

2001—Pub. L. 107-107, div. A, title X, § 1048(e)(10)(B), Dec. 28, 2001, 115 Stat. 1228, struck out item 2468 “Military installations: authority of base commanders over contracting for commercial activities”.

2000—Pub. L. 106-398, § 1 [[div. A], title III, §§ 341(g)(2), 353(b), 354(b)], Oct. 30, 2000, 114 Stat. 1654, 1654A-64, 1654A-73, 1654A-75, added items 2461a and 2475 and struck out item 2471 “Persons outside the Department of Defense: lease of excess depot-level equipment and facilities by”.

1999—Pub. L. 106-65, div. A, title III, § 342(b)(2), Oct. 5, 1999, 113 Stat. 569, added item 2467 and struck former item 2467 “Cost comparisons: requirements with respect to retirement costs and consultation with employees”.

1997—Pub. L. 105-85, div. A, title III, §§ 355(c)(1), 356(b), 359(a)(2), 361(a)(2), 385(b), Nov. 18, 1997, 111 Stat. 1694, 1695, 1699, 1701, 1712, added item 2460, substituted “Collection and retention of cost information data on converted services and functions” for “Reports on savings or costs from increased use of DOD civilian personnel” in item 2463 and “capabilities” for “functions” in item 2464, and added items 2469a and 2474.

1996—Pub. L. 104-201, div. A, title VIII, § 832(b), Sept. 23, 1996, 110 Stat. 2616, added item 2473.

Pub. L. 104-106, div. A, title III, § 312(d), Feb. 10, 1996, 110 Stat. 251, added item 2472.

Pub. L. 104-106, div. A, title III, § 311(f)(2), Feb. 10, 1996, 110 Stat. 248, which directed striking out items 2466 and 2469, was repealed by Pub. L. 105-85, div. A, title III, § 363, Nov. 18, 1997, 111 Stat. 1702.

1994—Pub. L. 103-337, div. A, title III, §§ 335(b), 336(b), Oct. 5, 1994, 108 Stat. 2717, added items 2470 and 2471.

1992—Pub. L. 102-484, div. A, title III, § 353(b), Oct. 23, 1992, 106 Stat. 2379, added item 2469.

1991—Pub. L. 102-190, div. A, title III, § 314(a)(2), Dec. 5, 1991, 105 Stat. 1337, substituted “Limitations on the performance of depot-level maintenance of materiel” for “Prohibition on certain depot maintenance workload competitions” in item 2466.

1989—Pub. L. 101-189, div. A, title XI, § 1131(a)(2), Nov. 29, 1989, 103 Stat. 1561, added item 2468.

1988—Pub. L. 100-456, div. A, title III, §§ 326(b), 331(b), Sept. 29, 1988, 102 Stat. 1956, 1958, added items 2466 and 2467.

#### § 2460. Definition of depot-level maintenance and repair

(a) IN GENERAL.—In this chapter, the term “depot-level maintenance and repair” means (except as provided in subsection (b)) material maintenance or repair requiring the overhaul, upgrading, or rebuilding of parts, assemblies, or subassemblies, and the testing and reclamation of equipment as necessary, regardless of the source of funds for the maintenance or repair or the location at which the maintenance or repair is performed. The term includes (1) all aspects of software maintenance classified by the Department of Defense as of July 1, 1995, as depot-level maintenance and repair, and (2) interim contractor support or contractor logistics support (or any similar contractor support), to the extent that such support is for the performance of services described in the preceding sentence.

(b) EXCEPTIONS.—(1) The term does not include the procurement of major modifications or upgrades of weapon systems that are designed to improve program performance or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul. A major upgrade program covered by this exception could continue to be performed by private or public sector activities.

(2) The term also does not include the procurement of parts for safety modifications. However,

the term does include the installation of parts for that purpose.

(Added and amended Pub. L. 112-239, div. A, title III, § 322(b)(1), (c), Jan. 2, 2013, 126 Stat. 1694, 1695.)

#### CODIFICATION

Section 322(b)(1) of Pub. L. 112-239, cited as a credit to this section, revived section 2460 of this title as in effect the day before the date of the enactment of Pub. L. 112-81, Dec. 31, 2011. See Prior Provisions note below.

#### PRIOR PROVISIONS

A prior section 2460, added Pub. L. 105-85, div. A, title III, § 355(a), Nov. 18, 1997, 111 Stat. 1693; amended Pub. L. 105-261, div. A, title III, § 341, Oct. 17, 1998, 112 Stat. 1973; Pub. L. 112-81, div. A, title III, § 321, Dec. 31, 2011, 125 Stat. 1361, defined “depot-level maintenance and repair” for this chapter prior to repeal by Pub. L. 112-239, div. A, title III, § 322(a)(1), Jan. 2, 2013, 126 Stat. 1694.

#### AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 112-239, § 322(c), substituted “or the nuclear refueling or defueling of an aircraft carrier and any concurrent complex overhaul” for “or the nuclear refueling of an aircraft carrier”.

#### EFFECTIVE DATE

Section and amendment by Pub. L. 112-239 effective Dec. 31, 2011, immediately after enactment of Pub. L. 112-81, see section 322(f) of Pub. L. 112-239, set out as an Effective Date of 2013 Amendment note under section 2366a of this title.

#### § 2461. Public-private competition required before conversion to contractor performance

(a) PUBLIC-PRIVATE COMPETITION.—(1) No function of the Department of Defense performed by Department of Defense civilian employees may be converted, in whole or in part, to performance by a contractor unless the conversion is based on the results of a public-private competition that—

(A) formally compares the cost of performance of the function by Department of Defense civilian employees with the cost of performance by a contractor;

(B) creates an agency tender, including a most efficient organization plan, in accordance with Office of Management and Budget Circular A-76, as implemented on May 29, 2003, or any successor circular;

(C) includes the issuance of a solicitation;

(D) determines whether the submitted offers meet the needs of the Department of Defense with respect to factors other than cost, including quality, reliability, and timeliness;

(E) examines the cost of performance of the function by Department of Defense civilian employees and the cost of performance of the function by one or more contractors to demonstrate whether converting to performance by a contractor will result in savings to the Government over the life of the contract, including—

(i) the estimated cost to the Government (based on offers received) for performance of the function by a contractor;

(ii) the estimated cost to the Government for performance of the function by Department of Defense civilian employees; and

(iii) an estimate of all other costs and expenditures that the Government would incur because of the award of such a contract;