

DFOP0018157 - Data Analytics & AI to Counter Global Diversion

1. For-profit subrecipient fee. The NOFO states that the Department prohibits profit to for-profit or commercial organizations under its assistance awards. Does this prohibition apply equally to a for-profit subrecipient under a non-profit prime recipient — i.e., may a for-profit subrecipient recover allowable direct and indirect costs, but no fee?

- a. No, recipients (both sub and/or contractor) are not allowed to collect a fee or use the grant to gain profit.

2. Contractor vs. subrecipient classification. For the application development component (Program Description, Component C), would an organization engaged by the prime to design and build the application typically be treated as a subrecipient or as a contractor under 2 CFR 200.331, and does that classification affect the allowability of fee/profit?

- a. We cannot advise whether an organization engaged by a prime should be designated as a subrecipient or a contractor. The fee/profit rules apply to all for-profit organizations whether they're a contractor or subrecipient.

3. Affiliated subrecipients. Are subawards to an organization affiliated with (under common control with) the prime recipient permissible, provided the affiliation is disclosed and all costs are charged at actual cost consistent with 2 CFR 200? Are there specific disclosure, conflict-of-interest, or competition requirements the Department expects in that circumstance?

- a. As long as there are no conflicts of interest this is allowed.

4. Background intellectual property. Where an applicant proposes to adapt a pre-existing (background) software solution rather than build from scratch — as contemplated by the NOFO's encouragement to leverage existing solutions — does the Government's license under 2 CFR 200.315 attach only to developments created under the award, leaving the applicant's pre-existing background IP unaffected?

- a. Existing background IP are unaffected, 2 CFR 200.315 only applies to anything developed for the award during the period of performance.

5. Scope of Government license and commercialization. For software, data, models, and other deliverables created under the award, please confirm the scope of the Government's license (e.g., government-purpose vs. unlimited), whether that license extends to use by partner-country governments, and whether the recipient retains the right to commercialize or license the resulting solution outside of Government use. Relatedly, who retains ownership of training data curated under the award and any models trained on it?

- a. Recipients own the right to their own IP that's developed under the grant. The Department have a royalty free and nonexclusive right to use it, or assign it to third parties to use.

6. Payment method. The NOFO indicates payments will be made on a reimbursement basis unless otherwise stipulated. Under what circumstances, if any, may a recipient request advance payments consistent with 2 CFR 200.305?

- a. Advance payments can be requested but are not guaranteed. They require a strong justification that must be approved by the Grants Officer, Deputy Assistant Secretary and Assistant Secretary.