

11/18/11

POLICY ALERT

No. 11-86

Inherently Governmental Functions

REFERENCES: [FAR Subpart 7.5—Inherently Governmental Functions](#)
[DFARS Subpart 207.5—Inherently Governmental Functions](#)
[DFARS PGI 207.5—Inherently Governmental Functions](#)
[DoDI 1100.22--Policy and Procedures for Determining Workforce Mix](#)
[OFPP Policy Letter 11-01, "Performance of Inherently Governmental and Critical Functions", Sep 12, 2011 \(FR Doc 2011-23165\)](#)

TYPE OF ACTION: TMA Policy Emphasis

EFFECTIVE DATE: Nov 18, 2011

ALERT RESCINDED: Policy Alert No. 06-17, issued 04/24/06

SUMMARY: The purpose of this Policy Alert is to summarize and emphasize current regulatory requirements regarding the treatment of Inherently Governmental and Critical Functions in accomplishing acquisition of services. This is a developmental area of policy. In addition to the current regulatory requirement (Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations Supplement (DFARS), and Department of Defense Instruction (DoDI)) references hyperlinked above, the Office of Federal Procurement Policy (OFPP) has issued a lengthy final policy memorandum (also referenced above), after addressing public comment on a draft version issued in March 2010. Now that the final policy is issued, OFPP will be working to develop and implement appropriate changes to the FAR to implement this policy letter. Pending conclusion of the update in process, the following summarize the current baseline of requirements. These requirements are detailed in the references cited above, which should be read in their entirety for complete information:

- Contracts shall not be used for the performance of Inherently Governmental Functions.
- Twenty examples of such inherently governmental functions are currently provided at FAR 7.503(c). By way of illustration, the following are a subset of examples specifically related to the performance of Federal procurement activities—
 - Determining what supplies or services are to be acquired by the Government;
 - Participating as a voting member on any source selection boards;
 - Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
 - Awarding contracts;
 - 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);
 - Terminating contracts;
 - Determining whether contract costs are reasonable, allocable, and allowable; and
 - Participating as a voting member on contractor performance evaluation boards.
- Other functions not considered inherently governmental are listed at FAR 7.503(d); however, it is pointed out that, although such functions are normally not considered to be inherently governmental, they may approach that status 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.

- Further, the agency head or designated requirements official must provide the contracting officer, concurrent with transmittal of any statement of work for services (or any modification thereof), a written determination, in consideration of the provisions of DoDI 1100.22, that none of the functions to be performed are inherently governmental nor are they exempt from private sector performance. The determination should address the degree to which any conditions and facts of the intended performance of services may restrict the discretionary authority, decision-making responsibility, or accountability of Government officials who use contractor services or work products.
- Finally, in accordance with 10 United States Code 2383, contracts for performance of *acquisition functions* closely associated with inherently governmental functions (see FAR 7.503(d)) may only be entered into if—
 - The Contracting Officer determines that appropriate military or civilian Department of Defense personnel—
 - Cannot reasonably be made available to perform the functions;
 - Will oversee contractor performance of the contract; and
 - Will perform all inherently governmental functions associated with the functions to be performed under the contract; and
 - The Contracting Officer ensures that the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract (see FAR Subpart 9.5).

ACTION REQUIRED: For the TRICARE Management Activity (TMA), in accordance with FAR 7.503(e), Chiefs of requiring organizations shall ensure that the written determination to accompany a services statement of work, as described in the Summary, above, is prepared in accordance with prescribed requirements and shall sign the determination for inclusion in the procurement package transmitted to the Acquisition Management & Support Directorate for action. Consultation with the Human Resources Division should occur as appropriate and as necessary.

Contracting Officers and Contract Specialists/Administrators shall ensure that procurement packages for services contracting contain the required written determination and review the statement of work for consistency with the determination provided.

All affected individuals shall familiarize themselves with the content of the References provided herein.

This Policy Alert is effective on the date indicated above and remains in effect until incorporated in a TMA acquisition policy document(s) following issuance of the pending FAR change, until superseded, or until otherwise rescinded. This Policy Alert will be posted to the TMA website in accordance with current practices.

You may direct comments/questions on this Policy Alert to the Contract Policy and Pricing Branch at 303-676-3853. If this policy alert has any broken links please report them by clicking [HERE](#).