

(8) In the case of any shortfall that is identified, a description of the shortfall and an identification of the subcategory of the work breakdown structure in which the shortfall occurred.

(9) In the case of any work breakdown structure category designated as a special interest item or other pursuant to such Instruction, or any successor instruction, an explanation for such designation.

(10) Whether the core depot-level maintenance and repair capability requirements described in the report submitted under this subsection for the preceding fiscal year have been executed.

(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; Pub. L. 115–91, div. A, title III, §332, Dec. 12, 2017, 131 Stat. 1354; Pub. L. 115–232, div. A, title VIII, §836(e)(10), Aug. 13, 2018, 132 Stat. 1870.)

AMENDMENT OF SECTION

Pub. L. 115–232, div. A, title VIII, §836(e)(10), (h), Aug. 13, 2018, 132 Stat. 1870, 1874, provided that, effective Jan. 1, 2020, subject to a savings provision, this section is amended as follows:

(1) in subsection (a)—

(A) in paragraph (3), by striking “commercial items” and inserting “commercial products or commercial services”; and

(B) in paragraph (5), by striking “The commercial items covered by paragraph (3) are commercial items” and inserting “The commercial products or commercial services covered by paragraph (3) are commercial products (as defined in section 103 of title 41) or commercial services (as defined in section 103a of such title)”; and

(2) in subsection (c)—

(A) in heading, by striking “Commercial Items” and inserting “Commercial Products or Commercial Services”; and

(B) by striking “commercial item” and inserting “commercial product or commercial service”.

See 2018 Amendment notes below.

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

2018—Subsec. (a)(3). Pub. L. 115–232, §836(e)(10)(A)(i), substituted “commercial products or commercial services” for “commercial items”.

Subsec. (a)(5). Pub. L. 115–232, §836(e)(10)(A)(ii), substituted “The commercial products or commercial services covered by paragraph (3) are commercial products (as defined in section 103 of title 41) or commercial services (as defined in section 103a of such title)” for “The commercial items covered by paragraph (3) are commercial items”.

Subsec. (c). Pub. L. 115–232, §836(e)(10)(B), in heading, substituted “Commercial Products or Commercial Services” for “Commercial Items” and, in introductory provisions, substituted “commercial product or commercial service” for “commercial item”.

2017—Subsec. (d)(4) to (10). Pub. L. 115–91 added pars. (4) to (10).

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

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–232 effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115–232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

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.

UPDATED GUIDANCE REGARDING BIENNIAL CORE REPORT

Pub. L. 115–91, div. A, title III, §338, Dec. 12, 2017, 131 Stat. 1360, provided that: “To ensure that the biennial core reporting procedures of the Department of Defense align with the requirements of section 2464 of title 10, United States Code, and that each reporting agency provides accurate and complete information, the Secretary of Defense shall direct the Under Secretary of Defense for Acquisition, Technology and Logistics to update the Department of Defense Guidance, in particular Department of Defense Instruction 4151.20, to require future biennial core reports include instructions to the reporting agencies on how to—

- “(1) report additional depot workload performed that has not been identified as a core requirement;
- “(2) accurately capture inter-service workload;
- “(3) calculate shortfalls; and
- “(4) estimate the cost of planned workload.”

§ 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 com-

monwealths, 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, which provided authority, during Operation Enduring Freedom and the subsequent 180 days, to use defense funds to contract with local and state governments to perform security functions at military installations, was repealed by Pub. L. 115-232, div. A, title VIII, §812(b)(53), Aug. 13, 2018, 132 Stat. 1850.

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 pursuant to section 1105 of title 31, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

(2) Each report required under paragraph (1) shall include as a separate item any expenditure covered by section 2474(f) of this title that was made during the fiscal year covered by the report and shall specify the amount and nature of each such expenditure.

(Added Pub. L. 100-456, div. A, title III, §326(a), Sept. 29, 1988, 102 Stat. 1955; amended Pub. L. 101-189, div. A, title III, §313, Nov. 29, 1989, 103 Stat. 1412; Pub. L. 102-190, div. A, title III, §314(a)(1), Dec. 5, 1991, 105 Stat. 1336; Pub. L. 102-484, div. A, title III, §352(a)-(c), Oct. 23, 1992,