

audit other than GAO (written public comments—three commenters).

DoD Response: DoD believes the government should not preclude reviews when payments are based on amounts generated from awardee's financial or cost records. The government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

4. *Public Comment:* Audits for other than cost sharing should apply only if there is reason to believe an impropriety has occurred (written public comment—one commenter).

DoD Response: DoD believes the government should not limit reviews of actual costs incurred to cases where there is a reason to believe an impropriety has occurred. When cost-type agreements provide for government payments that exceed \$5 million, the government needs to have some reasonable assurance regarding the appropriateness of those amounts. DoD believes the final rule provides such reasonable assurance while also providing appropriate flexibility in its application.

E. Applicability

1. *Public Comment:* Need to establish a threshold for applicability to prime recipients (written public comment—one commenter).

DoD Response: DoD agrees that a threshold for mandatory application of the policy is needed. The final rule establishes that threshold at \$5 million per cost-type agreement. DoD believes this is an appropriate threshold because it will cover a majority of the dollars while exempting a majority of the agreements from mandatory application of the policy. Using data from the past eight years, it is anticipated that this threshold will provide the government with access to records for 89% of all government dollar under cost-type agreements, while also exempting 78% of those agreements from mandatory application of the policy.

2. *Public Comment:* Consider whether the language regarding "payments generated from financial records" could be misconstrued and applied too broadly. Examples of when the language would and would not apply should be considered (public meeting).

DoD Response: The language "payments generated from financial records" has been included in the final rule within the definition of a cost-type other transaction. To reduce potential misunderstanding or inappropriate

application, the final rule includes examples of what constitutes a cost-type agreement.

3. *Public Comment:* Consider providing the Agreements Officer more flexibility in the application of the audit access clause (public meeting).

DoD Response: The final rule provides the Agreements Officer with the flexibility to negotiate the length and extent of access for any agreements that are less than \$5 million. It also provides for the ability to deviate from some or all of the specific access requirements for cost-type agreements in excess of \$5 million when such deviation is adequately supported by the particular facts and circumstances. The Agreements Officer should consult with the cognizant auditor to ensure that the benefits of such a deviation outweigh any increased risks to the Government.

4. *Public Comment:* Consider addressing the circumstances where a single agreement has both cost-based and fixed-price portions (public meeting).

DoD Response: DoD believes the examples of a cost-type agreement included in the proposed rule provides sufficient guidance for use by Agreements Officers in determining proper application of the policy to those unique circumstances in which an agreement has both cost-type and fixed-price portions.

5. *Public Comment:* Consider using different thresholds for nontraditional vs. traditional contractors (public meeting).

DoD Response: DoD considered using different thresholds for nontraditional and traditional contractors, but believes such an application would result in unnecessary complexity. DoD believes requiring application of the policy to all cost-type agreements in excess of \$5 million is a more desirable approach because (1) it is anticipated to include a majority of the Government dollars on cost-type agreements while also exempting most of the agreements from mandatory application, and (2) it provides for the same threshold as the Comptroller General access, thereby providing a simple unified threshold for applying the two requirements.

6. *Public Comment:* Make the application of the audit policy at the discretion of the Agreements Officer regardless of the dollar amount of the agreement (public meeting).

DoD Response: DoD believes it is desirable to provide some specific policy for access to records when agreements exceed \$5 million. However, DoD recognizes the need for an Agreements Officer to be able to

exercise good business judgment. Under the final rule, for agreements that are less than \$5 million, application of the audit policy is solely at the discretion of the Agreements Officer. In addition, for cost-type agreements in excess of \$5 million, the final rule provides for a deviation from application of the policy if supported by the particular facts and circumstances.

7. *Public Comment:* Make the application of the audit policy mandatory regardless of the dollar amount of the agreement (public meeting).

DoD Response: DoD established a threshold that minimizes its risk. We did so to encourage participation by non traditional contractors. DoD believes that, for agreements that are less than \$5 million, the Agreements Officer should have the flexibility to negotiate audit access to records based on their assessment of risk of the particular agreement.

8. *Public Comment:* Apply the audit threshold requirements at \$5 million per agreement. This is the same as the GAO access requirements and the trigger for Earned Value Management (public meeting).

DoD Response: DoD agrees that this threshold is appropriate for mandatory application of the policy. In addition to being the same as the GAO access requirements (which simplifies application), DoD also believes that threshold, with its accompanying provisions for deviation, properly balances the need for access to records with the need to encourage contractor participation.

9. *Public Comment:* Consider using a trigger threshold requirement such as that used in applying the Cost Accounting Standards (public meeting).

DoD Response: DoD considered using a trigger concept, but believes such a concept would be unnecessarily complex. The \$5 million threshold per cost-type agreement is a simplified approach that achieves the proper balance between the need for access to records and the need to encourage contractor participation.

10. *Public Comment:* The rule should not apply to nontraditional contractors (written public comment—one commenter).

DoD Response: DoD believes the final rule properly balances the need to access records with the concerns of nontraditional Defense contractors. The final rule provides for application of the policy for cost-type agreements in excess of \$5 million. It is anticipated, based on past history, that this will exempt about 78% of the agreements. For the remaining 22%, the final rule