

(b) Programs in which commercial or non-developmental items can satisfy the military requirement are preferred as candidate programs. A nominated program will address which standard commercial, industrial practices will be used in the pilot program and how those practices will be applied.

(c) Nomination of candidate programs must be accompanied by a list of waivers being requested to Statutes, FAR, DFARS, DoD Directives<sup>4</sup> and Instructions,<sup>5</sup> and where applicable, DoD Component regulations. Waivers being requested must be accompanied by rationale and justification for the waiver. The justification must include:

(1) The provision of law proposed to be waived or limited.

(2) The effects of the provision of law on the acquisition, including specific examples.

(3) The actions taken to ensure that the waiver or limitation will not reduce the efficiency, integrity, and effectiveness of the acquisition process used for the defense acquisition program; and

(4) A discussion of the efficiencies or savings, if any, that will result from the waiver or limitation.

(d) No nominated program shall be accepted until the Under Secretary of Defense has determined that the candidate program is properly planned.

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

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AUTHORITY: Sec. 845, Pub. L. 103-160, 107 Stat. 1547, as amended.

SOURCE: 66 FR 57383, Nov. 15, 2001, unless otherwise noted.

<sup>4</sup>See footnote 3 to § 2.4(b).

<sup>5</sup>See footnote 3 to § 2.4(b).

#### **§ 3.1 Purpose.**

This part consolidates rules that implement section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, 107 Stat. 1547, as amended, and have a significant impact on the public. Section 845 authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency, and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants, or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense.

[67 FR 54956, Aug. 27, 2002]

#### **§ 3.2 Background.**

“Other transactions” is the term commonly used to refer to the 10 U.S.C. 2371 authority to enter into transactions other than contracts, grants or cooperative agreements. “Other transactions” are generally not subject to the Federal laws and regulations limited in applicability to contracts, grants or cooperative agreements. As such, they are not required to comply with the Federal Acquisition Regulation (FAR) and its supplements (48 CFR).

[67 FR 54956, Aug. 27, 2002]

#### **§ 3.3 Applicability.**

This part applies to the Secretary of a Military Department, the Directors of the Defense Agencies, and any other official designated by the Secretary of Defense to enter into transactions other than contracts, grants or cooperative agreements for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense, under authority of 10 U.S.C. 2371. Such transactions are commonly referred to as “other transaction” agreements and are hereafter referred to as agreements.

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