated, the contracting officer must, in consultation with legal counsel, review the management plan in the consortium's collaboration agreement to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the project's chances of success.

### TOTAL FUNDING

### § 603.520 Reasonableness of total project funding.

In cooperation with the program official, the contracting officer must assess the reasonableness of the total estimated budget to perform the RD&D that will be supported by the agreement.

(a) *Labor.* Much of the budget likely will involve direct labor and associated indirect costs, which may be represented together as a "loaded" labor rate. The program official is an essential advisor on reasonableness of the overall level of effort and its composi-

tion by labor category. The contracting officer also may rely on experience with other awards as the basis for determining reasonableness.

(b) *Real property and equipment.* In almost all cases, the project costs should normally include only depreciation or use charges for real property and equipment of for-profit participants, in accordance with § 603.680. Remember that the budget for an expenditure-based TIA may not include depreciation of a participant's property as a direct cost of the project if that participant's practice is to charge the depreciation of that type of property as an indirect cost, as many organizations do.

### COST SHARING

### § 603.525 Value and reasonableness of the recipient's cost sharing contribution.

The contracting officer must:

(a) Determine that the recipient's cost sharing contributions meet the criteria for cost sharing and determine values for them, in accordance with §§ 603.530 through 603.555. In doing so, the contracting officer must:

(1) Ensure that there are affirmative statements from any third parties identified as sources of cash contributions, and

(2) Include in the award file an evaluation that documents how the values of the recipient's contributions to the funding of the project were determined.

(b) Judge that the recipient's cost sharing contribution, as a percentage of the total budget, is reasonable. To the maximum extent practicable, the recipient must provide at least half of the costs of the project, in accordance with § 603.215.

### § 603.530 Acceptable cost sharing.

The contracting officer may accept any cash or in-kind contributions that meet all of the following criteria.

(a) In the contracting officer's judgment, they represent meaningful cost sharing that demonstrates the recipient's commitment to the success of the RD&D project. Cash contributions clearly demonstrate commitment and they are strongly preferred over in-kind contributions.

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(b) They are necessary and reasonable for accomplishment of the RD&D project's objectives.

(c) They are costs that may be charged to the project under § 603.625 and § 603.635, as applicable to the participant making the contribution.

(d) They are verifiable from the recipient's records.

(e) They are not included as cost sharing contributions for any other Federal award.

(f) They are not paid by the Federal Government under another award, except:

(1) Costs that are authorized by Federal statute to be used for cost sharing.

(2) Independent research and development (IR&D) costs, as described in 48 CFR part 31.208-18, that meet all of the criteria in paragraphs (a) through (e) of this section. IR&D is acceptable as cost sharing, even though it may be reimbursed by the Government through other awards. It is standard business practice for all for-profit firms, including commercial firms, to recover their IR&D costs through prices charged to their customers. Thus, the cost principles at 48 CFR part 31 allow a for-profit firm that has expenditure-based, Federal procurement contracts to recover through those procurement contracts the allocable portion of its research and development costs associated with a technology investment agreement. Contracting officers should note that in accordance with section 603.545, they may not count participant's costs of prior research, including IR&D, as a cost sharing contribution.

### § 603.535 Value of proposed real property or equipment.

The contracting officer rarely should accept values for cost sharing contributions of real property or equipment that are in excess of depreciation or reasonable use charges, as discussed in § 603.680 for for-profit participants. The contracting officer may accept the full value of a donated capital asset if the real property or equipment is to be dedicated to the project and the contracting officer expects that it will have a fair market value that is less than \$5,000 at the project's end. In those cases, the contracting officer

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should value the donation at the lesser of:

(a) The value of the property as shown in the recipient's accounting records (*i.e.*, purchase price less accumulated depreciation); and

(b) The current fair market value. The contracting officer may accept the use of any reasonable basis for determining the fair market value of the property. If there is a justification to do so, the contracting officer may accept the current fair market value even if it exceeds the value in the recipient's records.

### § 603.540 Acceptability of fully depreciated real property or equipment.

The contracting officer should limit the value of any contribution of a fully depreciated asset to a reasonable use charge. In determining what is reasonable, the contracting officer must consider:

(a) The original cost of the asset;

(b) Its estimated remaining useful life at the time of the negotiations;

(c) The effect of any increased maintenance charges or decreased performance due to age; and

(d) The amount of depreciation that the participant previously charged to Federal awards.

### § 603.545 Acceptability of costs of prior RD&D.

The contracting officer may not count any participant's costs of prior RD&D as a cost sharing contribution. Only the additional resources that the recipient will provide to carry out the current project (which may include pre-award costs for the current project, as described in § 603.830) are to be counted.

### § 603.550 Acceptability of intellectual property.

(a) In most instances, the contracting officer should not count costs of patents and other intellectual property (*e.g.*, copyrighted material, including software) as cost sharing because:

(1) It is difficult to assign values to these intangible contributions;

(2) Their value usually is a manifestation of prior research costs, which are not allowed as cost share under § 603.545; and