

Advocacy Recommends that the Office of Federal Procurement Policy Provide Consideration to Small Business

On June 1, 2010, the Office of Advocacy (Advocacy) filed a comment letter with the Office of Federal Procurement Policy on its proposed policy letter, *Policy Letter to Provide Guidance to Executive Departments and Agencies on Circumstances When Work Must Be Reserved for Performance by Federal Government Employees*. A complete copy of Advocacy's letter to the Office of Federal Procurement Policy (OFPP) is available at www.sba.gov/advo/laws/comments/.

- This proposed policy letter implements the Presidential Memorandum on Government Contracting of March 4, 2009 and section 321 of the National Defense Authorization Act of FY 2009. The Presidential Memorandum directs the Office of Management and Budget (OMB) to clarify when governmental outsourcing of services is, and is not, consistent with section 321. Section 321 of the FY 2009 National Defense Authorization Act requires OMB to create a single definition for the term “inherently governmental function.”
- The draft policy letter requires the agencies to adopt the FAIR Act definition of inherently governmental function as the single government-wide definition. OFPP has taken this approach because the line has been blurred between functions that are inherently governmental and those that are not. OFPP is also concerned that there is insufficient management attention focused on ensuring that work is properly reserved for Federal employees to maintain certain critical capability levels in the government.
- Advocacy has spoken to several small business trade organizations that have in general supported the effort of the government to develop policy guidance on when work must be reserved for performance by Federal employees. Small businesses want to make sure that they will not lose contracts as a direct result of the government revisiting the issue of “inherently governmental” and insourcing.
- Advocacy recommends that when an agency makes a determination that a small business contract must be cancelled and the work given to Federal employees, then the small business contract should not be abruptly terminated, but phased out over a period of time. This would provide the small business owner with an opportunity to retool the company's business model.
- Advocacy recommends that OFPP's final policy letter reinforce the Federal government wide 23 percent acquisition goal for small business. Advocacy also recommends that the letter address the issue of small business subcontracting, as small businesses are concerned that large prime contractors may reduce or eliminate their contracts under this new policy.