



When is a Position Inherently Governmental?

One-size-fits-all rules and definitions that direct all agencies on what jobs are, in fact, inherently governmental functions don't work, experts say.

By **Matthew Weigelt** **Jun 18, 2010**

Members of a panel of experts told the Commission on Wartime Contracting in Iraq and Afghanistan that the concept of an "inherently governmental function" is unclear and, thus, one-size-fits-all rules and definitions that direct all government officials on what jobs are inherently governmental functions don't work.

"You don't want to be boxed in" when making these decisions, said former congressman Christopher Shays, co-chairman of the contracting commission.

An inherently governmental function refers to a job that only a federal employee should do, nor should it be outsourced. For example, only a federal employee can sign a contract on the government's behalf that obligates the expenditure of tax money.

Experts say a contractor in an inherently governmental function might be able to unduly influence the government toward a course of action.

The commission's June 18 hearing centered on answering the question of whether private security contractors are performing inherently governmental functions when they are in or outside a war zone. Similarly, some experts have asked whether agencies should keep from outsourcing information technology systems and IT services because they are critical to whether an agency meets its mission.

Al Burman, former administrator of the Office of Federal Procurement Policy (OFPP) inside the Office of Management and Budget and now president of Jefferson Solutions, said agency officials should decide whether a job is an inherently governmental function based on the circumstances.

As for security contractors in war zones, the government should use government employees if the agency has them, several members of the panel said. Outside those situations, the security jobs can be outsourced, as they often are.

"Everything is different in an active combat zone," said Stan Soloway, president of the Professional Services Council.

For security work and other jobs where the definition of inherently governmental is questionable, agencies should ask whether the work is a "critical function," another new concept, Burman said.

Currently, OFPP officials are working on clarifying the concept of inherently governmental function, as they proposed a policy letter in March. The proposal offers questions for agency officials to ask when faced with figuring out if a job is inherently governmental. OFPP also offered two other terms: "closely associated with an inherently governmental function" and "critical function." Each is another step further away from the government employee-only positions.

These closely associated and critical functions have become important as they help government officials decide where they should focus their employees. Federal agencies are working to build up their workforces so they don't rely so much on contractors to accomplish their mission.