

Pub. L. 111-383, div. A, title III, § 353, Jan. 7, 2011, 124 Stat. 4194; Pub. L. 112-81, div. A, title IX, § 938, Dec. 31, 2011, 125 Stat. 1547.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 109-163, div. A, title III, § 343, Jan. 6, 2006, 119 Stat. 3200, which was set out as a note under section 2461 of this title, prior to repeal by Pub. L. 110-181, div. A, title III, § 324(c), Jan. 28, 2008, 122 Stat. 61.

A prior section 2463, 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. 101-510, div. A, title XIII, § 1301(14), Nov. 5, 1990, 104 Stat. 1668; Pub. L. 105-85, div. A, title III, § 385(a), Nov. 18, 1997, 111 Stat. 1712, related to collection and retention of cost information data on the conversion of services and functions of the Department of Defense to or from contractor performance, prior to repeal by Pub. L. 109-163, div. A, title III, § 341(f), Jan. 6, 2006, 119 Stat. 3199.

AMENDMENTS

2011—Subsec. (b)(1). Pub. L. 112-81, § 938(1), added subpars. (A), (B), and (D), redesignated former subpars. (B), (C), and (D) as (C), (E), and (F), and struck out former subpar. (A) which read as follows: “has been performed by Department of Defense civilian employees at any time during the previous 10 years;”.

Subsec. (d)(1). Pub. L. 111-383 struck out “under the National Security Personnel System, as established” before “pursuant to section 9902 of title 5”.

Subsecs. (e), (f). Pub. L. 112-81, § 938(3), added subsecs. (e) and (f). Former subsec. (e) redesignated (g).

Subsec. (g). Pub. L. 112-81, § 938(4), substituted “this section:” for “this section the term ‘functions closely associated with inherently governmental functions’ has the meaning given that term in section 2383(b)(3) of this title.” and added pars. (1) to (3).

Pub. L. 112-81, § 938(2), redesignated subsec. (e) as (g).

PROHIBITION ON ESTABLISHING GOALS OR QUOTAS FOR CONVERSION OF FUNCTIONS TO PERFORMANCE BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES

Pub. L. 111-383, div. A, title III, § 323, Jan. 7, 2011, 124 Stat. 4184, provided that:

“(a) PROHIBITION.—The Secretary of Defense may not establish, apply, or enforce any numerical goal, target, or quota for the conversion of Department of Defense functions to performance by Department of Defense civilian employees, unless such goal, target, or quota is based on considered research and analysis, as required by section 235, 2330a, or 2463 of title 10, United States Code.

“(b) DECISIONS TO INSOURCE.—In deciding which functions should be converted to performance by Department of Defense civilian employees pursuant to section 2463 of title 10, United States Code, the Secretary of Defense shall use the costing methodology outlined in the Directive-Type Memorandum 09-007 (Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support) or any successor guidance for the determination of costs when costs are the sole basis for the decision. The Secretary of a military department may issue supplemental guidance to assist in such decisions affecting functions of that military department.

“(c) REPORTS.—

“(1) REPORT TO CONGRESS.—Not later than March 31, 2011, the Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report on the decisions with respect to the conversion of functions to performance by Department of Defense civilian employees made during fiscal year 2010. Such report shall identify, for each such decision—

“(A) the agency or service of the Department involved in the decision;

“(B) the basis and rationale for the decision; and

“(C) the number of contractor employees whose functions were converted to performance by Department of Defense civilian employees.

“(2) COMPTROLLER GENERAL REVIEW.—Not later than 120 days after the submittal of the report under paragraph (1), the Comptroller General of the United States shall submit to the congressional defense committees an assessment of the report.

“(d) CONSTRUCTION.—Nothing in this section shall be construed—

“(1) to preclude the Secretary of Defense from establishing, applying, and enforcing goals for the conversion of acquisition functions and other critical functions to performance by Department of Defense civilian employees, where such goals are based on considered research and analysis; or

“(2) to require the Secretary of Defense to conduct a cost comparison before making a decision to convert any acquisition function or other critical function to performance by Department of Defense civilian employees, where factors other than cost serve as a basis for the Secretary’s decision.”

DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES

Pub. L. 110-181, div. A, title III, § 324(a)(3), Jan. 28, 2008, 122 Stat. 61, provided that: “The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act [Jan. 28, 2008].”

§ 2464. Core logistics capabilities

(a) NECESSITY FOR CORE LOGISTICS CAPABILITIES.—(1) It is essential for the national defense that the Department of Defense maintain a core logistics capability that is Government-owned and Government-operated (including Government personnel and Government-owned and Government-operated equipment and facilities) to ensure a ready and controlled source of technical competence and resources necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(2) The Secretary of Defense shall identify the core logistics capabilities described in paragraph (1) and the workload required to maintain those capabilities.

(3) The core logistics capabilities identified under paragraphs (1) and (2) shall include those capabilities that are necessary to maintain and repair the weapon systems and other military equipment (including mission-essential weapon systems or materiel not later than four years after achieving initial operational capability, but excluding systems and equipment under special access programs, nuclear aircraft carriers, and commercial products or commercial services described in paragraph (5)) that are identified by the Secretary, in consultation with the Chairman of the Joint Chiefs of Staff, as necessary to enable the armed forces to fulfill the strategic and contingency plans prepared by the Chairman of the Joint Chiefs of Staff under section 153(a) of this title.

(4) The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified under paragraphs (1), (2), and (3) at Government-owned, Government-operated facilities of the Department of Defense (including

Government-owned, Government-operated facilities of a military department) and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence in peacetime while preserving the surge capacity and reconstitution capabilities necessary to support fully the strategic and contingency plans referred to in paragraph (3).

(5) 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) that have been sold or leased in substantial quantities to the general public and are purchased without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(b) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a logistics capability identified by the Secretary under subsection (a)(2) may not be contracted for performance by non-Government personnel under the procedures 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 PRODUCTS OR COMMERCIAL SERVICES.—The first time that a weapon system or other item of military equipment described in subsection (a)(3) is determined to be a commercial product or commercial service 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 de-

termination. 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.

(4) Any workload shortfalls at any work breakdown structure category designated as a lower-level category pursuant to Department of Defense Instruction 4151.20, or any successor instruction.

(5) A description of any workload executed at a category designated as a first-level category pursuant to such Instruction, or any successor instruction, that could be used to mitigate shortfalls in similar categories.

(6) A description of any progress made on implementing mitigation plans developed pursuant to paragraph (3).

(7) A description of core capability requirements and corresponding workloads at the first level category.

(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.)

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 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 firefighting functions if the contract is—

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

(B) covers only the performance of firefighting 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),