



OFPP to Issue Final Guidance on 'Inherently Governmental'

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After more than a year, the Office of Federal Procurement Policy is giving agencies final guidance for what jobs must be done by government employees and how to treat work that is considered closely associated to inherently government and critical functions.

OFPP will issue the final policy letter for those jobs in Monday's Federal Register. Federal News Radio obtained a copy of the final policy letter. OMB previously issued the draft letter in March 2010.

The policy letter makes eight changes to how agencies previously treated inherently government.

For instance, starting with the name of the policy letter, OFPP changed it to "Performance and Management of Inherently Governmental and Critical Functions," instead of "Work Reserved for Performance by Federal Government Employees."

But, more specifically, OFPP expands and clarifies what jobs should be done by federal officials:

- All 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 or past performance evaluations and taking action based on those evaluations
- Selection of grant and cooperative agreement recipients

Additionally, OFPP provides agencies with another list of functions closely associated with inherently governmental work.

"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," the final policy letter states.

Agencies will also be provided a list of comprehensive responsibilities for functions closely associated with inherently governmental functions to analyze when they are deciding how to classify the functions.

"Caution that, in many cases, functions include multiple activities that may be of a different nature — some activities within a function may be inherently governmental, some may be closely associated, and some may be neither — and by evaluating work at the activity level, an agency may be able to more easily differentiate tasks within a function that may be performed only by federal employees from those tasks that can be performed by either federal employees or contractors," the letter states.

The policy letter also requires agencies to use the "rule of two" when bringing previously contracted out functions to large and small businesses back in-house.

"The rule of two requires that acquisitions be reserved for award to small businesses, or certain subsets of small businesses, if there are two or more responsible small businesses capable of performing the work at fair market prices," the letter states.

The policy letter is effective Oct. 12.

OFPP will work with the Federal Acquisition Regulations (FAR) Council to implement changes to the FAR. OFPP also will work with the Federal Acquisition Institute and the Defense Acquisition University on appropriate training materials for the acquisition workforce and others in the acquisition profession.

OFPP received more than 30,000 comments on the letter, but all but 110 were submitted as a form letter by interested parties.

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