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Inherently Governmental and Critical Functions Template

A Mandatory Reference for ADS Chapter 300

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INHERENTLY GOVERNMENTAL AND CRITICAL FUNCTIONS CHECKLIST

In accordance with Federal policy, agencies must (1) ensure that contractors do not perform inherently governmental functions; (2) give special consideration to Federal employee performance of functions closely associated with inherently governmental functions, and when such work is performed by contractors, provide greater attention and an enhanced degree of management oversight of the contractors' activities to ensure that contractors' duties do not expand to include performance of inherently governmental functions; and (3) ensure that Federal employees perform and/or manage critical functions to the extent necessary for the agency to operate effectively and maintain control of its mission and operations. This checklist documents the analysis conducted by the operating unit to confirm that the procurement of services above the simplified acquisition threshold complies with this policy. Please check the appropriate boxes below and provide comments where needed.

Award Title:

<input type="checkbox"/>	<p>1. The function to be contacted does not appear on the illustrative list of inherently governmental functions in Appendix A of <u>OFPP Policy Letter 11-01</u> and does not otherwise qualify as an inherently governmental function taking into consideration, as necessary, the tests in subsection 5-1(a) of <u>OFPP Policy Letter 11-01</u>. The tests in 5-1(a) include evaluating, on a case-by-case basis, the nature of the work and level of discretion associated with performance of the work. Functions which involve the exercise of sovereign powers of the United States are governmental by nature. A function requiring the exercise of discretion is deemed inherently governmental if the exercise of that discretion commits the government to a course of action where two or more alternative courses of action exist and decision-making is not already limited or guided by existing policies, procedures, directions, orders and other guidance.</p> <p>Comments:</p>
<input type="checkbox"/>	<p>2. A statute, such as an annual appropriations act, does not identify the function as inherently governmental or otherwise require it to be performed by Federal employees.</p> <p>Comments:</p>
<input type="checkbox"/>	<p>3. The proposed role for the contractor is not so extensive that the ability of senior management to develop and consider options or take an alternative course of action is or would be preempted or inappropriately restricted.</p> <p>Comments:</p>
<input type="checkbox"/>	<p>4. If the function is closely associated with an inherently governmental one (a) special consideration has been given to using Federal employees to perform the function in accordance with applicable law and implementing guidance (b) the Agency has sufficient capacity and capability to give special management attention to contractor performance, limit or guide the contractor's exercise of discretion, ensure reasonable identification of contractors and contractor work products, avoid or mitigate conflicts of interest, and preclude unauthorized personal services; (c) the agency will comply with the checklist of responsibilities in Appendix C of <u>OFPP Policy Letter 11-01</u>.</p> <p>Comments:</p>

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5. If the function is a critical function, the operating unit has sufficient internal capability to control its mission and operations as provided in subsections 5-1(b) of **OFPP Policy Letter 11-01**. Determining the criticality of a function requires the exercise of informed judgment. The more important the function, the more important that the operating unit have internal capability to maintain control of the mission and operations. Sufficient internal capability generally requires that the operating unit have an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the requirements; formulate alternatives; take other appropriate actions to properly manage and be accountable for the work product; and continue critical operations with in-house resources, another contractor, or a combination of the two, in the event of contractor default. Sufficient internal capability also requires that the operating unit have the ability and internal expertise to oversee and manage any contractors used to support the Federal workforce. Determinations concerning what constitutes sufficient internal capability must be made on a case-by-case basis taking into account, among other things the operating unit's mission, complexity of the function and the need for specialized skill; current strength of the in-house expertise, current size and effect of contractor default on performance.

Comments:

6. SIGNATURES

Contracting Officer's Representative

Date:

Operating Unit Management Official
Division Chief Level or Above

Date: