



OMB Seeks Input on Changes to 'Inherently Governmental' Definition

By Robert Brodsky April 27, 2010

The Obama administration's top procurement official said Monday he wants to hear from federal contractors before settling on a final policy on outsourcing services to the private sector.

Daniel Gordon, administrator of the Office of Federal Procurement Policy at the Office of Management and Budget, told a group of contracting and legal executives he considers a March 31 draft policy memo--which established a single governmentwide definition of "inherently governmental" functions--a work in progress.

"I am anxious for an open discussion of the issues from all sectors involved in this area," Gordon told a joint meeting of the Professional Services Council, a contractor trade association, and the American Bar Association's Committee on Privatization, Outsourcing and Financing Transactions.

OFPP's long-awaited policy guidance instructed agencies to use the definition of inherently governmental in the 1998 Federal Activities Inventory Reform Act. The FAIR Act classifies an activity as inherently governmental when it is so intimately related to the public interest that it must be performed by federal employees.

The notice also instructs officials to avoid an overreliance on contractors for functions that are "closely associated with inherently governmental" or that are "critical" for the agency's mission. Unlike inherently governmental activities, which are reserved exclusively for federal employees, agencies would be able to use contractors in the other categories as long as they have the internal capacity to manage and oversee the work.

Comments on the proposed policy are due by May 31.

Gordon said Monday he is "in listening mode." In particular, he said he is open to discussions that there may not be enough of a distinction between tasks that are closely associated with inherently governmental and those that are critical.

While the particulars of the policy could evolve as OFPP receives more input from the public, Gordon said some fundamental elements will remain. He said the policy should be consistent and nuanced, establishing a clear line between contractors and federal employees that has blurred considerably in recent years.

"We are outsourcing things that you would have never imagined 15 years ago," Gordon said.

In addition to revamping its inherently governmental policy, OMB has asked agencies to analyze at least one program, project or activity in which the agency has concerns about the extent of reliance on contractors. Agencies would then set up pilot programs to address identified weaknesses, which could lead to the insourcing of some functions.

Roughly two thirds of the projects being analyzed are related to either acquisition functions or information technology, Gordon said.

The inherently governmental rule will be finalized by late summer or early fall, Gordon said. The policy likely will have cascading effects, leading to changes in the Federal Acquisition Regulation.