

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. 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.