

101-510, div. A, title IX, §921, Nov. 5, 1990, 104 Stat. 1627; Pub. L. 102-190, div. A, title III, §315(a), Dec. 5, 1991, 105 Stat. 1337; Pub. L. 103-160, div. A, title III, §370(c), Nov. 30, 1993, 107 Stat. 1634; Pub. L. 103-337, div. A, title III, §386(c), Oct. 5, 1994, 108 Stat. 2742, related to authority of military base commanders over contracting for commercial activities.

**§ 2469. Contracts to perform workloads previously performed by depot-level activities of the Department of Defense: requirement of competition**

(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense shall ensure that the performance of a depot-level maintenance and repair workload described in subsection (b) is not changed to performance by a contractor or by another depot-level activity of the Department of Defense unless the change is made using—

(1) merit-based selection procedures for competitions among all depot-level activities of the Department of Defense; or

(2) competitive procedures for competitions among private and public sector entities.

(b) SCOPE.—Except as provided in subsection (c), subsection (a) applies to any depot-level maintenance and repair workload that has a value of not less than \$3,000,000 (including the cost of labor and materials) and is being performed by a depot-level activity of the Department of Defense.

(c) EXCEPTION FOR PUBLIC-PRIVATE PARTNERSHIPS.—The requirements of subsection (a) may be waived in the case of a depot-level maintenance and repair workload that is performed at a Center of Industrial and Technical Excellence designated under subsection (a) of section 2474 of this title by a public-private partnership entered into under subsection (b) of such section consisting of a depot-level activity and a private entity.

(d) INAPPLICABILITY OF OMB CIRCULAR A-76.—Office of Management and Budget Circular A-76 (or any successor administrative regulation or policy) does not apply to a performance change to which subsection (a) applies.

(Added Pub. L. 102-484, div. A, title III, §353(a), Oct. 23, 1992, 106 Stat. 2378; amended Pub. L. 103-160, div. A, title III, §346, title XI, §1182(a)(7), Nov. 30, 1993, 107 Stat. 1625, 1771; Pub. L. 103-337, div. A, title III, §338, Oct. 5, 1994, 108 Stat. 2718; Pub. L. 104-106, div. A, title III, §311(f)(1), Feb. 10, 1996, 110 Stat. 248; Pub. L. 105-85, div. A, title III, §§355(b), 363, Nov. 18, 1997, 111 Stat. 1694, 1702; Pub. L. 106-65, div. A, title III, §334, Oct. 5, 1999, 113 Stat. 568; Pub. L. 108-136, div. A, title III, §333, Nov. 24, 2003, 117 Stat. 1442.)

AMENDMENTS

2003—Subsec. (b). Pub. L. 108-136, §333(1), substituted “Except as provided in subsection (c), subsection” for “Subsection”.

Subsecs. (c), (d). Pub. L. 108-136, §333(2), (3), added subsec. (c) and redesignated former subsec. (c) as (d).

1999—Subsec. (b). Pub. L. 106-65 inserted “(including the cost of labor and materials)” after “\$3,000,000”.

1997—Pub. L. 105-85, §363, repealed Pub. L. 104-106, §311(f)(1). See 1996 Amendment note below.

Subsecs. (a), (b). Pub. L. 105-85, §355(b), substituted “maintenance and repair” for “maintenance or repair”.

1996—Pub. L. 104-106, §311(f)(1), which directed repeal of this section, was repealed by Pub. L. 105-85, §363.

1994—Pub. L. 103-337 amended section generally. Prior to amendment, section read as follows:

“(a) REQUIREMENT FOR COMPETITION.—The Secretary of Defense or the Secretary of a military department may not change the performance of a depot-level maintenance workload that has a value of not less than \$3,000,000 and is being performed by a depot-level activity of the Department of Defense to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload.

“(b) INAPPLICABILITY OF OMB CIRCULAR A-76.—The use of Office of Management and Budget Circular A-76 shall not apply to a performance change under subsection (a).”

1993—Pub. L. 103-160, §346, amended section, as amended by Pub. L. 103-160, §1182(a)(7), (h), by designating existing provisions as subsec. (a), inserting heading, striking out “threshold” before “value”, substituting “to performance by a contractor unless the Secretary uses competitive procedures for the selection of the contractor to perform such workload” for “unless the Secretary uses competitive procedures to make the change”, and adding subsec. (b).

Pub. L. 103-160, §1182(a)(7), struck out “, prior to any such change,” after “Department of Defense unless”.

**[§ 2469a. Repealed. Pub. L. 107-314, div. A, title III, § 333(a), Dec. 2, 2002, 116 Stat. 2514]**

Section, added Pub. L. 105-85, div. A, title III, §359(a)(1), Nov. 18, 1997, 111 Stat. 1696; amended Pub. L. 106-65, div. A, title III, §335, title X, §1066(a)(20), Oct. 5, 1999, 113 Stat. 568, 771, related to use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at closed or realigned military installations.

**§ 2470. Depot-level activities of the Department of Defense: authority to compete for maintenance and repair workloads of other Federal agencies**

A depot-level activity of the Department of Defense shall be eligible to compete for the performance of any depot-level maintenance and repair workload of a Federal agency for which competitive procedures are used to select the entity to perform the workload.

(Added Pub. L. 103-337, div. A, title III, §335(a), Oct. 5, 1994, 108 Stat. 2716.)

**[§ 2471. Repealed. Pub. L. 106-398, § 1 [[div. A], title III, §341(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A-64]**

Section, added Pub. L. 103-337, div. A, title III, §336(a), Oct. 5, 1994, 108 Stat. 2717; amended Pub. L. 104-106, div. A, title XV, §1503(a)(26), Feb. 10, 1996, 110 Stat. 512; Pub. L. 105-85, div. A, title III, §361(b)(1), Nov. 18, 1997, 111 Stat. 1701, related to lease of excess depot-level equipment and facilities by persons outside the Department of Defense.

**§ 2472. Prohibition on management of depot employees by end strength**

The civilian employees of the Department of Defense, including the civilian employees of the military departments and the Defense Agencies, who perform, or are involved in the performance of, depot-level maintenance and repair workloads may not be managed on the basis of any constraint or limitation in terms of man years, end strength, full-time equivalent positions, or maximum number of employees. Such employees shall be managed solely on the basis of the