

the House of Representatives a report on the implementation of the program. The report shall include an analysis of the evaluation criteria established pursuant to subsection (c).”

INCREASED RELIANCE ON PRIVATE-SECTOR SOURCES FOR COMMERCIAL PRODUCTS AND SERVICES

Section 357 of Pub. L. 104-106 provided that:

“(a) **IN GENERAL.**—The Secretary of Defense shall endeavor to carry out through a private-sector source any activity to provide a commercial product or service for the Department of Defense if—

“(1) the product or service can be provided adequately through such a source; and

“(2) an adequate competitive environment exists to provide for economical performance of the activity by such a source.

“(b) **APPLICABILITY.**—(1) Subsection (a) shall not apply to any commercial product or service with respect to which the Secretary determines that production, manufacture, or provision of that product or service by the Government is necessary for reasons of national security.

“(2) A determination under paragraph (1) shall be made in accordance with regulations prescribed under subsection (c).

“(c) **REGULATIONS.**—The Secretary shall prescribe regulations to carry out this section. Such regulations shall be prescribed in consultation with the Director of the Office of Management and Budget.

“(d) **REPORT.**—(1) The Secretary shall identify activities of the Department (other than activities specified by the Secretary pursuant to subsection (b)) that are carried out by employees of the Department to provide commercial-type products or services for the Department.

“(2) Not later than April 15, 1996, the Secretary shall transmit to the congressional defense committees [Committees on Armed Services and on Appropriations of the Senate and Committees on National Security and Appropriations of the House of Representatives] a report on opportunities for increased use of private-sector sources to provide commercial products and services for the Department.

“(3) The report required by paragraph (2) shall include the following:

“(A) A list of activities identified under paragraph (1) indicating, for each activity, whether the Secretary proposes to convert the performance of that activity to performance by private-sector sources and, if not, the reasons why.

“(B) An assessment of the advantages and disadvantages of using private-sector sources, rather than employees of the Department, to provide commercial products and services for the Department that are not essential to the warfighting mission of the Armed Forces.

“(C) A specification of all legislative and regulatory impediments to converting the performance of activities identified under paragraph (1) to performance by private-sector sources.

“(D) The views of the Secretary on the desirability of terminating the applicability of OMB Circular A-76 to the Department.

“(4) The Secretary shall carry out paragraph (1) in consultation with the Director of the Office of Management and Budget and the Comptroller General of the United States. In carrying out that paragraph, the Secretary shall consult with, and seek the views of, representatives of the private sector, including organizations representing small businesses.”

§ 2461a. Development and implementation of system for monitoring cost saving resulting from public-private competitions

(a) **SYSTEM FOR MONITORING PERFORMANCE.**—

(1) The Secretary of Defense shall monitor the performance, including the cost of performance,

of each function of the Department of Defense that, after October 30, 2000, is the subject of a public-private competition conducted under section 2461 of this title.

(2) In carrying out paragraph (1), the Secretary shall—

(A) compare the cost of performing the function before the public-private competition to the cost of performing the function after the implementation of the results of the public-private competition; and

(B) identify any actual savings of the Department of Defense after the implementation of the results of the public-private competition and compare such savings to the estimated savings identified pursuant to section 2461(a)(1)(E) of this title for that public-private competition;

(3) The monitoring of a function shall continue under this section for at least five years after the conversion, reorganization, or reengineering of the function pursuant to such a public-private competition.

(b) **CONSIDERATION IN PREPARATION OF FUTURE-YEARS DEFENSE PROGRAM.**—In preparing the future-years defense program under section 221 of this title, the Secretary of Defense shall, for the fiscal years covered by the program, estimate and take into account the costs to be incurred and the savings to be derived from the performance of functions by workforces selected in public-private competitions conducted under section 2461 of this title. The Secretary shall consider the results of the monitoring under this section in making the estimates.

(Added Pub. L. 106-398, § 1 [[div. A], title III, § 354(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-73; amended Pub. L. 107-107, div. A, title X, § 1048(a)(21), (c)(11), Dec. 28, 2001, 115 Stat. 1224, 1226; Pub. L. 109-163, div. A, title III, § 341(d), (g)(2)(C), Jan. 6, 2006, 119 Stat. 3199, 3200.)

AMENDMENTS

2006—Pub. L. 109-163, § 341(g)(2)(C), substituted “Development and implementation of system for monitoring cost saving resulting from public-private competitions” for “Development of system for monitoring cost savings resulting from workforce reductions” in section catchline.

Subsec. (a). Pub. L. 109-163, § 341(d)(1), (2), redesignated subsec. (b) as (a) and struck out former subsec. (a) which defined “workforce review”.

Subsec. (a)(1). Pub. L. 109-163, § 341(d)(3)(A), substituted “monitor” for “establish a system for monitoring” and “a public-private competition conducted under section 2461 of this title” for “a workforce review”.

Subsec. (a)(2). Pub. L. 109-163, § 341(d)(3)(B), added par. (2) and struck out former par. (2) which established requirements for the monitoring system.

Subsec. (a)(3). Pub. L. 109-163, § 341(d)(3)(C), inserted “pursuant to such a public-private competition” after “reengineering of the function”.

Subsec. (b). Pub. L. 109-163, § 341(d)(4), substituted “public-private competitions conducted under section 2461 of this title” for “workforce reviews”.

Pub. L. 109-163, § 341(d)(2), redesignated subsec. (e) as (b). Former subsec. (b) redesignated (a).

Subsecs. (c) to (e). Pub. L. 109-163, § 341(d)(1), (2), redesignated subsec. (e) as (b) and struck out former subsecs. (c) and (d) which related to waiver for certain workforce reviews and annual report, respectively.

2001—Subsec. (a)(2). Pub. L. 107-107, § 1048(a)(21), substituted “efficiency” for “efficiency”.

Subsec. (b)(1). Pub. L. 107-107, §1048(c)(11), substituted “October 30, 2000,” for “the date of the enactment of this section.”

§ 2462. Reports on public-private competition

(a) REPORT ON PUBLIC-PRIVATE COMPETITION RESULTS.—(1) Upon the completion of a public-private competition under section 2461 of this title, the Secretary of Defense shall submit to Congress a report containing the results of the public-private competition required by subsection (a) of such section.

(2) Each report under this subsection shall include the following:

(A) The date on which the public-private competition was commenced.

(B) The number of Department of Defense civilian employees who were performing the function when the public-private competition was commenced and the number of such employees whose employment was or will be terminated or otherwise affected by converting to performance of the function by a contractor or by implementation of the most efficient organization of the function.

(C) The Secretary's certification that the Government's calculation of the cost of performance of the function by Department of Defense civilian employees is based on an estimate of the most cost effective manner for performance of the function by Department of Defense civilian employees that meets the needs of the Department with respect to factors other than cost, including quality and reliability.

(D) The Secretary's certification that the public-private competition did not include any predetermined personnel constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees.

(E) The Secretary's certification that the entire public-private competition is available for examination.

(F) In the case of a function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, a description of the effect that the manner of performance of the function, and administration of the resulting contract if any, will have on the overhead costs of the center or ammunition plant, as the case may be.

(G) A schedule for implementing the results of the public-private competition.

(3)(A) No decision made on the basis of a public-private competition under section 2461 of this title may be implemented until after the submission of a report under paragraph (1).

(B) Notwithstanding subparagraph (A), in the case of function performed at a Center of Industrial and Technical Excellence designated under section 2474(a) of this title or an Army ammunition plant, the conversion of the function to performance by a contractor may not begin until at least 60 days after the submission of a report under paragraph (1).

(b) ANNUAL REPORT.—Not later than June 30 of each year, the Secretary of Defense shall submit to Congress a written report, which shall include the following:

(1) An estimate of the percentage of functions (other than functions that are inherently governmental) that Department of Defense civilian employees will perform and an estimate of the percentage of such functions that contractors will perform during the fiscal year during which the report is submitted.

(2) The results of public-private competitions conducted under section 2461 of this title that were completed during the preceding fiscal year, including each of the following:

(A) The number of such competitions completed during such fiscal year and the number of Department of Defense civilian employees performing functions for which such a competition was conducted.

(B) The percentage of such competitions that resulted in the continued performance of a function by Department of Defense civilian employees.

(C) The percentage of such competitions that resulted in the conversion of a function to performance by a contractor.

(D) The percentage of the Department of Defense civilian employees identified pursuant to subparagraph (A) whose positions will be converted to performance by contractors or eliminated as a result of implementing the results of such competitions.

(3) The results of monitoring the performance of Department functions under section 2461a of this title, including for each function subject to monitoring, each of the following:

(A) The cost of the public-private competition conducted under section 2461 of this title.

(B) The cost of performing the function before such competition compared to the costs incurred after implementing the conversion, reorganization, or reengineering actions recommended pursuant to the competition.

(C) The actual savings derived from the implementation of the recommendations made pursuant to such competition, if any, compared to the anticipated savings that were to result from the conversion, reorganization, or reengineering actions.

(Added Pub. L. 100-370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 109-163, div. A, title III, §341(c)(1), Jan. 6, 2006, 119 Stat. 3197.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 99-661, div. A, title XII, §1223, Nov. 14, 1986, 100 Stat. 3977.

AMENDMENTS

2006—Pub. L. 109-163, amended section catchline and text generally. Prior to amendment, section required the Secretary of Defense to contract for certain supplies and services when cost was lower than cost at which Department of Defense could provide same.

§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

(a) GUIDELINES REQUIRED.—(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and