



“Inherently Governmental” Is Not A License To Steal Private Sector Jobs

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The term “inherently governmental” applies to those positions and activities that are central to the exercise of the responsibilities of government and which by law or high policy must be performed by permanent federal employees. These positions or the work they entail cannot be conducted by private contractors. The Federal Activities Inventory Reform (FAIR) Act of 1998 defines an inherently governmental function as “a function so intimately related to the public interest as to require performance by Federal Government employees.” Office of Management and Budget (OMB) Circular A-76 dealing with public-private competitions for similar work defines an inherently governmental activity as “an activity that is so intimately related to the public interest as to mandate performance by government personnel.” Simply put, if it involves the work of government employees exercising statutory authorities and responsibilities in the interest of the public, then the function or activity is inherently governmental.

The Obama Administration has expressed concern that the government has been relying excessively on private contractors and may even have turned over to them responsibilities for inherently governmental functions. The OMB is working on a new definition of the term inherently governmental. To that end, in a memo to government departments and agencies last year regarding management of the total work force, the OMB Director warned that “agencies must be alert to situations in which excessive reliance on contractors undermines the ability of the federal government to accomplish its missions.” This memo identifies criteria for considering converting positions from private to government personnel. They include ensuring the ability to effectively manage the total workforce, the maintenance of effective government performance, in-house performance as necessary for the agency to maintain control of its mission and operations, and where the continued use of a private sector service provider would compromise a critical agency or Administration policy.

Federal regulations and interpretations of the concept of inherently governmental functions have always focused on those activities that are critical to the establishment of federal policies, to ensuring control over the direction of policy implementation, to the management

and direction of the total labor force, and to the maintenance of sufficient in-house knowledge and expertise so as to be able to effectively conduct the government's business. Efficiency, effectiveness and sheer cost all dictate that most jobs related to fulfilling the obligations of government not be done by government employees.

Now there is a move afoot to radically redefine the concept of inherently governmental functions. This new crusade would sweep into the maw of the government workforce vast swathes of private employment simply for providing support to positions that are inherently governmental. Recently, 11 Democratic senators sent a letter to the Director of OMB urging him to define inherently governmental work in broad terms, "to cover all sensitive functions so managers won't need designations like 'core,' 'critical' and mission-essential' to shield jobs they know are best performed by federal workers."

The idea that all sensitive functions should be inherently governmental is so broad a redefinition as to be ludicrous on its face. What job of relevance cannot be defined as sensitive? The mechanic that tightens the nut on the lug that holds the wheel of the car that is driven by a government employee to an official meeting is in a sensitive position. The Senators propose doing away with terms such as core, critical or mission-essential as designations of functions or work that must be performed by government personnel. How many degrees of separation would be required before a job was not sensitive? Such an approach could virtually wipe out any ability of the public and private sectors to work together on the maintenance, repair and overhaul of military equipment. In theory, a broad definition would require expanding the U.S. military by hundreds of thousands of people to cover positions currently occupied by private contractors. Using the sensitivity standard, the job of any private contractor with a security clearance would be a candidate for insourcing. Also, such a policy would eliminate any flexibility in the way the government uses its total workforce of private and public employees. In reality, what functions are critical, core or mission-essential can change over time. But not if these Senators have their way.

The historically recognized roles of government employees are those related to enforcing the laws, making policy, formulating regulations, providing guidance in the implementation of laws, regulations and policies and managing all activities in which the federal government is directly involved. There is no basis in history, management theory, or our experience with democratic governance that calls for such a massive expansion of government activities and personnel as called for by the Socialist 11.