



OFPP Proposes Tests for Deciding when to Outsource Work

Too much 'inherently governmental' functions going to contractors, proposed policy states

By Matthew Weigelt
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The Obama administration is creating a new test for agencies to use when deciding whether or not to outsource work to contractors.

The proposed guidance is part of the administration attempt to clarify the definition of what is an "inherently governmental function" and to bring more contractor work in-house.

"There are too many anecdotes that suggest work that is really inherently governmental — work that needs to be reserved for federal employees — is, in fact, being done by contractors," Daniel Gordon, administrator of Office of Federal Procurement Policy, said in a speech earlier this month.

The OFPP guidance is using the definition that is part of the 1998 Federal Activities Inventory Reform Act.

The term inherently governmental function means a "function that is so intimately related to the public interest as to require performance by federal government employees," according to the FAIR Act.

The proposed policy letter includes examples of inherently governmental work such as applying government authority or making value judgments for the government, such monetary transactions. The policy letter also outlines tests agencies can use to determine whether or not it is appropriate to hire a contractor for the work.

"The nature of the function test" would ask agency managers to consider whether the work under consider would involve exercising the government's sovereignty. If so, it would be an inherently governmental function, or work that only a federal employee can do, such as obligating tax money by signing a contract.

"The discretion test" would have managers evaluate whether outsourcing the work to a contractor could effectively commit the government to a course of action, according to the policy document.

"It is the policy of the executive branch to ensure that government action is taken as a result of informed, independent judgments made by government officials," who are bound by law and are accountable to the president, the letter states.

President Barack Obama first addressed this issue in a March 4, 2009, procurement memo, in which he ordered OFPP to clarify when outsourcing is and is not appropriate.

But the issue was not new. Six months earlier, President George W. Bush signed into law the fiscal 2009 National Defense Authorization Act, which also required OFPP to establish clearer lines between work that a contractor can and cannot do.

President Bill Clinton signed the FAIR Act into law in 1998, which includes the single, governmentwide definition of inherently governmental work.

In 2003, OFPP updated the definition of inherently governmental as spelled out in the Office of Management and Budget Circular A-76, which superseded another policy document from 1992.

OFPP will accept comments on its proposal through June 1.



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