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 depot-level maintenance and repair capabilities

(a) NECESSITY FOR CORE DEPOT-LEVEL MAINTENANCE AND REPAIR CAPABILITIES.—(1) It is essential for national security that the Department of Defense maintain a core depot-level maintenance and repair capability, as defined by this title, in support of mission-essential weapon systems or items of military equipment needed to directly support combatant command operational requirements and enable the armed forces to execute the strategic, contingency, and emergency plans prepared by the Department of Defense, as required under section 153(a) of this title.

(2) This core depot-level maintenance and repair capability shall be Government-owned and Government-operated, including the use of Government personnel and Government-owned and Government-operated equipment and facilities, throughout the lifecycle of the weapon system or item of military equipment involved 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.

(3)(A) Except as provided in subsection (c), the Secretary of Defense shall identify and establish the core depot-level maintenance and repair capabilities and capacity required in paragraph (1).

(B) Core depot-level maintenance and repair capabilities and capacity, including the facilities, equipment, associated logistics capabilities, technical data, and trained personnel, shall be established not later than four years after a weapon system or item of military equipment achieves initial operational capability or is fielded in support of operations.

(4) The Secretary of Defense shall assign Government-owned and Government-operated depot-level maintenance and repair facilities of the Department of Defense sufficient workload to ensure cost efficiency and technical competence in peacetime, while preserving the ability to

provide an effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements.

(b) WAIVER AUTHORITY.—(1) The Secretary of Defense may waive the requirement in subsection (a)(3) if the Secretary determines that—

(A) the weapon system or item of military equipment is not an enduring element of the national defense strategy;

(B) in the case of nuclear aircraft carrier refueling, fulfilling the requirement is not economically feasible; or

(C) it is in the best interest of national security.

(2) The Secretary of a military department may waive the requirement in subsection (a)(3) for special access programs if such a waiver is determined to be in the best interest of the United States.

(3) The determination to waive requirements in accordance with paragraph (1) or (2) shall be documented and notification submitted to Congress with justification for the waiver within 30 days of issuance.

(c) APPLICABILITY TO COMMERCIAL ITEMS.—(1) The requirement in subsection (a)(3) shall not apply to items determined to be commercial items.

(2) The first time a weapon system or other item of military equipment described in subsection (a) is determined to be a commercial item for the purposes of the exception under subsection (c), the Secretary of Defense shall submit to Congress a notification of the determination, together with the justification for the determination. The justification for the determination shall include, at a minimum, the following:

(A) The estimated percentage of commonality of parts of the version of the item that is sold or leased in the commercial marketplace and the version of the item to be purchased by the Department of Defense.

(B) The value of any unique support and test equipment and tools needed to support the military requirements if the item were maintained by the Department of Defense.

(C) A comparison of the estimated life-cycle depot-level maintenance and repair support costs that would be incurred by the Government if the item were maintained by the private sector with the estimated life-cycle depot-level maintenance support costs that would be incurred by the Government if the item were maintained by the Department of Defense.

(3) In this subsection, the term ''commercial item'' means an end-item, assembly, subassembly, or part sold or leased in substantial quantities to the general public and purchased by the Department of Defense without modification in the same form that they are sold in the commercial marketplace, or with minor modifications to meet Federal Government requirements.

(d) LIMITATION ON CONTRACTING.—(1) Except as provided in paragraph (2), performance of workload needed to maintain a core depot-level maintenance and repair capability identified by the Secretary under subsection (a)(3) 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 depot-level maintenance and repair 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.

(e) BIENNIAL CORE REPORT.—Not later than April 1 on 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 subsequent fiscal year 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 the shortfall and a plan either to correct, or mitigate, the effects of the shortfall.

(f) ANNUAL CORE REPORT.—In 2013 and each year thereafter, not later than 60 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), for the fiscal year preceding the fiscal year during which the report is submitted, each of the following:

(1) The core depot-level maintenance and repair capability requirements identified in subsection (a)(3).

(2) The workload required to cost-effectively support such requirements.

(3) To the maximum extent practicable, the additional workload beyond the workloads identified under subsection (a)(4) needed to ensure that not more than 50 percent of the nonexempt depot maintenance funding is expended for performance by non-Federal governmental personnel in accordance with section 2466 of this title.

(4) The allocation of workload for each Center of Industrial and Technical Excellence as designated in accordance with section 2474 of this title.

(5) The depot-level maintenance and repair capital investments required to be made in order to ensure compliance with subsection (a)(3) by not later than four years after achieving initial operational capacity.

(6) The outcome of a reassessment of continuation of a waiver granted under subsection (b).

(g) COMPTROLLER GENERAL REVIEW.—The Comptroller General shall review each report required under subsections (e) and (f) for completeness and compliance and provide findings and recommendations to the congressional defense committees not later than 60 days after the report is submitted to Congress.

(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.)

HISTORICAL AND REVISION NOTES

Section is based on Pub. L. 98–525, title III, § 307, Oct. 19, 1984, 98 Stat. 2514, as amended by Pub. L. 99–145, title XII, § 1231(f), Nov. 8, 1985, 99 Stat. 733.

AMENDMENTS

2011—Pub. L. 112–81 amended section generally. Prior to amendment, section related to core logistics capabilities.

1999—Subsec. (b)(3)(A). Pub. L. 106–65 substituted ''and the Committee on Armed Services'' for ''and the Committee on National Security''.

1998—Subsec. (c). Pub. L. 105–261 added subsec. (c).

1997—Pub. L. 105–85 substituted ''capabilities'' for ''functions'' in section catchline and amended text generally. Prior to amendment, text related to necessity for core logistics capabilities and restricted contracting out of certain logistics activities and functions of the Department of Defense to non-Government personnel.

1996—Subsec. (b)(3), (4). Pub. L. 104–106 added par. (3) and struck out former pars. (3) and (4) which read as follows:

''(3) A waiver under paragraph (2) may not take effect until—

''(A) the Secretary submits a report on the waiver to the Committees on Armed Services and the Committees on Appropriations of the Senate and House of Representatives; and

''(B) a period of 20 days of continuous session of Congress or 40 calendar days has passed after the receipt of the report by those committees.

''(4) For purposes of paragraph (3)(B), the continuity of a session of Congress is broken only by an adjournment sine die, and 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 such 20-day period.''

1989—Subsec. (b)(3)(A). Pub. L. 101–189 substituted ''Committees on Appropriations'' for ''Committee on Appropriations''.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–261, div. A, title III, § 343(b), Oct. 17, 1998, 112 Stat. 1976, provided that: ''Subsection (c) of section 2464 of title 10, United States Code (as added by subsection (a)), shall apply with respect to determinations made after the date of the enactment of this Act [Oct. 17, 1998].''

CONDITIONS ON EXPANSION OF FUNCTIONS PERFORMED UNDER PRIME VENDOR CONTRACTS FOR DEPOT-LEVEL MAINTENANCE AND REPAIR

Pub. L. 105–261, div. A, title III, § 346, Oct. 17, 1998, 112 Stat. 1979, as amended by Pub. L. 106–65, div. A, title III, § 336, Oct. 5, 1999, 113 Stat. 568, prohibited the Secretary of Defense or of a military department from entering into a prime vendor contract for depot-level maintenance and repair of certain military equipment before completing reporting requirements, prior to repeal by Pub. L. 111–383, div. A, title III, § 322, Jan. 7, 2011, 124 Stat. 4184.

POLICY REGARDING PERFORMANCE OF DEPOT-LEVEL MAINTENANCE AND REPAIR FOR DEPARTMENT OF DEFENSE

Pub. L. 104–106, div. A, title III, § 311, Feb. 10, 1996, 110 Stat. 246, as amended by Pub. L. 105–85, div. A, title III, § 363, Nov. 18, 1997, 111 Stat. 1702, required the Secretary of Defense, not later than Mar. 31, 1996, to develop and submit to Congress a comprehensive policy on the performance of depot-level maintenance and repair for the Department of Defense that maintains the capability described in this section and to submit to Congress a report on the depot-level maintenance and repair workload of the Department of Defense and required the Comptroller General to transmit to Congress reports containing a detailed analysis of the Secretary's proposed policy and report.

## § 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