

Accountant is overly broad (public meeting).

*DoD Response:* DoD does not believe using the cost principles is overly broad for purposes of the final rule, which uses cost principles for determining the level of approval to (a) use an IPA and (b) deviate from application of the policy. When a contractor is performing on a contract subject to the cost principles, a government representative (e.g., Defense Contract Audit Agency (DCAA)) has access to that contractor's books and records. Therefore, DoD believes that cost principles are an appropriate for determining when an IPA may be used.

### Regulatory Evaluation

#### *Executive Order 12866, "Regulatory Planning and Review"*

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

#### *Unfunded Mandates Reform Act (Section 202 of Public Law 104-4)*

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### *Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

It has been certified that this part is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

#### *Public Law 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 *et seq.*)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

#### *Executive Order 13132, "Federalism"*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

### List of Subjects in 32 CFR Part 3

Government procurement,  
Transactions for prototype projects.

■ Accordingly, 32 CFR part 3 is amended to read as follows:

### PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

■ 1. The authority citation for 32 CFR part 3 continues to read as follows:

**Authority:** Section 845 of Public Law 103-160, 107 STAT. 1547, as amended.

■ 2. Section 3.4 is revised to read as follows:

#### § 3.4 Definitions.

*Agency point of contact (POC).* The individual identified by the military department or defense agency as its POC for prototype OTs.

*Agreements Officer.* An individual with the authority to enter into, administer, or terminate OTs for prototype projects and make related determinations and findings.

*Approving Official.* The official responsible for approving the OTs acquisition strategy and resulting OT agreement. This official must be at least one level above the Agreements Officer and at no lower level than existing agency thresholds associated with procurement contracts.

*Awardee.* Any business unit that is the direct recipient of an OT agreement.

*Business unit.* Any segment of an organization, or an entire business organization which is not divided into segments.

*Contracting activity.* An element of an agency designated by the agency head and delegated broad authority regarding acquisition functions. It includes elements designated by the Director of a Defense Agency which has been delegated contracting authority through its agency charter.

*Cost-type OT.* 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 or require submittal of financial or cost records/reports to determine whether additional effort can be accomplished for the fixed amount.

*Fixed-price type OT.* Agreements where payments are not based on amounts generated from the awardee's financial or cost records.

*Head of the contracting activity (HCA).* The official who has overall responsibility for managing the contracting activity.

*Nontraditional Defense contractor.* A business unit that has not, for a period of at least one year prior to the date of the OT agreement, entered into or performed on (1) any contract that is subject to full coverage under the cost

accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or (2) any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

*Procurement contract.* A contract awarded pursuant to the Federal Acquisition Regulation.

#### *Qualified Independent Public*

*Accountant.* An accountant that is licensed or works for a firm that is licensed in the state or other political jurisdiction where they operate their professional practice and comply with the applicable provisions of the public accountancy law and rules of the jurisdiction where the audit is being conducted.

*Segment.* One of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service.

*Senior Procurement Executive.* The following individuals:

(1) Department of the Army—Assistant Secretary of the Army (Acquisition, Logistics and Technology);

(2) Department of the Navy—Assistant Secretary of the Navy (Research, Development and Acquisition);

(3) Department of the Air Force—Assistant Secretary of the Air Force (Acquisition).

(4) The Directors of Defense Agencies who have been delegated authority to act as Senior Procurement Executive for their respective agencies.

*Single Audit Act.* Establishes uniform audit requirements for audits of state and local government, universities, and non-profit organizations that expend Federal awards.

*Subawardee.* Any business unit of a party, entity or subordinate element performing effort under the OT agreement, other than the awardee.

*Traditional Defense contractor.* Any business unit that does not meet the definition of a nontraditional Defense contractor.

■ 3. New § 3.8 is added to read as follows:

#### § 3.8 DoD access to records policy.

(a) *Applicability.* This section provides policy concerning DoD access to awardee and subawardee records on OT agreements for prototype projects. This access is separate and distinct from Comptroller General access.