

CHANGE REQUEST COVER SHEET

Change Request Number: 12-88

Date Received: 5/29/2012

Title: Inherently Governmental and Critical Functions

Name: Tim Eckert

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Policy OR Guidance: Guidance

Section/Text Location Affected: T3.8.2A.3

Summary of Change: Additional guidance related to inherently governmental functions and related new guidance on critical functions

Reason for Change: Adaptation of OMB guidance on Performance of Inherently Governmental and Critical Functions to the FAA AMS

Development, Review, and/or Concurrence: Acquisition Policy Division; Procurement Legal; and Contracting Offices at HQ, the Service Areas and Centers

Target Audience: Contracting workforce

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.8.2 Service Contracting

Service Contracting

Section 3 : Inherently Governmental and Critical Functions [\[Old Content\]](#)[\[New Content\]](#)

[\[RedLine Content\]](#)

SECTIONS EDITED:

Section 3 : Inherently Governmental Functions

Old Content: Procurement Guidance:

T3.8.2 Service Contracting

Service Contracting

Section 3 : Inherently Governmental Functions

a. Inherently Governmental functions are those activities so closely related to the public interest that only Federal employees can perform the functions. These functions include activities that require either use of discretion in applying Government authority, or use of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, which requires discretionary use of Government authority; or (2) decisions affecting monetary transactions and entitlements. The FAA cannot contract for inherently Governmental functions.

b. The following functions are considered inherently Governmental (this list is not all inclusive):

- (1) Determining FAA program priorities and budget requests;
- (2) Conducting monetary transactions /or entitlements;
- (3) Interpreting and executing laws that will bind FAA to take or not take some action by contract, policy, regulation, authorization, or order;
- (4) Determining FAA policy;
- (5) Exercising ultimate control over acquisition, use, or disposal of FAA's property, including collecting, controlling, or disbursing funds, and on what terms;
- (6) Determining budget policy, guidance and strategy;
- (7) Directing and controlling Federal employees;
- (8) Approving position descriptions and performance standards for Federal employees;

(9) Determining and defining supplies or services to be acquired by FAA (the contractor may not identify its own work requirements, or write its own statement of work or task assignments);

(10) Approving contractual documents, such as those documents defining requirements, incentive plans, and evaluation criteria;

(11) Awarding, administering, and terminating contracts (including functions delegated to a Contracting Officer's Technical Representative);

(12) Determining whether contract costs are reasonable, allocable, and allowable; and

(13) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

c. Contracts requiring advice, recommendations, reports, analyses, or other similar work could influence the authority, accountability, and responsibilities of Government officials. These contracts require active monitoring and administration to ensure contractors do not perform inherently Governmental functions and Federal employees properly exercise their authority.

New Content: Procurement Guidance:

T3.8.2 Service Contracting

Service Contracting

Section 3 : Inherently Governmental and Critical Functions

a. Inherently Governmental Functions.

(1) The FAA cannot contract for inherently Governmental functions. Inherently Governmental functions are those activities so closely related to the public interest that only Federal employees can perform the functions. These functions include activities that require either use of discretion in applying Government authority, or use of value judgments in making decisions for the Government. Governmental functions normally fall into two categories:

(a) The act of governing, which requires discretionary use of Government authority; or

(b) Decisions affecting monetary transactions and entitlements.

(2) The following functions are considered inherently Governmental (this list is not all inclusive):

(a) Determining FAA program priorities and budget requests;

(b) Conducting monetary transactions or entitlements;

- (c) Interpreting and executing laws that will bind FAA to take or not take some action by contract, policy, regulation, authorization, or order;
- (d) Determining FAA policy;
- (e) Exercising ultimate control over acquisition, use, or disposal of FAA's property, including collecting, controlling, or disbursing funds, and on what terms;
- (f) Determining budget policy, guidance and strategy;
- (g) Directing and controlling Federal employees;
- (h) Selecting or non-selecting individuals for Federal employment (including interviewing for employment)
- (i) Approving position descriptions and performance standards for Federal employees;
- (j) Determining and defining supplies or services to be acquired by FAA (the contractor may not identify its own work requirements, or write its own statement of work or task assignments);
- (k) Approving contractual documents, such as those documents defining requirements, incentive plans, and evaluation criteria;
- (l) Awarding, administering, and terminating contracts (including functions delegated to a Contracting Officer's Representative);
- (m) Determining whether contract costs are reasonable, allocable, and allowable;
- (n) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, General Accountability Office, or other Federal audit entity;
- (o) Approving FAA responses to Freedom of Information Act (FOIA) requests (other than routine responses that do not require the exercise of judgment whether documents are released or withheld), and approving FAA responses to the administrative appeals of denials of FOIA requests;
- (p) Approving FAA licensing actions and inspections; and
- (q) Performing adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

(3) Effort under contracts requiring advice, recommendations, reports, analyses, or other similar work is considered effort closely associated with performing inherently Governmental functions. Such closely associated effort could influence the authority, accountability, and responsibilities of FAA officials. These contracts require active monitoring and administration to ensure contractors do not perform inherently Governmental functions and Federal employees properly exercise their authority.

(4) Prior to issuing a screening information request (SIR) or contract for services, the CO must determine whether the services are inherently Governmental functions.

b. *Critical Functions.*

(1) "Critical functions" are functions necessary for an agency to effectively perform and maintain control of its mission and operations. These functions are typically recurring and long-term.

(2) Examples of critical FAA functions include (this list is not all-inclusive):

- Aviation safety;
- Air traffic operations;
- FAA information systems; and
- Security and hazardous material safety

(3) Before issuing a SIR or contract for services, the CO and program official should determine if the procurement is in support of a critical FAA function. Where a critical FAA function is not inherently Governmental, both FAA and contractor employees may support the function.

(4) The CO and program official should use informed judgment when determining whether the services support a critical FAA function. In making this determination, the overall importance of the function to FAA's mission and operations should be considered. The more important the function, the more important it is that FAA have the internal capability to maintain control of its mission and operations. Sufficient internal capability generally requires that FAA have an adequate number of Federal employees having the necessary expertise to oversee any contractors supporting the critical function, and perform the needed work without adverse impact in the event of contractor default. The CO and program official must monitor the contractor performance supporting a critical FAA function during contract performance.

c. *Reporting.* All services contracts must indicate in PRISM at the beginning of the "Description" field whether the services are either "closely associated" with inherently governmental functions or supporting "critical functions." If neither, the services will be indicated as "other functions."

Red Line Content: Procurement Guidance:

T3.8.2 Service Contracting

FAST Archive 07/2012

CR 12-88

p. 5

Section 3 : Inherently Governmental ~~Functions~~ and Critical Functions

a. **Inherently Governmental Functions.**

(1) The FAA cannot contract for inherently Governmental functions. Inherently Governmental functions are those activities so closely related to the public interest that only Federal employees can perform the functions.-- These functions include activities that require either use of discretion in applying Government authority, or use of value judgments in making decisions for the Government. Governmental functions normally fall into two categories:--

(~~1a~~) ~~the~~**The** act of governing, which requires discretionary use of Government authority; or

(~~2b~~) ~~decisions~~**Decisions** affecting monetary transactions and entitlements. ~~The FAA cannot contract for inherently Governmental functions.~~

~~b.~~ **(2)** -The following functions are considered inherently Governmental (this list is not all inclusive):

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(~~2b~~) Conducting monetary transactions ~~for~~ entitlements;

(~~3c~~) Interpreting and executing laws that will bind FAA to take or not take some action by contract, policy, regulation, authorization, or order;

(~~4d~~) Determining FAA policy;

(~~5e~~) Exercising ultimate control over acquisition, use, or disposal of FAA's property, including collecting, controlling, or disbursing funds, and on what terms;

(~~6f~~) Determining budget policy, guidance and strategy;

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(8h) Selecting or non-selecting individuals for Federal employment (including interviewing for employment)

(i) Approving position descriptions and performance standards for Federal employees;

(9j) Determining and defining supplies or services to be acquired by FAA (the contractor may not identify its own work requirements, or write its own statement of work or task assignments);

(10k) Approving contractual documents, such as those documents defining requirements, incentive plans, and evaluation criteria;

(11l) Awarding, administering, and terminating contracts (including functions delegated to a Contracting Officer's ~~Technical~~ Representative);

(12m) Determining whether contract costs are reasonable, allocable, and allowable; ~~and~~

(13n) Drafting Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, ~~the General Accounting~~ Accountability Office, or other Federal audit entity.;

~~e.~~ (o) Approving FAA responses to Freedom of Information Act (FOIA) requests (other than routine responses that do not require the exercise of judgment whether documents are released or withheld), and approving FAA responses to the administrative appeals of denials of FOIA requests;

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