

“(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, 106 Stat. 2378; Pub. L. 103-337, div. A, title III, §332, Oct. 5, 1994, 108 Stat. 2715; Pub. L. 104-106, div. A, title III, §§311(f)(1), 312(b), Feb. 10, 1996, 110 Stat. 248, 250; Pub. L. 105-85, div. A, title III, §§357, 358, 363, Nov. 18, 1997, 111 Stat. 1695, 1702; Pub. L. 106-65, div. A, title III, §333, Oct. 5, 1999, 113 Stat. 567; Pub. L. 107-107, div. A, title III, §341, Dec. 28, 2001, 115 Stat. 1060; Pub. L. 108-136, div. A, title III, §332, Nov. 24, 2003, 117 Stat. 1442; Pub. L. 108-375, div. A, title III, §321, Oct. 28, 2004, 118 Stat. 1845; Pub. L. 109-364, div. A, title III, §331(b), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 111-84, div. A, title III, §329, Oct. 28, 2009, 123 Stat. 2256.)

#### Editorial Notes

##### AMENDMENTS

2009—Subsec. (d)(1). Pub. L. 111-84 substituted “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” for “April 1 of each year”.

2006—Subsec. (d). Pub. L. 109-364, §331(b)(2), struck out “and Review” after “Annual Report” in heading.

Subsec. (d)(2). Pub. L. 109-364, §331(b)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “Not later than 90 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General’s views on whether—

“(A) the Department of Defense complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

“(B) the expenditure projections for the current fiscal year and the ensuing fiscal year are reasonable.”

2004—Subsec. (d). Pub. L. 108-375 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

“(1) Not later than February 1 of each year, 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 were expended during the preceding two fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

“(2) Not later than April 1 of each year, 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 are projected to be expended during each of the next five fiscal years for performance of depot-level maintenance and repair workloads by the public and private sectors, as required by this section.

“(3) Not later than 60 days after the date on which the Secretary submits a report under this subsection, the Comptroller General shall submit to Congress the Comptroller General’s views on whether—

“(A) in the case of a report under paragraph (1), the Department of Defense has complied with the requirements of subsection (a) for the fiscal years covered by the report; and

“(B) in the case of a report under paragraph (2), the expenditure projections for future fiscal years are reasonable.”

2003—Subsecs. (d), (e). Pub. L. 108-136 redesignated subsec. (e) as (d) and struck out heading and text of former subsec. (d). Text read as follows: “Subsection (a) shall not apply with respect to the Sacramento Army Depot, Sacramento, California.”

2001—Subsecs. (b), (c). Pub. L. 107-107 added subsecs. (b) and (c) and struck out heading and text of former subsec. (c). Text read as follows: “The Secretary of the

military department concerned and, with respect to a Defense Agency, the Secretary of Defense may waive the applicability of subsection (a) for a fiscal year, to a particular workload, or to a particular depot-level activity if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.”

1999—Subsec. (e). Pub. L. 106-65 amended heading and text of subsec. (e) generally. Text read as follows:

“(1) Not later than February 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of the funds referred to in subsection (a) that were expended during the preceding fiscal year for performance of depot-level maintenance and repair workloads by the public and private sectors as required by section 2466 of this title.

“(2) Not later than 90 days after the date on which the Secretary submits the annual report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General’s views on whether the Department of Defense has complied with the requirements of subsection (a) for the fiscal year covered by the report.”

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

Subsec. (a). Pub. L. 105-85, §357, substituted “50 percent” for “40 percent”.

Subsec. (e). Pub. L. 105-85, §358, reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Not later than January 15, 1995, the Secretary of Defense shall submit to Congress a report identifying, for each military department and Defense Agency, the percentage of funds referred to in subsection (a) that was used during fiscal year 1994 to contract for the performance by non-Federal Government personnel of depot-level maintenance and repair workload.”

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

Subsec. (b). Pub. L. 104-106, §312(b), redesignated subsec. (b) as section 2472(a) of this title.

1994—Subsec. (a). Pub. L. 103-337, §332(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows:

“(1) Except as provided in paragraph (2), the Secretary of a military department and, with respect to a Defense Agency, the Secretary of Defense, may not contract for the performance by non-Federal Government personnel of more than 40 percent of the depot-level maintenance workload for the military department or the Defense Agency.

“(2) The Secretary of the Army shall provide for the performance by employees of the Department of Defense of not less than the following percentages of Army aviation depot-level maintenance workload:

“(A) For fiscal year 1993, 50 percent.

“(B) For fiscal year 1994, 55 percent.

“(C) For fiscal year 1995, 60 percent.”

Subsec. (b). Pub. L. 103-337, §332(b), inserted “and repair” after “maintenance” in two places.

Subsec. (e). Pub. L. 103-337, §332(c), amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows:

“(1) Not later than January 15, 1992, and January 15, 1993, the Secretary of the Army and the Secretary of the Air Force shall jointly submit to Congress a report describing the progress during the preceding fiscal year to achieve and maintain the percentage of depot-level maintenance required to be performed by employees of the Department of Defense pursuant to subsection (a).

“(2) Not later than January 15, 1994, the Secretary of each military department and the Secretary of Defense, with respect to the Defense Agencies, shall jointly submit to Congress a report described in paragraph (1).”

1992—Subsec. (a). Pub. L. 102-484, §352(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “PERCENTAGE LIMITATION.—Not less than 60 percent of the funds available for each fiscal

year for depot-level maintenance of materiel managed for the Department of the Army and the Department of the Air Force shall be used for the performance of such depot-level maintenance by employees of the Department of Defense.”

Subsec. (c). Pub. L. 102-484, §352(b), substituted “The Secretary of the military department concerned and, with respect to a Defense Agency, the Secretary of Defense” for “The Secretary of the Army, with respect to the Department of the Army, and the Secretary of the Air Force, with respect to the Department of the Air Force.”

Subsec. (e). Pub. L. 102-484, §352(c), designated existing provisions as par. (1) and added par. (2).

1991—Pub. L. 102-190 substituted section catchline for one which read “Prohibition on certain depot maintenance workload competitions” and amended text generally. Prior to amendment, text read as follows: “The Secretary of Defense shall prohibit the Secretary of the Army and the Secretary of the Air Force, in selecting an entity to perform any depot maintenance workload, from carrying out a competition for such selection—

“(1) between or among maintenance activities of the Department of the Army and the Department of the Air Force; or

“(2) between a maintenance activity of either such department and a private contractor.”

1989—Pub. L. 101-189, in introductory provisions, substituted “shall prohibit” for “may not require”, “Army and” for “Army or”, and “from carrying out” for “to carry out”.

## Statutory Notes and Related Subsidiaries

### CONGRESSIONAL FINDINGS

Pub. L. 103-337, div. A, title III, §331, Oct. 5, 1994, 108 Stat. 2715, provided that: “Congress makes the following findings:

“(1) By providing the Armed Forces with a critical capacity to respond to the needs of the Armed Forces for depot-level maintenance and repair of weapon systems and equipment, the depot-level maintenance and repair activities of the Department of Defense play an essential role in maintaining the readiness of the Armed Forces.

“(2) It is appropriate for the capability of the depot-level maintenance and repair activities of the Department of Defense to perform maintenance and repair of weapon systems and equipment to be based on policies that take into consideration the readiness, mobilization, and deployment requirements of the military departments.

“(3) It is appropriate for the management of employees of the depot-level maintenance and repair activities of the Department of Defense to be based on the amount of workload necessary to be performed by such activities to maintain the readiness of the weapon systems and equipment of the military departments and on the funds made available for the performance of such workload.”

### REUTILIZATION INITIATIVE FOR DEPOT-LEVEL ACTIVITIES

Pub. L. 103-337, div. A, title III, §337, Oct. 5, 1994, 108 Stat. 2717, provided that:

“(a) PROGRAM AUTHORIZED.—The Secretary of Defense shall conduct activities to encourage commercial firms to enter into partnerships with depot-level activities of the military departments for the purposes of—

“(1) demonstrating commercial uses of the depot-level activities that are related to the principal mission of the depot-level activities;

“(2) preserving employment and skills of employees currently employed by the depot-level activities or providing for the reemployment and retraining of employees who, as the result of the closure, realignment, or reduced in-house workload of such activities, may become unemployed; and

“(3) supporting the goals of other defense conversion, reinvestment, and transition assistance pro-

grams while also allowing the depot-level activities to remain in operation to continue to perform their defense readiness mission.

“(b) CONDITIONS.—The Secretary shall ensure that activities conducted under this section—

“(1) do not interfere with the closure or realignment of a depot-level activity of the military departments under a base closure law; and

“(2) do not adversely affect the readiness or primary mission of a participating depot-level activity.”

#### CONTINUATION OF PERCENTAGE LIMITATIONS ON PERFORMANCE OF DEPOT-LEVEL MAINTENANCE

Pub. L. 103-160, div. A, title III, §343, Nov. 30, 1993, 107 Stat. 1624, provided that: “The Secretary of Defense shall ensure that the percentage limitations applicable to the depot-level maintenance workload performed by non-Federal Government personnel set forth in section 2466 of title 10, United States Code, are adhered to.”

#### EFFECT OF 1992 AMENDMENTS ON EXISTING CONTRACTS

Pub. L. 102-484, div. A, title III, §352(d), Oct. 23, 1992, 106 Stat. 2378, provided that: “The Secretary of a military department and the Secretary of Defense, with respect to the Defense Agencies, may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Oct. 23, 1992] in order to comply with the requirements of section 2466(a) of title 10, United States Code, as amended by subsection (a).”

#### PROHIBITION ON CANCELLATION OF CONTRACTS IN EFFECT ON DECEMBER 5, 1991

Pub. L. 102-190, div. A, title III, §314(a)(3), Dec. 5, 1991, 105 Stat. 1337, provided that: “The Secretary of the Army and the Secretary of the Air Force may not cancel a depot-level maintenance contract in effect on the date of the enactment of this Act [Dec. 5, 1991] in order to comply with the requirements of section 2466(a) of such title, as amended by subsection (a).”

#### COMPETITION PILOT PROGRAM; REVIEW AND REPORT

Pub. L. 102-190, div. A, title III, §314(b)-(d), Dec. 5, 1991, 105 Stat. 1337, as amended by Pub. L. 102-484, div. A, title III, §354, Oct. 23, 1992, 106 Stat. 2379, required the Comptroller General to submit to Congress, not later than Feb. 1, 1994, an evaluation of all depot maintenance workloads of the Department of Defense that were performed by an entity selected pursuant to competitive procedures, and required the Secretary of Defense to submit to Congress, not later than Dec. 1, 1993, a report containing a five-year strategy of the Department of Defense to use competitive procedures for the selection of entities to perform depot maintenance workloads and describing the cost savings anticipated.

#### PILOT PROGRAM FOR DEPOT MAINTENANCE WORKLOAD COMPETITION

Pub. L. 101-510, div. A, title IX, §922, Nov. 5, 1990, 104 Stat. 1627, authorized a depot maintenance workload competition pilot program during fiscal year 1991, outlined elements of the program, and provided for a report not later than Mar. 31, 1992, to congressional defense committees, prior to repeal by Pub. L. 102-190, div. A, title III, §314(b)(2), Dec. 5, 1991, 105 Stat. 1337.

### **[§ 2467. Repealed. Pub. L. 110-181, div. A, title III, § 322(b)(1), Jan. 28, 2008, 122 Stat. 59]**

Section, added Pub. L. 100-456, div. A, title III, §331(a), Sept. 29, 1988, 102 Stat. 1957; amended Pub. L. 106-65, div. A, title III, §342(a), (b)(1), Oct. 5, 1999, 113 Stat. 569; Pub. L. 107-107, div. A, title X, §1048(a)(22), Dec. 28, 2001, 115 Stat. 1224, related to cost comparisons: inclusion of retirement costs; consultation with employees; waiver of comparison.

### **[§ 2468. Repealed. Pub. L. 107-107, div. A, title X, § 1048(e)(10)(A), Dec. 28, 2001, 115 Stat. 1228]**

Section, added Pub. L. 101-189, div. A, title XI, §1131(a)(1), Nov. 29, 1989, 103 Stat. 1560; amended Pub. L.

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.)

#### Editorial Notes

##### 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”.