

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.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

- (1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.
- (2) Services that involve or relate to reorganization and planning activities.
- (3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.
- (4) Services that involve or relate to the development of regulations.
- (5) Services that involve or relate to the evaluation of another contractor's performance.
- (6) Services in support of acquisition planning.
- (7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).
- (8) Contractors providing technical evaluation of contract proposals.
- (9) Contractors providing assistance in the development of statements of work.

- (10) Contractors providing support in preparing responses to Freedom of Information Act requests.
- (11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).
- (12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.
- (13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.
- (14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.
- (15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.
- (16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.
- (17) Contractors providing inspection services.
- (18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.
- (19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.
- (e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

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