

**CHAPTER 146—CONTRACTING FOR PERFORMANCE OF CIVILIAN COMMERCIAL OR INDUSTRIAL TYPE FUNCTIONS**

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**AMENDMENTS**

2014—Pub. L. 113-291, div. A, title X, § 1060(a)(2)(B), Dec. 19, 2014, 128 Stat. 3502, struck out item 2462 “Reports on public-private competition”.

2013—Pub. L. 112-239, div. A, title III, § 322(b)(2)(B), Jan. 2, 2013, 126 Stat. 1695, substituted “Core logistics capabilities” for “Core depot-level maintenance and repair capabilities” in item 2464.

2011—Pub. L. 112-81, div. A, title III, § 327(b), Dec. 31, 2011, 125 Stat. 1368, substituted “Core depot-level maintenance and repair capabilities” for “Core logistics capabilities” in item 2464.

Pub. L. 111-383, div. A, title VIII, § 822(b), Jan. 7, 2011, 124 Stat. 4268, struck out item 2473 “Procurements from the small arms production industrial base”.

2008—Pub. L. 110-181, div. A, title III, §§ 322(d), 324(a)(2), Jan. 28, 2008, 122 Stat. 60, 61, added item 2463 and struck out item 2467 “Cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison”.

2006—Pub. L. 109-364, div. A, title III, § 332(b), Oct. 17, 2006, 120 Stat. 2150, added item 2476.

Pub. L. 109-163, div. A, title III, § 341(g)(4), Jan. 6, 2006, 119 Stat. 3200, substituted “Public-private competition required” for “Commercial or industrial type functions: required studies and reports” in item 2461, “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 item 2461a, and “Reports on public-private competition” for “Contracting for certain supplies and services required when cost is lower” in item 2462 and struck out item 2463 “Collection and retention of cost information data on converted services and functions”.

2004—Pub. L. 108-375, div. A, title III, § 322(b)(2), Oct. 28, 2004, 118 Stat. 1846, substituted “Prohibition on management of depot employees by end strength” for “Management of depot employees” in item 2472.

2002—Pub. L. 107-314, div. A, title III, § 333(b), Dec. 2, 2002, 116 Stat. 2514, struck out item 2469a “Use of competitive procedures in contracting for performance of depot-level maintenance and repair workloads formerly performed at certain military installations”.

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.

#### REQUIREMENT FOR MILITARY DEPARTMENT INTER-SERVICE DEPOT MAINTENANCE

Pub. L. 116-92, div. A, title III, §358, Dec. 20, 2019, 133 Stat. 1323, provided that:

“(a) **JOINT PROCESS FOR TECHNICAL COMPLIANCE AND QUALITY CONTROL.**—If the Secretary of a military department transfers any maintenance action on a platform to a depot under the jurisdiction of the Secretary of another military department, the two Secretaries shall develop and implement a process to ensure the technical compliance and quality control for the work performed.

“(b) **REQUIREMENTS.**—A process developed under subsection (a) shall include the following requirements—

“(1) The Secretary of the military department with jurisdiction over the depot to which the maintenance action is transferred shall—

“(A) ensure that the technical specifications, requirements, and standards for work to be performed are provided to such action or depot; and

“(B) implement procedures to ensure that completed work complies with such specifications, requirements and standards.

“(2) The Secretary who transfers the maintenance activity or depot shall ensure that—

“(A) the technical specifications and requirements are clearly understood; and

“(B) the work performed is completed to the technical specifications, requirements, and standards prescribed under paragraph (1), and that the Secretary of the military department with jurisdiction over the depot is informed of any shortcoming or discrepancy.

“(c) **REPORTS.**—Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Under

Secretary of Defense for Acquisition and Sustainment shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report containing a certification that sufficient policy and procedures are in place to ensure quality control when the depot or maintenance activities of one military department support another. The report shall include a description of known shortfalls in existing policies and procedures and actions the Department of Defense is taking to address such shortfalls.”

#### § 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;

(F) requires continued performance of the function by Department of Defense civilian employees unless the difference in the cost of performance of the function by a contractor compared to the cost of performance of the function by Department of Defense civilian employees would, over all performance periods required by the solicitation, be equal to or exceed the lesser of—

(i) 10 percent of the personnel-related costs for performance of that function in the agency tender; or

(ii) \$10,000,000;

(G) requires that the contractor shall not receive an advantage for a proposal that would reduce costs for the Department of Defense by—

(i) not making an employer-sponsored health insurance plan (or payment that