

and requirements of Office of Management and Budget Circular A-76 or any successor administrative regulation or policy (hereinafter in this section referred to as OMB Circular A-76).

(2) The Secretary of Defense may waive paragraph (1) in the case of any such logistics capability and provide that performance of the workload needed to maintain that capability shall be considered for conversion to contractor performance in accordance with OMB Circular A-76. Any such waiver shall be made under regulations prescribed by the Secretary and shall be based on a determination by the Secretary that Government performance of the workload is no longer required for national defense reasons. Such regulations shall include criteria for determining whether Government performance of any such workload is no longer required for national defense reasons.

(3)(A) A waiver under paragraph (2) may not take effect until the expiration of the first period of 30 days of continuous session of Congress that begins on or after the date on which the Secretary submits a report on the waiver to the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(B) For the purposes of subparagraph (A)—

(i) continuity of session is broken only by an adjournment of Congress sine die; and

(ii) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(c) NOTIFICATION OF DETERMINATIONS REGARDING CERTAIN COMMERCIAL ITEMS.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial item for the purposes of the exception contained in that subsection, the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(1) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the Government's version of the item.

(2) The value of any unique support and test equipment and tools that are necessary to support the military requirements if the item were maintained by the Government.

(3) A comparison of the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life cycle logistics support costs that would be incurred by the Government if the item were maintained by the Government.

(d) BIENNIAL CORE REPORT.—Not later than April 1 of each even-numbered year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (except for the Coast Guard), for the fiscal year after the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements and sustaining workloads, organized by work breakdown structure, expressed in direct labor hours.

(2) The corresponding workloads necessary to sustain core depot-level maintenance and repair capability requirements, expressed in direct labor hours and cost.

(3) In any case where core depot-level maintenance and repair capability requirements exceed or are expected to exceed sustaining workloads, a detailed rationale for any and all shortfalls and a plan either to correct or mitigate the effects of the shortfalls.

(e) COMPTROLLER GENERAL REVIEW.—The Comptroller General of the United States shall review each report submitted under subsection (d) for completeness and compliance and shall submit to the congressional defense committees findings and recommendations with respect to the report by not later than 60 days after the date on which the report is submitted to Congress.

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

CODIFICATION

Section 322(b)(2)(A) of Pub. L. 112-239, cited as a credit to this section, revived section 2464 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 2464, 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. 104-106, div. A, title III, § 314, Feb. 10, 1996, 110 Stat. 251; Pub. L. 105-85, div. A, title III, § 356(a), Nov. 18, 1997, 111 Stat. 1694; Pub. L. 105-261, div. A, title III, § 343(a), Oct. 17, 1998, 112 Stat. 1976; Pub. L. 106-65, div. A, title X, § 1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 112-81, div. A, title III, § 327(a), Dec. 31, 2011, 125 Stat. 1366, related to core depot-level maintenance and repair capabilities prior to repeal by Pub. L. 112-239, div. A, title III, § 322(a)(2), Jan. 2, 2013, 126 Stat. 1694.

AMENDMENTS

2013—Subsecs. (d), (e). Pub. L. 112-239, § 322(d), added subsecs. (d) and (e).

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.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective Dec. 31, 2021, of provisions in subsec. (d) of this section requiring submittal of biennial report to Congress, see section 1061 of Pub. L. 114-328, set out as a note under section 111 of this title.

§ 2465. Prohibition on contracts for performance of firefighting or security-guard functions

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of fire-fighting functions if the contract is—

(A) for a period of one year or less; and

(B) covers only the performance of fire-fighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(Added Pub. L. 99-661, div. A, title XII, §1222(a)(1), Nov. 14, 1986, 100 Stat. 3976, §2693; amended Pub. L. 100-180, div. A, title XI, §1112(a)-(b)(2), Dec. 4, 1987, 101 Stat. 1147; renumbered §2465, Pub. L. 100-370, §2(b)(1), July 19, 1988, 102 Stat. 854; Pub. L. 104-106, div. A, title XV, §1503(a)(25), Feb. 10, 1996, 110 Stat. 512; Pub. L. 108-136, div. A, title III, §331, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136 substituted “apply to the following contracts:” for “apply—” in introductory provisions. “A” for “to a” at beginning of pars. (1) to (3), period for semicolon at end of par. (1), and period for “; or” at end of par. (2), and added par. (4).

1996—Subsec. (b)(3). Pub. L. 104-106 substituted “under contract on September 24, 1983” for “under contract or September 24, 1983”.

1988—Pub. L. 100-370 renumbered section 2693 of this title as this section.

1987—Pub. L. 100-180 inserted “or security-guard” before “functions” in section catchline and subsec. (a), and substituted “a function” for “the function” in subsec. (b)(1).

TEMPORARY AUTHORITY TO CONTRACT WITH LOCAL AND STATE GOVERNMENTS FOR PERFORMANCE OF SECURITY FUNCTIONS AT UNITED STATES MILITARY INSTALLATIONS

Pub. L. 107-56, title X, §1010, Oct. 26, 2001, 115 Stat. 395, provided that:

“(a) IN GENERAL.—Notwithstanding section 2465 of title 10, United States Code, during the period of time that United States armed forces are engaged in Operation Enduring Freedom, and for the period of 180 days thereafter, funds appropriated to the Department of Defense may be obligated and expended for the purpose of entering into contracts or other agreements for the performance of security functions at any military installation or facility in the United States with a proximately located local or State government, or combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation.

“(b) TRAINING.—Any contract or agreement entered into under this section shall prescribe standards for the training and other qualifications of local government law enforcement personnel who perform security functions under this section in accordance with criteria established by the Secretary of the service concerned.

“(c) REPORT.—One year after the date of enactment of this section [Oct. 26, 2001], the Secretary of Defense

shall submit a report to the Committees on Armed Services of the Senate and the House of Representatives describing the use of the authority granted under this section and the use by the Department of Defense of other means to improve the performance of security functions on military installations and facilities located within the United States.”

PERFORMANCE OF EMERGENCY RESPONSE FUNCTIONS AT CHEMICAL WEAPONS STORAGE INSTALLATIONS

Pub. L. 106-398, §1 [[div. A], title III, §355], Oct. 30, 2000, 114 Stat. 1654, 1654A-75, provided that:

“(a) RESTRICTION ON CONVERSION.—The Secretary of the Army may not convert to contractor performance the emergency response functions of any chemical weapons storage installation that, as of the date of the enactment of this Act [Oct. 30, 2000], are performed for that installation by employees of the United States until the certification required by subsection (c) has been submitted in accordance with that subsection.

“(b) COVERED INSTALLATIONS.—For the purposes of this section, a chemical weapons storage installation is any installation of the Department of Defense on which lethal chemical agents or munitions are stored.

“(c) CERTIFICATION REQUIREMENT.—The Secretary of the Army shall certify in writing to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives that, to ensure that there will be no lapse of capability to perform the chemical weapon emergency response mission at a chemical weapons storage installation during any transition to contractor performance of those functions at the installation, the plan for conversion of the performance of those functions—

“(1) is consistent with the recommendation contained in General Accounting Office [now Government Accountability Office] Report NSIAD-00-88, entitled ‘DoD Competitive Sourcing’, dated March 2000;

“(2) provides for a transition to contractor performance of emergency response functions which ensures an adequate transfer of the relevant knowledge and expertise regarding chemical weapon emergency response to the contractor personnel; and

“(3) complies with section 2465 of title 10, United States Code.”

§ 2466. Limitations on the performance of depot-level maintenance of materiel

(a) PERCENTAGE LIMITATION.—Not more than 50 percent of the funds made available in a fiscal year to a military department or a Defense Agency for depot-level maintenance and repair workload may be used to contract for the performance by non-Federal Government personnel of such workload for the military department or the Defense Agency. Any such funds that are not used for such a contract shall be used for the performance of depot-level maintenance and repair workload by employees of the Department of Defense.

(b) WAIVER OF LIMITATION.—The Secretary of Defense may waive the limitation in subsection (a) for a fiscal year if—

(1) the Secretary determines that the waiver is necessary for reasons of national security; and

(2) the Secretary submits to Congress a notification of the waiver together with the reasons for the waiver.

(c) PROHIBITION ON DELEGATION OF WAIVER AUTHORITY.—The authority to grant a waiver under subsection (b) may not be delegated.

(d) ANNUAL REPORT.—(1) Not later than 90 days after the date on which the budget of the President for a fiscal year is submitted to Congress