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## **Subpart 7.5—Inherently Governmental Functions**

### **7.500 Scope of subpart.**

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors.

### **7.501 [Reserved]**

### **7.502 Applicability.**

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

### **7.503 Policy.**

- (a) Contracts shall not be used for the performance of inherently governmental functions.
- (b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.
- (c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:
  - (1) The direct conduct of criminal investigations.
  - (2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.
  - (3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.
  - (4) The conduct of foreign relations and the determination of foreign policy.
  - (5) The determination of agency policy, such as determining the content and application of regulations, among other things.
  - (6) The determination of Federal program priorities for budget requests.
  - (7) The direction and control of Federal employees.

- (8) The direction and control of intelligence and counter-intelligence operations.
- (9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
- (10) The approval of position descriptions and performance standards for Federal employees.
- (11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).
- (12) In Federal procurement activities with respect to prime contracts—
  - (i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);
  - (ii) Participating as a voting member on any source selection boards;
  - (iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
  - (iv) Awarding contracts;
  - (v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);
  - (vi) Terminating contracts;
  - (vii) Determining whether contract costs are reasonable, allocable, and allowable; and
  - (viii) Participating as a voting member on performance evaluation boards.
- (13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.
- (14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

- (15) The approval of Federal licensing actions and inspections.
- (16) The determination of budget policy, guidance, and strategy.
- (17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—
- (i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined and the funds collected can be easily controlled using standard case management techniques; and
  - (ii) Routine voucher and invoice examination.
- (18) The control of the treasury accounts.
- (19) The administration of public trusts.
- (20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the Government Accountability Office, or other Federal audit entity.