

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

functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.

(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.—The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

(B) is an acquisition workforce function;

(C) is a function closely associated with the performance of an inherently governmental function;

(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;

(E) has been performed pursuant to a contract awarded on a non-competitive basis; or

(F) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or

(2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

(c) EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.—The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A-76, or any other provision of law or regulation before—

(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;

(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or

(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

(d) USE OF FLEXIBLE HIRING AUTHORITY.—(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the

performance by Department of Defense civilian employees of functions described in subsection (b).

(2) The Secretary shall make use of the inventory required by section 2330a(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

(e) DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—

(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09-007 entitled “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support” or any successor guidance for the determination of costs when costs are the sole basis for the determination;

(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function; or

(ii) \$10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

(f) NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.

(g) DEFINITIONS.—In this section:

(1) The term “functions closely associated with inherently governmental functions” has the meaning given that term in section 2383(b)(3) of this title.

(2) The term “acquisition function” has the meaning given that term under section 1721(a) of this title.

(3) The term “inherently governmental function” has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note).

(Added Pub. L. 110-181, div. A, title III, §324(a)(1), Jan. 28, 2008, 122 Stat. 60; amended Pub. L. 111-383, div. A, title III, §353, Jan. 7, 2011, 124 Stat. 4194; Pub. L. 112-81, div. A, title IX, §938, Dec. 31, 2011, 125 Stat. 1547.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 109-163, div. A, title III, §343, Jan. 6,

2006, 119 Stat. 3200, which was set out as a note under section 2461 of this title, prior to repeal by Pub. L. 110-181, div. A, title III, §324(c), Jan. 28, 2008, 122 Stat. 61.

A prior section 2463, added Pub. L. 100-370, §2(a)(1), July 19, 1988, 102 Stat. 853; amended Pub. L. 101-189, div. A, title XVI, §1622(c)(7), Nov. 29, 1989, 103 Stat. 1604; Pub. L. 101-510, div. A, title XIII, §1301(14), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 105-85, div. A, title III, §385(a), Nov. 18, 1997, 111 Stat. 1712, related to collection and retention of cost information data on the conversion of services and functions of the Department of Defense to or from contractor performance, prior to repeal by Pub. L. 109-163, div. A, title III, §341(f), Jan. 6, 2006, 119 Stat. 3199.

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 112-81, §938(1), added subpars. (A), (B), and (D), redesignated former subpars. (B), (C), and (D) as (C), (E), and (F), and struck out former subpar. (A) which read as follows: “has been performed by Department of Defense civilian employees at any time during the previous 10 years;”.

Subsec. (d)(1). Pub. L. 111-383 struck out “under the National Security Personnel System, as established” before “pursuant to section 9902 of title 5”.

Subsecs. (e), (f). Pub. L. 112-81, §938(3), added subsecs. (e) and (f). Former subsec. (e) redesignated (g).

Subsec. (g). Pub. L. 112-81, §938(4), substituted “this section:” for “this section the term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.” and added pars. (1) to (3).

Pub. L. 112-81, §938(2), redesignated subsec. (e) as (g).

PROHIBITION ON ESTABLISHING GOALS OR QUOTAS FOR CONVERSION OF FUNCTIONS TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 111-383, div. A, title III, §323, Jan. 7, 2011, 124 Stat. 4184, provided that:

“(a) PROHIBITION.—The Secretary of Defense may not establish, apply, or enforce any numerical goal, target, or quota for the conversion of Department of Defense functions to performance by Department of Defense civilian employees, unless such goal, target, or quota is based on considered research and analysis, as required by section 235, 2330a, or 2463 of title 10, United States Code.

“(b) DECISIONS TO INSOURCE.—In deciding which functions should be converted to performance by Department of Defense civilian employees pursuant to section 2463 of title 10, United States Code, the Secretary of Defense shall use the costing methodology outlined in the Directive-Type Memorandum 09-007 (Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support) or any successor guidance for the determination of costs when costs are the sole basis for the decision. The Secretary of a military department may issue supplemental guidance to assist in such decisions affecting functions of that military department.

“(c) REPORTS.—

“(1) REPORT TO CONGRESS.—Not later than March 31, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the decisions with respect to the conversion of functions to performance by Department of Defense civilian employees made during fiscal year 2010. Such report shall identify, for each such decision—

“(A) the agency or service of the Department involved in the decision;

“(B) the basis and rationale for the decision; and

“(C) the number of contractor employees whose functions were converted to performance by Department of Defense civilian employees.

“(2) COMPTROLLER GENERAL REVIEW.—Not later than 120 days after the submittal of the report under para-

graph (1), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of the report.

“(d) CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to preclude the Secretary of Defense from establishing, applying, and enforcing goals for the conversion of acquisition functions and other critical functions to performance by Department of Defense civilian employees, where such goals are based on considered research and analysis; or

“(2) to require the Secretary of Defense to conduct a cost comparison before making a decision to convert any acquisition function or other critical function to performance by Department of Defense civilian employees, where factors other than cost serve as a basis for the Secretary’s decision.”

DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES

Pub. L. 110-181, div. A, title III, §324(a)(3), Jan. 28, 2008, 122 Stat. 61, provided that: “The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008].”

§ 2464. Core depot-level maintenance and repair capabilities

(a) NECESSITY FOR CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES.—(1) It is essential for national security that the Department of Defense maintain a core depot-level maintenance and repair capability, as defined by this title, in support of mission-essential weapon systems or items of military equipment needed to directly support combatant command operational requirements and enable the armed forces to execute the strategic, contingency, and emergency plans prepared by the Department of Defense, as required under section 153(a) of this title.

(2) This core depot-level maintenance and repair capability shall be Government-owned and Government-operated, including the use of Government personnel and Government-owned and Government-operated equipment and facilities, throughout the lifecycle of the weapon system or item of military equipment involved to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(3)(A) Except as provided in subsection (c), the Secretary of Defense shall identify and establish the core depot-level maintenance and repair capabilities and capacity required in paragraph (1).

(B) Core depot-level maintenance and repair capabilities and capacity, including the facilities, equipment, associated logistics capabilities, technical data, and trained personnel, shall be established not later than four years after a weapon system or item of military equipment achieves initial operational capability or is fielded in support of operations.

(4) The Secretary of Defense shall assign Government-owned and Government-operated depot-level maintenance and repair facilities of the Department of Defense sufficient workload to ensure cost efficiency and technical competence in peacetime, while preserving the ability to