

Office of Federal Procurement Policy Issues Guidance on What Jobs Should be Done by Feds

By Shaw Bransford & Roth P.C.

September 13, 2011

The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) issued a final policy letter in Monday's Federal Register, which explains to federal agencies what functions and positions are "inherently governmental" and how to treat work that is considered closely associated to inherently governmental and critical functions.

The guidance is similar to a draft letter released in March 2010. It makes eight changes to how agencies previously treated inherently governmental functions. The new list of inherently governmental functions is about 90 to 95 percent the same as the previous list in the Federal Acquisition Regulations.

"Today marks an important milestone in an effort that began with the President's March memorandum on government contracting in which he called on us to clarify the line between functions that cannot or should not be outsourced and those that may be subject to private sector performance," said Dan Gordon, OFPP administrator.

The document includes a long list of the functions that should be completed by federal employees, or are inherently governmental, and a separate list of "functions closely associated with the performance of inherently government functions." The guidance's definition of inherently governmental is based on the 1998 Federal Activities Inventory Reform Act. Gordon said that the comments received on the draft guidance issued in March were mostly in favor of keeping the existing definition.

OFPP said that functions being done by federal employees should include: combat; security operations in certain situations connected with combat or potential combat; determination of an offer's price reasonableness; final determinations about a contractor's performance, including approving award fee determinations and past performance evaluations; and the selection of grant and cooperative agreement recipients, among others.

According to the letter, "Federal acquisitions that include conducting market research, developing inputs for independent government cost estimates, drafting the price negotiations memorandum and collecting information, performing an analysis or making a recommendation for a proposed performance rating to assist the agency in determining its evaluation of a contractor's performance" are all considered functions closely associated with inherently governmental work.

Agencies will be given a comprehensive list of functions closely associated with inherently governmental functions to analyze how the functions should be classified. Gordon said the final policy letter no longer separates closely associated and critical functions, as that led to confusion and those function can be determined by management.

Additionally, the new policy letter requires agencies to use the "rule of two," when bringing previously contracted out functions back in-house. The rule of two says that acquisitions should be reserved for small businesses or certain subsets of small businesses, if there are two or more small businesses capable of performing the work at a fair price.

OFPP received more than 30,000 comments on the 2010 proposed letter. It also said many agencies are aware of the changes. "We have been working very closely with the agencies for more than a year and a half now on this," said Gordon. "I wouldn't expect the publication to lead to significant differences."

© 2011 FedManager.com. All Right Reserved.