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[Home](#) [Search](#) [USCprelim](#) [Download](#) [Classification](#) [Codification](#) [Popular Names](#) [Table III](#) [Other Tables](#) [About](#)
[Currency](#)



Go to 1st query term(s)

-CITE-

10 USC Sec. 2474

01/03/2012 (112-90)

-EXPCITE-

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART IV - SERVICE, SUPPLY, AND PROCUREMENT

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

-HEAD-

Sec. 2474. Centers of Industrial and Technical Excellence:

designation; public-private partnerships

-STATUTE-

(a) Designation. - (1) The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, shall designate each depot-level activity or military arsenal facility of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note)) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2) The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best-business practices at their Centers of Industrial and

Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base (as defined in section 2500(1) of this title).

(3) The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

(b) Public-Private Partnerships. - (1) To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center to enter into public-private cooperative arrangements (in this section referred to as a "public-private partnership") to provide for any of the following:

(A) For employees of the Center, private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-level maintenance and repair work that involves one or more core competencies of the Center.

(B) For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center that are not fully utilized

for a military department's own production or maintenance requirements.

(2) The objectives for exercising the authority provided in paragraph (1) are as follows:

(A) To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence.

(B) To reduce or eliminate the cost of ownership of a Center by the Department of Defense in such areas of responsibility as operations and maintenance and environmental remediation.

(C) To reduce the cost of products of the Department of Defense produced or maintained at a Center.

(D) To leverage private sector investment in -

(i) such efforts as plant and equipment recapitalization for a Center; and

(ii) the promotion of the undertaking of commercial business ventures at a Center.

(E) To foster cooperation between the armed forces and private industry.

(3) If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 4555 of this title, to facilitate the establishment of public-private partnerships and the achievement of the objectives set forth in paragraph (2).

(c) Private Sector Use of Excess Capacity. - Any facilities or equipment of a Center of Industrial and Technical Excellence made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use

of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

(d) Crediting of Amounts for Performance. - Amounts received by a Center for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work.

Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) (!1) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

(e) Availability of Excess Equipment to Private-Sector Partners. - Equipment or facilities of a Center of Industrial and Technical Excellence may be made available for use by a private-sector entity under this section only if -

(1) the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center in a Defense Agency, by the Secretary of Defense; and

(2) the private-sector entity agrees -

(A) to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

(B) to hold harmless and indemnify the United States from -

(i) any claim for damages or injury to any person or

property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563(c)(3) of this title; and

(ii) any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

(f) Exclusion of Certain Expenditures From Percentage Limitation.

- Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

(g) Construction of Provision. - Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.

-SOURCE-

(Added Pub. L. 105-85, div. A, title III, Sec. 361(a)(1), Nov. 18, 1997, 111 Stat. 1700; amended Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(a)-(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A-61 to 1654A-63; Pub. L. 107-107, div. A, title III, Secs. 342, 343(b), Dec. 28, 2001, 115 Stat. 1060, 1061; Pub. L. 107-314, div. A, title III, Sec. 334, Dec. 2, 2002, 116 Stat. 2514; Pub. L. 108-375, div. A, title III, Sec. 323, title X, Sec. 1084(d)(20), Oct. 28, 2004, 118 Stat. 1846, 2062; Pub. L. 109-364, div. A, title III,

Sec. 331(a), Oct. 17, 2006, 120 Stat. 2149; Pub. L. 112-81, div. A, title III, Sec. 322, Dec. 31, 2011, 125 Stat. 1362.)

-REFTEXT-

REFERENCES IN TEXT

Subsection (d) of section 2667 of this title, referred to in subsec. (d), was redesignated subsec. (e) and a new subsec. (d) was added by Pub. L. 109-364, div. A, title VI, Sec. 662(b), Oct. 17, 2006, 120 Stat. 2263.

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AMENDMENTS

2011 - Subsec. (a)(1). Pub. L. 112-81 inserted "or military arsenal facility" after "depot-level activity".

2006 - Subsec. (f). Pub. L. 109-364 struck out "(1)" before "Amounts", "entered into during fiscal years 2003 through 2009" before "shall not be counted", and par. (2) which read as follows: "All funds covered by paragraph (1) shall be included as a separate item in the reports required under paragraphs (1), (2), and (3) of section 2466(d) of this title."

2004 - Subsec. (f)(1). Pub. L. 108-375, Sec. 323, substituted "through 2009" for "through 2006".

Subsec. (f)(2). Pub. L. 108-375, Sec. 1084(d)(20), substituted "section 2466(d)" for "section 2466(e)".

2002 - Subsec. (f)(1). Pub. L. 107-314, Sec. 334(1), substituted "Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract entered into during fiscal years 2003 through 2006" for "Amounts expended out of funds described in paragraph (2) for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical

Excellence".

Subsec. (f) (2), (3). Pub. L. 107-314, Sec. 334(2), (3), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: "The funds referred to in paragraph (1) are funds available to the military departments and Defense Agencies for depot-level maintenance and repair workloads for fiscal years 2002 through 2005."

2001 - Subsec. (e) (2) (B) (i). Pub. L. 107-107, Sec. 343(b), substituted "under the circumstances described in section 2563(c) (3) of this title" for "in a case of willful conduct or gross negligence".

Subsecs. (f), (g). Pub. L. 107-107, Sec. 342, added subsec. (f) and redesignated former subsec. (f) as (g).

2000 - Subsec. (a) (1). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(a) (1)], substituted "The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency," for "The Secretary of Defense" and "of the designee" for "of the activity".

Subsec. (a) (2). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(a) (2)], inserted "of Defense" after "The Secretary" and substituted "Centers of Industrial and Technical Excellence" for "depot-level activities".

Subsec. (a) (3). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(a) (3)], substituted "operations at Centers of Industrial and Technical Excellence" for "depot-level operations", "by the Centers" for "by depot-level activities", and "of the Centers" for "of such activities".

Subsec. (b). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(b)], amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "The Secretary of Defense shall enable Centers of Industrial and Technical Excellence to enter into

public-private cooperative arrangements for the performance of depot-level maintenance and repair at such Centers and shall encourage the use of such arrangements to maximize the utilization of the capacity at such Centers. A public-private cooperative arrangement under this subsection shall be known as a 'public-private partnership'."

Subsec. (c). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(c)(3)], added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(d)], inserted at end "Consideration in the form of rental payments or (notwithstanding section 3302(b) of title 31) in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667(d) of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located."

Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(c)(1), (2)], redesignated subsec. (c) as (d) and struck out heading and text of former subsec. (d). Text read as follows: "The policy required under subsection (a) shall include measures to enable a private sector entity that enters into a partnership arrangement under subsection (b) or leases excess equipment and facilities at a Center of Industrial and Technical Excellence pursuant to section 2471 of this title to perform additional work at the Center, subject to the limitations outlined in subsection (b) of such section, outside of the types of work normally assigned to the Center."

Subsecs. (e), (f). Pub. L. 106-398, Sec. 1 [[div. A], title III, Sec. 341(e)], added subsecs. (e) and (f).

REPORTING REQUIREMENT

Pub. L. 105-85, div. A, title III, Sec. 361(c), Nov. 18, 1997, 111 Stat. 1701, provided that, not later than Mar. 1, 1999, the Secretary of Defense was to submit to Congress a report on the policies established by the Secretary pursuant to this section to implement the requirements of this section.

-FOOTNOTE-

(1) See References in Text note below.



[Home](#) [Search](#) [USCprelim](#) [Download](#) [Classification](#) [Codification](#) [Popular Names](#) [Table III](#) [Other Tables](#) [About Currency](#)

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