



Inherently Governmental Job Proposal Blurs a Blurry World

The new phrases “closely associated with inherently governmental function” and “critical function,” are causing the most concern, panelists say.

Matthew Weigelt Apr 29, 2010

Members of a panel of acquisition experts have voiced concerns with several new terms included in the Obama administration’s inherently government function policy proposal, saying the phrases further blur an already-murky area of government acquisition.

The new phrases “closely associated with inherently governmental function” and “critical function,” caused the most concern for panelists who spoke April 28 at the Managing Procurement in the Age of Open Government conference, which is sponsored by the 1105 Government Information Group.

“Every time I see more guidance or language on [inherently government functions] I’m not sure I have any more clarity than I did before,” said Michael Fischetti, a panel member and director of acquisition management and support in the Office of Assistant Secretary of Defense for Health Affairs and TRICARE Management Activity.

“It’s like a lot of things, you know it when you see it, but it’s hard to put rules around it,” Fischetti said.

The Office of Federal Procurement Policy included the two terms in a March 31 policy, hoping to provide agencies with clearer guidance on what jobs should be handled by federal employees and which can be outsourced to the private sector. The Obama administration is looking to build more expertise among federal employees and not rely so heavily on contractors.

OFPP is attempting to refine the definition of “inherently governmental,” which has been the standard litmus test for decades. In the latest policy, OFPP opted for the statutory definition of inherently governmental function, as described in the Federal Activities Inventory Reform Act (FAIR Act). An Office of Management and Budget policy has a definition of the phrase, as does the Federal Acquisition Regulation.

The FAIR Act defines the term as a “function that is so intimately related to the public interest as to require performance by federal government employees.”

The new policy takes a bull's eye approach. The work closely associated with inherently governmental functions is the next ring around those intimate jobs, and then comes the critical function. Finally, a non-critical function is farthest away from those central jobs.

Daniel Gordon, OFPP administrator, has said he wants more federal employees filling up the jobs in and around the most intimate jobs. But in his keynote address at the conference, Gordon was candid about the fact that he doesn’t view this as an insourcing initiative and he also doesn’t believe in insourcing quotas.

Panelist Robert Burton, former deputy OFPP administrator and now partner at the Venable law firm, disagreed, saying that agencies have such an unrestrained definition of “critical function” that they could insource almost anything.

“It’s pretty much wide open,” he said. And he believes agency officials will tend to see all jobs as somewhat critical to meeting their mission.

“Most people don’t want to be associated with a non-critical function,” he said.

Panelists felt much the same about the proposal, as it moves toward regulation. Jan Frye, panelist and deputy assistant secretary for acquisition and logistics at the Veterans Affairs Department, said the term closely associated with inherently governmental function could hurt procurement officers who need advisers, especially in an age when agencies simply don’t have enough employees with experience.

“I hope we don’t get squared the wrong way with this ‘closely associated’ thing,” he said.

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