



**National Society of
Professional Engineers®**

New Federal Policy Could Restrict Government Contracting

BY SARAH OGDEN NOVEMBER 2011

Most federal A/E services could face additional scrutiny before they are contracted to the private sector, under a new policy from the Office of Federal Procurement Policy that took effect October 12.

The rules respond to a 2009 Presidential Memorandum on Government Contracting, which stated that the line between inherently governmental and commercial activities had become blurred and may have led to the performance of inherently governmental work by outside contractors and a general overreliance on government outsourcing.

The new policy clarifies what functions are inherently governmental—that is, "so intimately related to the public interest as to require performance by federal government employees" and requires agencies to identify their "critical functions" to ensure they can maintain control of functions key to the agency's mission and operations.

The Office of Federal Procurement Policy (OFPP) does not define A/E services as inherently governmental, but it does define "construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments" as "closely associated" with inherently governmental functions. The policy also states that professional and technical services "are likely to be commonly found among those considered to be either critical or closely associated with inherently governmental functions" though it does not explicitly include professional services in the "closely associated" category.

Though the "closely associated" category does not prohibit private contractors from competing for work, it does subject those services to extra scrutiny before they can be outsourced. Agencies now must give special consideration to using federal employees to perform functions closely associated with inherently governmental functions in order to minimize reliance on outsourcing.

NSPE's Professional Policy "Recognition of the Engineering Function Within Government" firmly supports licensed professional engineers in the government and encourages them to perform functions that hone their professional and technical capabilities. NSPE is concerned, however, that the number of licensed professional engineers in the federal workforce is not sufficient to support the federal government's new internal focus, which could lead to underqualified federal employees overseeing critical A/E projects. This would create a hazard to the public health and safety.

The Council on Federal Procurement of Architectural and Engineering Services, of which NSPE is a founding member, commented on OFPP's policy during the 2010 public comment period. In addition to citing the threat to the public health and safety, COFPAES discussed the concern that including "construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments" as a "closely associated" function could have a slippery slope effect, resulting in the design and construction of all federal buildings being deemed "closely associated." OFPP did not include COFPAES's comments in its final policy.

Despite the possible ramifications of the new policy, the agency speakers at the recent COFPAES Federal Markets Conference (see sidebar) remained unconcerned about the policy's effect on their future plans. One speaker said that there is no way to implement the policy because the federal government simply does not have a sufficient internal engineering workforce. Another pointed out that the policy has received no funding, without which nothing in Washington gets done.