

United States Senate
WASHINGTON, DC 20510

March 18, 2010

The Honorable Peter Orszag
Director
Office of Management and Budget
Eisenhower Executive Office Building
725 17th Street, NW
Washington, DC 20503

Dear Director Orszag:

As you develop a new definition of “inherently governmental” functions, we urge you to revise the definition to guarantee that the use of private contractors doesn’t undermine agencies’ missions. This definition must prevent functions like the evaluation of contractors, preparation of budgets, development of policies, and interpretation of regulations from being privatized. The previous Administration gave control of these and other essential functions to private contractors with the result being wasted taxpayer dollars and a weakened executive branch. We know you and the President are charting a new course by revising personnel contracting rules. A critical part of this review is developing a new government-wide definition of “inherently governmental” to identify those federal functions that should never be outsourced.

Specifically, we suggest that the new “inherently governmental” definition include the following elements:

1. An expansion of the definition 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.
2. A rebuttable presumption that critical functions or those “closely associated with inherently governmental” should be performed by federal employees. We can’t continue to allow federal agencies to lose control of mission-relevant functions by giving contractors a decisive role in how they are executed.
3. The specification that contractor recommendations be treated as if they are final decisions—indisputably critical functions—when federal managers can’t substantively review them. Often a contractor recommendation is functionally equivalent to an agency decision but, under the current definition, contractor advice – no matter how central to an agency decision - is automatically deemed not inherently governmental. This should be changed so that exercises of discretion or recommendations that contribute significantly to agencies’ final decisions are reserved for federal employee performance.
4. The requirement that, as part of the inventories required by Congress, agencies must review all contracts to see if they include functions that shouldn’t have been outsourced

because they fall under the new inherently governmental definition and then in-source where appropriate, consistent with the law.

Also, we strongly suggest taking two steps so that the new definition has maximum impact:

1. Incorporate the definition and compliance guidance into the Federal Acquisition Regulation with deadlines for correction of inappropriately outsourced jobs and require each agency to assign a senior official to ensure compliance.

2. Clarify that commercial federal employee functions should not be targeted for outsourcing, especially given the associated costs and controversies, and the benefits of internal reengineering.

Thank you for your work on this difficult and important issue. For too long, federal agencies faced policies that favored irrational contracting out. A better definition of inherently governmental will go a long way to reversing this trend and we look forward to working with your office to come up with one.

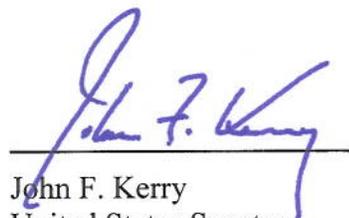
Sincerely,



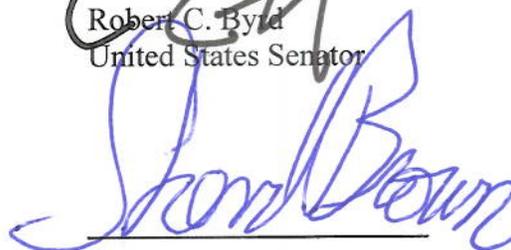
Barbara A. Mikulski
United States Senator



Robert C. Byrd
United States Senator



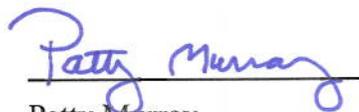
John F. Kerry
United States Senator



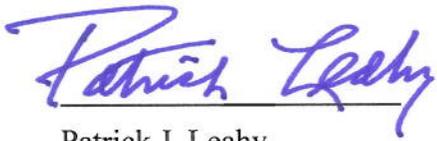
Sherrod Brown
United States Senator



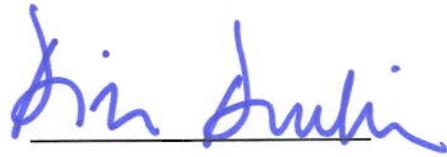
Tom Harkin
United States Senator



Patty Murray
United States Senator



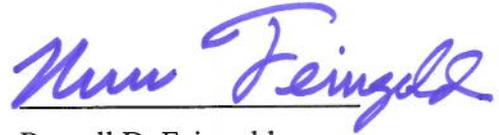
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United States Senator



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