



Construction Industry Round Table

Regulatory News Alert

A force for positive change in the design / construction industry

5/27/10 – June 1st Deadline to Comment on Obama Administration’s Efforts to Restrict Private Sector Contracting Fast Approaching

In a direct assault on the ability of private sector firms to compete for federal government contracts, the Obama Administration is proposing substantive changes to what should be considered “inherently governmental” which restricts what can be put out for competition. [See, CIRT’s related Regulatory News story 04/02/10]. The new proposal appears at 75 Fed.Reg.16,188 (03/31/10) as an official rulemaking with a public comment deadline of June 1, 2010.

The proposed policy letter fails to state or reinstate the original Eisenhower 1955 policy (Bureau of the Budget Bulletin 55-4, the predecessor of OMB Circular A-76) that the government should utilize the private sector to the maximum extent possible and should not compete with its citizens. In addition, OFPP appears to broaden the reach of “inherently governmental functions” with the phrase “**contracts for professional and technical services**” in a convoluted portion of the policy letter that addresses “Post-award” functions being reviewed by government employees/agencies to protect against contractors taking on government activities. Professional and technical services have been considered commercial activities for decades and should continue to be so defined. Moreover, the proposal seems to also suggest (as part of *Appendix B. Examples of functions closely associated with the performance of inherently governmental functions*) the un-workable notion that “construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments” is somehow an inherently governmental function and as such is required to be done by government employees (i.e., construction work is to be done by government workers!?!?).