



NOTICE REGARDING PROHIBITION OF INHERENTLY GOVERNMENTAL SERVICES UNDER THE GSA MULTIPLE AWARD SCHEDULE

Some acquisition services are inherently governmental in nature and shall not be performed by contractors. Pursuant to the [Office of Federal Policy \(OFPP\) Policy Letter 11-01](#), Performance of Inherently Governmental and Critical Functions. The following federal procurement services are illustrative of inherently governmental activities and thus are **prohibited** under the GSA Multiple Award Schedule, [SIN 541611](#).

- 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)
- 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, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);
- Terminating contracts;
- Determining whether contract costs are reasonable, allocable, and allowable; and
- Performing as a voting member on performance evaluation boards

Pursuant to OFPP Policy Letter 11-01, the following acquisition support services are examples of functions closely associated with the performance of inherently governmental functions. This list should be reviewed in conjunction with the list of inherently governmental functions depicted in Appendix A of OFPP Policy Letter 11-01 to better understand differences between the actions identified on each list.



- 1) Services supporting acquisition, including in the areas of:
 - a) Acquisition planning, such as by –
 - i) Conducting market research
 - ii) Developing inputs for government cost estimates, and
 - iii) Drafting statements of work and other pre-award documents;
 - b) Source selection, such as by –
 - i) Preparing a technical evaluation and associated documentation;
 - ii) Participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and
 - iii) Drafting the price negotiations memorandum; and
 - c) Contract management, such as by –
 - i) Assisting in the evaluation of a contractor's performance(e.g., by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and
 - ii) Providing support for assessing contract claims and preparing termination settlement documents

If the agency determines that contractor performance of a function closely associated with an inherently governmental function is appropriate, the agency shall –

- 1) Limit or guide a contractor's exercise of discretion and retain control of government operations by both –
 - a) Establishing in the contract specified ranges of acceptable decisions and/or conduct; and
 - b) Establishing in advance a process for subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, final approval by an agency official;
- 2) Assign a sufficient number of qualified government employees, with expertise to administer or perform the work, to give special management attention to the contractor's activities, in particular, to ensure that they do not expand to include inherently governmental functions, are not performed in ways not contemplated by the contract so as to become inherently governmental, do not undermine the integrity of the government's decision-making process, and do not interfere with Federal employees' performance of the closely-associated inherently governmental functions;



- 3) Ensure that the level of oversight and management that would be needed to retain government control of contractor performance and preclude the transfer of inherently governmental responsibilities to the contractor would not result in unauthorized personal services as provided by FAR 37.104;
- 4) Ensure that a reasonable identification of contractors and contractor work products is made whenever there is a risk that Congress, the public, or other persons outside of the government might confuse contractor personnel or work products with government officials or work products, respectively; and
- 5) Take appropriate steps to avoid or mitigate conflicts of interest, such as by conducting pre-award conflict of interest reviews, to ensure contract performance is in accordance with objective standards and contract specifications, and developing a conflict of interest mitigation plan, if needed, that identifies the conflict and special actions that will be taken to lessen the potential for conflict of interest or reduce the risk involved with a potential conflict of interest.

If agencies intend to procure services that are closely related to inherently governmental services, GSA recommends that agency officials document the above items in an approved agency-prescribed format (i.e., memorandum to the file, or a Determination and Findings (D&F)) and include this documentation in the procurement file.



U.S. General Services Administration