

provides for a deviation when supported by the particular facts and circumstances. In those remaining instances where the access requirements are applied to nontraditional Defense contractors, the rule provides for use of an Independent Public Accountant if the nontraditional Defense contractor refuses Government access to its records.

11. *Public Comment:* The rule should state that it does not apply to existing agreements (written public comment—one commenter).

*DoD Response:* The final rule specifies the Other Transactions to which the policy applies, which does not include existing agreements.

#### F. Use of an Independent Public Accountant (IPA)

1. *Public Comment:* Use of an IPA will discourage nontraditional contractors because of the need for accounting systems to fully document costs and government access to IPA work papers that include company proprietary information (written public comments—two commenters).

*DoD Response:* DoD believes an awardee should maintain an accounting system that adequately supports the amounts used as the basis for payment regardless of whether the Government has access to the awardee's records. An awardee that enters into a cost-type agreement should have some sort of accounting system that adequately supports those amounts. In regard to company proprietary information, the final rule addresses this concern by limiting the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with GAGAS.

2. *Public Comment:* Delete government access to IPA work papers to protect propriety information of awardees/participants (written public comments—two commenters).

*DoD Response:* DoD believes it is important for the government to have access to IPA work papers to assure the audit has been performed in accordance with GAGAS. However, in recognition of the concern expressed by the commenter, the final rule limits the government's right to make copies of the IPA's work papers to instances where there is evidence the audit has not been performed in accordance with those standards.

3. *Public Comment:* The statements "Use amounts generated from the awardee's financial or cost records as the basis for payment" and "direct access to sufficient records to ensure full accountability for all government

funding" are too broad and too vague. Audit access should be for very limited with focused purposes (written public comment—one commenter).

*DoD Response:* The final rule includes specific examples of a cost-type agreements which is defined as agreements where payments are based on amounts generated from the awardee's financial or cost records or that require at least one third of the total costs to be provided by non-Federal parties pursuant to statute. The statement "direct access to sufficient records to ensure full accountability for all government funding" has been replaced by a more focused requirement that the government have access to directly pertinent records "needed to verify the actual costs or reporting used as the basis of payment or to verify statutorily required cost share under the agreement."

4. *Public Comment:* Define GAGAS (written public comment—one commenter).

*DoD Response:* The final rule includes a description of Generally Accepted Government Auditing Standards and where those standards can be found.

5. *Public Comment:* The rule should require the agreement to specify the percentage of payments that may be withheld when an audit by an IPA is not adequately performed (written public comment—one commenter).

*DoD Response:* The final rule states that the Agreements Officer has the right to "withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The specified percentage should be sufficient to enhance performance or corrective action while also not being unfairly punitive."

6. *Public Comment:* Change "should" to "shall" in statement that "Agreement Officer should grant approval to use an IPA when participant is not performing contract subject to Cost Principles/CAS and refuses to accept award if government has access" (written public comment—one commenter).

*DoD Response:* The final rule states that the access to records clause for business units not performing contracts subject to the Cost Principles/CAS "must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the government has access to the business unit's records."

7. *Public Comment:* Sample audit clause should revise "The audit will be conducted by an IPA" to "The audit will be conducted by a mutually acceptable IPA at government expense" (written public comment—one commenter).

*DoD Response:* To reduce the complexity of the rule and assure maximum flexibility for the Agreements Officer, the final rule deletes all of the sample audit clauses. Sample audit clauses intended to serve as a guide can be found at <http://www.osd.mil/dp> (under the "Other Transactions" Special Interest Item in "Questions and Answers"). These samples may be modified as necessary to address the particular facts and circumstances of each agreement.

8. *Public Comment:* Add language stating that the purpose of the audit of an IPA's work papers is to verify compliance with GAGAS (public meeting).

*DoD Response:* The final rule states that the government will have access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

9. *Public Comment:* Eliminate the need to access an IPA's work papers and rely on AICPA standards and public accounting peer reviews (public meeting).

*DoD Response:* DoD does not believe the AICPA standards and peer reviews provide adequate assurance that the audit of the other transaction has been performed in accordance with GAGAS because (a) GAGAS has some requirements that are not included in the AICPA standards, and (b) public accounting peer reviews focus on financial statement reviews and compliance with GAAS (as opposed to government financial payment reviews and compliance with GAGAS).

10. *Public Comment:* Require that IPA's comply with Generally Accepted Auditing Standards (GAAS) instead of GAGAS (public meeting).

*DoD Response:* The requirement to comply with GAGAS is a statutory requirement that cannot be waived by DoD. The Inspector General Act of 1978 (as amended) requires that audit work of Federal organizations, programs, activities, and functions comply with GAGAS.

11. *Public Comment:* Add language stating that, when an IPA's report is not adequate, an Agreements Officer should consider terminating an agreement only if it is impractical to withhold monies or suspend performance until the audit is satisfactorily performed (public meeting).

*DoD Response:* The final rule states that the Agreements Officer may terminate the agreement only if it is not practical to either (a) withhold monies, or (b) suspend performance until the audit is completed satisfactorily.