

### § 32.3

from the definition of “award” in this section.

*Subrecipient.* The legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

*Supplies.* All personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

*Suspension.* An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 2 CFR part 1125.

*Termination.* The cancellation of an award, in whole or in part, at any time prior to the date of completion.

*Third party in-kind contributions.* The value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

*Unliquidated obligations.* The amount of obligations incurred by the recipient:

(1) That have not been paid, if financial reports are prepared on a cash basis.

(2) For which an outlay has not been recorded, if reports are prepared on an accrued expenditure basis.

*Unobligated balance.* The portion of the funds authorized by a DoD Component that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

*Unrecovered indirect cost.* The difference between the amount awarded and the amount which could have been

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awarded under the recipient’s approved negotiated indirect cost rate.

*Working capital advance.* A procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

[63 FR 12188, Mar. 12, 1998, as amended at 70 FR 49477, Aug. 23, 2005; 72 FR 34998, June 26, 2007]

#### § 32.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 32.4.

#### § 32.4 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award may be approved by DoD Components in accordance with procedures stated in 32 CFR 21.335(a) and 21.340.

(b) *Small awards.* DoD Components may apply less restrictive requirements than the provisions of this part when awarding small awards, except for those requirements which are statutory.

(c) *Other class deviations.* (1) For classes of awards other than small awards, the Director of Defense Research and Engineering (DDR&E), or his or her designee, may grant exceptions from the requirements of this part:

(i) With the written concurrence of the Office of the Management and Budget (OMB). The DDR&E, or his or her designee, shall provide written notification to OMB of the Department of Defense’s intention to grant a class deviation; and

(ii) When exceptions are not prohibited by statute.

(2) DoD Components shall request approval for such deviations in accordance with 32 CFR 21.335(b) and 21.340. However, in the interest of maximum

uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances.

[63 FR 12188, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

### § 32.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of 32 CFR part 33. Subrecipients that are for-profit organizations are subject to 32 CFR part 34.

## Subpart B—Pre-Award Requirements

### § 32.10 Purpose.

Sections 32.11 through 32.17 prescribe application forms and instructions and other pre-award matters.

### § 32.11 Pre-award policies.

(a) *Use of grants, cooperative agreements, and contracts.* (1) OMB Circular A-110 states that:

(i) In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract).

(ii) The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-6308) governs the use of grants, cooperative agreements, and contracts. Under that Act:

(A) A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute.

(B) Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(C) The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other re-

ipient when carrying out the activity contemplated in the agreement.”

(2) In selecting the appropriate award instruments, DoD Components’ grants officers shall comply with the DoD implementation of the Federal Grant and Cooperative Agreement Act at 32 CFR part 22, subpart B.

(b) *Public notice and priority setting.* As a matter of Governmentwide policy, Federal awarding agencies shall notify the public of intended funding priorities for programs that use discretionary awards, unless funding priorities are established by Federal statute. For DoD Components, compliance with competition policies and statutory requirements implemented in 32 CFR part 22, subpart C, shall constitute compliance with this Governmentwide policy.

[63 FR 12188, Mar. 12, 1998, as amended at 68 FR 47160, Aug. 7, 2003]

### § 32.12 Forms for applying for Federal assistance.

(a) DoD Components shall comply with the applicable report clearance requirements of 5 CFR part 1320, “Controlling Paperwork Burdens on the Public,” with regard to all forms used in place of or as a supplement to the Standard Form 424<sup>2</sup> (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by DoD Components.

(c) For Federal programs covered by E.O. 12372 (3 CFR, 1982 Comp., p. 197), “Intergovernmental Review of Federal Programs,” the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoD Component or the Catalog of Federal Domestic Assistance. The

<sup>2</sup>For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the “DoD Directory of Contract Administration Services Components,” DLAH 4105.4, which can be obtained from: Defense Logistics Agency, Publications Distribution Division (DASC-WDM), 8725 John J. Kingman Rd., Suite 0119, Fort Belvoir, VA 22060-6220.