

§ 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 re-engineering 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.)

Editorial Notes

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.

§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

(a) GUIDELINES REQUIRED.—(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.

(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.—The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that—

(1) is performed by a contractor and—

(A) is a critical function that—

(i) is necessary to maintain sufficient Government expertise and technical capabilities; or

(ii) entails operational risk associated with contractor performance;

(B) is an acquisition workforce function;

(C) is a function closely associated with the performance of an inherently governmental function;

(D) has been performed by Department of Defense civilian employees at any time during the previous 10-year period;

(E) has been performed pursuant to a contract awarded on a non-competitive basis; or

(F) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or

(2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by

Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

(c) **EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.**—The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A-76, or any other provision of law or regulation before—

(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;

(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or

(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

(d) **USE OF FLEXIBLE HIRING AUTHORITY.**—(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).

(2) The Secretary shall make use of the inventory required by section 4505(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

(e) **DETERMINATIONS RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.**—(1) Except as provided in paragraph (2), in determining whether a function should be converted to performance by Department of Defense civilian employees, the Secretary of Defense shall—

(A) develop methodology for determining costs based on the guidance outlined in the Directive-Type Memorandum 09-007 entitled “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 determination;

(B) take into consideration any supplemental guidance issued by the Secretary of a military department for determinations affecting functions of that military department; and

(C) ensure that the difference in the cost of performing the function by a contractor compared to the cost of performing the function by Department of Defense civilian employees would be equal to or exceed the lesser of—

- (i) 10 percent of the personnel-related costs for performance of that function; or
- (ii) \$10,000,000.

(2) Paragraph (1) shall not apply to any function that is inherently governmental or any function described in subparagraph (A), (B), or (C) of subsection (b)(1).

(f) **NOTIFICATION RELATING TO THE CONVERSION OF CERTAIN FUNCTIONS.**—The Secretary of Defense shall establish procedures for the timely notification of any contractor who performs a

function that the Secretary plans to convert to performance by Department of Defense civilian employees pursuant to subsection (a). The Secretary shall provide a copy of any such notification to the congressional defense committees.

(g) **DEFINITIONS.**—In this section:

(1) The term “functions closely associated with inherently governmental functions” has the meaning given that term in section 4508(b)(3) of this title.

(2) The term “acquisition function” has the meaning given that term under section 1721(a) of this title.

(3) The term “inherently governmental function” has the meaning given that term in the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note).

(Added Pub. L. 110-181, div. A, title III, §324(a)(1), Jan. 28, 2008, 122 Stat. 60; amended 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; Pub. L. 116-283, div. A, title XVIII, §1883(b)(2), Jan. 1, 2021, 134 Stat. 4294.)

Editorial Notes

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

2021—Subsec. (d)(2). Pub. L. 116-283 substituted “section 4505(c)” for “section 2330a(c)”.

Subsec. (g)(1). Pub. L. 116-283 substituted “section 4508(b)(3)” for “section 2383(b)(3)”.

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).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Amendment by Pub. L. 116-283 effective Jan. 1, 2022, with additional provisions for delayed implementation and applicability of existing law, see section 1801(d) of

Pub. L. 116-283, set out as a note preceding section 3001 of this title.

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, as amended by Pub. L. 117-81, div. A, title XVII, § 1702(b)(2), Dec. 27, 2021, 135 Stat. 2155, 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 2463, 3137 [sic, probably should refer to former section 235], or 4505 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