

tion 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. Repealed. Pub. L. 113-291, div. A, title X, § 1060(a)(2)(A), Dec. 19, 2014, 128 Stat. 3502]

Section, 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, related to reports on public-private competition.

#### § 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

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