



Implementation of OFPP Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions

February 21, 2012



OFPP Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions – Purpose

- Office of Management and Budget (OMB) has placed increased emphasis on multi-sector workforce planning and management.
 - Federal employees
 - Contractors

- Agencies must:
 - ✓ Understand the types of functions performed by Federal and contractor employees.
 - ✓ Ensure that certain work is performed only by Federal employees.
 - ✓ Identify and more closely manage functions that are considered high risk to the government.
 - ✓ Maintain appropriate balance between Federal employees and contractors.
 - Ensure adequate in-house capacity for mission critical function.

- OFPP Policy Letter (P.L.) 11-01 establishes requirement for review and management of service contract requirements, to include designation of contractor services in accordance with P.L. functional definitions.
 - FAIR Act Inventory is already in place for annual review of functions performed by Federal employees.
 - P.L. 11-01 requires capability for analysis of entire workforce.
 - Leads to more informed use of resources in the future.
 - All service contract actions awarded on/after **March 1, 2012** must be coded.



OFPP Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions

- For all requirements for procurement of services, Procurement Customer must provide:
 - confirmation that functions to be contracted are not inherently governmental;
 - designation of the services to be contracted as “closely associated to inherently governmental,” “critical,” or “other”; and,
 - confirmation that the agency has capacity and capability to give special management attention to contractor performance.
- New service contracts awarded **on/after March 1, 2012**, must be coded by the applicable service designation in the Federal Procurement Data System (FPDS).
 - See OFPP Memorandum “Service Contract Inventories,” dated December 19, 2011.
- Deputy Bureau Heads have been appointed Senior Bureau Accountable Officials (SBAOs) responsible for bureau-level implementation, execution of determination of services coding, and oversight of program requirements.



Code Definitions and Considerations

Inherently Governmental – a function that is so intimately related to the public interest as to require performance by Federal Government employees (Section 5 of the Federal Activities Inventory Reform Act (FAIR), Public Law 105-270).

- ❑ Governmental by nature (functions which involve the exercise of sovereign powers of the US, *e.g.*, policeman; use of discretion (*e.g.*, budgetary decisions, contract award determinations))
- Cannot be performed by a contractor



Code Definitions and Considerations continued

Closely Associated with Inherently Governmental Function – a function that is not generally considered to be an inherently governmental function but may approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function.

- ❑ Examples: functions that support budget, planning or acquisition

- ❑ Additional oversight required for contractor performance
 - ❖ Cannot unduly influence government performance of inherently governmental function
 - ❖ Contractor performance within contract scope only, *e.g.*, no “creep” into inherently governmental work

- COR primarily responsible for increased monitoring of contractor performance



Code Definitions and Considerations continued

Critical – a function that is necessary to the agency being able to effectively perform and maintain control of its mission and operations.

- Examples: analysis of tax laws that impose significant compliance burdens on taxpayers
- Higher risk to the government
- Recurring and long-term in duration
- Exercise of informed judgement by agency officials to determine criticality
- Contractor performance of critical functions common
 - ❖ Overreliance on contractors often found in these functional areas
 - ❖ Appropriate balance between federal and contractor workforce necessary to ensure acceptable risk in mission and operations
 - The more important the function, the more important that agency maintain internal capability
- Additional oversight required for contractor performance
 - ❖ CORs
 - ❖ Contract Administration



Code Definitions and Considerations continued

Other - a function that does not fit one of the three prior definitions

- Standard oversight of contractor performance



Determination of Coding of Service Contract Requirement Worksheet

See Worksheet

- P.L. 11-01 requires that contract files contain appropriate supporting analysis of coding determinations for any action > SAT.
- HR will work with bureaus to determine suitable documentation of required analyses.
- The Coding of Service Contract Requirement Worksheet available at the link provided on Slide 13 is required for use in accordance with SBAO and HR guidance.



Service Contract Actions to be Coded

- Service contract actions to be coded in FPDS:
 - each new contract award for services with a total estimated value (including options) greater than the micro-purchase threshold (\$3000 as of effective date of this policy) awarded on/after March 1, 2012;
 - each Task Order and Delivery Order for services awarded on/after March 1, 2012, (regardless of the source or award date of the basic contract, order, Blanket Purchase Agreement or other contractual vehicle); and,
 - each modification to an award for services (regardless of the source or date of the basic award action).

(In this context, “award” includes, but is not limited to, a new contract, purchase order, BPA, or other similar contractual action.)
- Department of the Treasury Acquisition Procedures Update (APU) 2012-01 REV 1, “Performance of Inherently Governmental and Critical Functions and the Coding of Service Contract Requirements,” dated February 16, 2012, provides acquisition-specific guidance for implementation of P.L. 11-01.



Coding of Contract Service Requirements

SBAO/Procurement Customer

- Certifies that service requirement does not involve inherently governmental function;
- Designates whether the service is closely associated, critical functions, or other functions; and
- Provides workforce analysis demonstrating sufficient internal capability to control mission operations.
- Completes required documentation, obtains approval, and submits to procurement office

Contracting Officer

- Ensures receipt of certificate and code(s) with procurement request package;
- Stops work on any request package indicating contractor performance of inherently gov't functions and resolves IAW bureau procedures;
- Accurately inputs service contract code in Federal Procurement Data System (FPDS) upon contract award; and
- Elevates unresolved issues to Senior Agency Official.

Department Senior Accountable Official

- Collaborates with CXOs (Finance/Budget, Procurement, Human Capital, IT) at department / bureau levels
- Develops and issues procedures, including training requirements;
- Oversees compliance, including reporting and audits; and
- Decides disputed cases.



Primary Roles and Responsibilities

ROLE/OWNER	RESPONSIBILITIES	CONTACT INFORMATION
Department Senior Accountable Official - CHCO	Executive program oversight	Anita Blair (202)927-0341
Bureau Accountable Official- Deputy Bureau Heads	Bureau-level workforce planning; determination for coding of contract service requirements, to include appropriate internal controls	To be provided at bureau level
Senior Procurement Executive (SPE)	Oversight of coding of contracts in FPDS and correlating oversight of data accuracy	Tom Sharpe (202)622-1039 Cathy Higginbotham (202)622-6585
Chief Human Capital Officer (CHCO)	Multi-sector workforce planning	Anita Blair (202)927-0341



Next Steps

- Establishment of bureau procedures and internal controls (SAO)
 - Identification of delegated determination approving officials
 - Work statements adequate to enable proper coding determinations
 - Required added oversight by COR and contract administrators
 - Review of execution and compliance during annual of service contract inventory
 - Review of procedures in FY 2012 and no less than every two years thereafter

- Training
 - Broad email distribution of training material February 3
 - Training outreach beginning week of February 6 (schedule to be announced)
 - Focus
 - Procurement Customer designation of codes for procurement requirements
 - Contracting office coding of contract awards in FPDS
 - Target audience
 - Acquisition workforce (COs, COTRs and PMs)
 - HR personnel
 - Budget admin contacts
 - Dept CXOs
 - Bureau SAOs- Dept SAO
 - Councils

- Follow-up
 - Test procedures
 - Revise process/Worksheet as needed



Policy References and Links

- OFPP Policy Letter (P.L.) 11-01, “[Performance of Inherently Governmental and Critical Functions](#),”* dated September 12, 2011 (Alternate link: [Performance of Inherently Governmental and Critical Functions | The White House](#))
- OFPP Memorandum, “[Service Contract Inventories](#),” dated December 19, 2011
- Department of the Treasury Acquisition Procedures Update (APU) 2012-01 Revision 1, “[Performance of Inherently Governmental and Critical functions and the Coding of Service Contract Requirements](#)”*, dated February 16, 2012
- Department of the Treasury [Coding of Service Contract Requirement Worksheet](#)* (Draft as of February 3)
- [P.L. 11-01 Training Slides](#)*

APU and related documents are available in the DTAP section of the OPE Treasury.gov policy page at <http://www.treasury.gov/about/organizational-structure/offices/Mgt/Pages/ProcurementPolicy-Regulations.aspx> . To access the URL, copy and paste the URL into the Internet Explorer address line. On incorporation of the APU language into the formal DTAP, the APU and supporting documents will be moved to the **Archived versions DTAP and associated Acquisition Policy Updates.*



Contacts

	DETERMINATION AND CODING AND OTHER NON-PROCUREMENT INQUIRIES:	PROCUREMENT-RELATED INQUIRIES:
BUREAU-SPECIFIC	Senior Bureau Accountable Officials / See Bureau Guidance	Bureau Chief Procurement Officer (BCPO) or designee
DEPARTMENT-LEVEL	Jim Sullivan, Treasury HR (202) 622-9395 or James.Sullivan@treasury.gov	Cathy Higginbotham, OPE (202) 622-6585 or Cathy.Higginbotham@treasury.gov