



*Office of Secretary of Defense  
Materiel Readiness & Maintenance Policy*

---



**It's the Law –  
Title 10 for Maintainers  
(Depot Focus)**

*Gregg Fogarty*

*OSD MR&MP*

*November 13, 2007*



# Outline

---



- **Definition of Depot Maintenance**
- **Core Logistics**
- **The \$3 Million Rule**
- **Prohibition on Management by End Strength**
- **The 50 Percent Limitation on Contracting for Depot Maintenance**
- **Partnering Provisions**
- **Minimal Capital Investment**



# Definition of Depot-Level Maintenance & Repair 10 USC 2460

---



- **Materiel maintenance or repair requiring overhaul, upgrading or rebuilding of parts, assemblies, or subassemblies**
- **Includes**
  - **Testing & reclamation**
  - **Software maintenance**
  - **Interim contractor support, contractor logistics support, & similar contractor support (if considered a depot service)**
- **Regardless of the source of funds**
- **Regardless of the location performed**



# Definition of Depot-Level Maintenance and Repair 10 USC 2460(cont)

---



## ➤ Exceptions

- Procurement of major modifications or upgrades designed to improve performance
- Nuclear refueling of an aircraft carrier
- Procurement of parts for safety modification
  - However, does include installation of safety modifications



# Core Logistics Capabilities 10 USC 2464



- **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**
- **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**



# Core Logistics Capabilities 10 USC 2464(cont)

---



- **The Secretary of Defense shall identify the core logistics capabilities described ... and the workload required to maintain those capabilities**
- **The Secretary of Defense shall require the performance of core logistics workloads necessary to maintain the core logistics capabilities identified**
  - **at Government-owned, Government-operated facilities of the DoD (including Government-owned, Government-operated facilities of a military department)**
  - **and shall assign such facilities sufficient workload to ensure cost efficiency and technical competence**



# Core Logistics Capabilities 10 USC 2464(cont)



- **When: Capability must be established within four years of initial operating capability**
- **Core Exceptions-**
  - **Special Access Programs**
  - **Nuclear Aircraft Carriers**
  - **Commercial Items (justified and reported to Congress)**
- **Workloads needed to meet core capabilities not subject to OMB Circular A-76**
  - **SecDef waiver only in the case when workload is no longer required for national defense reasons**



# Requirement for Competition

## “The \$3 Million Rule”

### 10 USC 2469

---



- **Cannot change location of performance for workloads at DoD depots valued at \$3 M or greater (including labor & materials) unless-**
  - **Merit based selection procedures for competitions among DoD depots**
  - **Competitive procedures for competition among public and private sector entities**
- **OMB Circular A-76 does not apply**
- **Waiver for work performed on a CITE for 10 USC 2474 partnership. (PL 108-136, sec 333)**





# Prohibition on Management by End Strength 10 USC 2472

---



- **Civilian employees of the DoD who perform depot-level maintenance & repair workloads**
  - **May not be managed on any constraint or limitation in terms of-**
    - **Man Years**
    - **End Strength**
    - **Full Time Equivalent Positions**
    - **Maximum Number of Employees**
- **Shall be managed solely on the basis of available workload and funds made available**



# Limitations on the Performance of Depot Level Maintenance of Materiel 10 USC 2466 (50-50)

---



- **Establishes the 50 percent limit on contracting for depot maintenance for each military department and Defense Agency**
  - **Funds not used for contract shall be used for the performance of workload by employees of the DoD**
- **Allows Secretary of Defense waiver based on reasons of national security (may not be delegated)**



---

# Rules of the Road for 50-50 Accounting



# Provisions of Law

---

- **Two governing statutes**
  - **10 USC 2466, Limitation on the performance of depot-level maintenance of materiel**
    - **Establishes the 50 percent limit on contracting for depot maintenance by a MILDEP or Defense Agency**
    - **Requires annual reporting to the Congress**
    - **Allows waiver by SECDEF based on reasons of national security (may not be delegated)**
  - **10 USC 2460, Definition of depot-level maintenance and repair**
    - **Defines what is included and what is excluded**



# Who Accounts?



- 
- **“... funds made available in a fiscal year to a military department or Defense Agency ...”**
  - **The military department, Defense Agency or other activity that gets the original appropriation from Congress is accountable for the limit and responsible for reporting**
  - **Interservice work is reported by the Principal, not the Service performing or contracting for the work**



# Is It Contract or Organic?



- **“... for the performance by non-Federal Government personnel ...”**
- **“... for the performance of depot-level maintenance and repair workload by employees of the Department of Defense”**
- **Who performs the touch labor determines how the work order or contract will be accounted**
- **Who does the touch labor determines how all the other factors of production will be accounted, either public or private**



# What Appropriations?

---



- **“... regardless of the sources of funds for maintenance or repair ...”**
- **All appropriations are included, not just designated depot maintenance O&M accounts**
- **It is the nature of the work as defined by 10 USC 2460, not the appropriation type, that governs**



# What Locations?



- **“ ... regardless of ... the location at which the maintenance or repair is performed”**
- **Work performed at non-depot locations is counted, depending on the nature of the work**
- **How the maintenance action is coded guides if it is to be included**
- **If it meets the 10 USC 2460 definition, count it**
- **Generally, all work performed in a depot is counted, as overflow from lower levels of maintenance is an inherent depot mission**





# What Is Included?

---



- **All factors of production are aggregated to include: labor, material, parts, indirect & overhead**
- **Software maintenance**
- **ICS, CLS, and similar contractor support (e.g., TSPR, PBL, flexible sustainment) to the extent that it is for performance of depot-level maintenance and repair**
- **Installation of modifications & upgrades, when a depot-level service**



# What Is Excluded?



- **Procurement of modifications & upgrades**
- **Nuclear refueling of aircraft carriers**
- **Remanufacturing wherein hulls, chassis, airframes and other major assemblies are utilized in new production**
  - **However, disassembly, reclamation, preparation, recovery, restoration and other depot maintenance actions accomplished prior to remanufacturing are included**



# Is There an Exception to 50-50 for Partnering?



- **10 USC 2474 has been amended creating an exemption to the 50 percent limitation in 10 USC 2466(a) on contracting for depot maintenance**
  - **Work performed at a CITE by a contractor pursuant to a partnership with funds made available for depot maintenance is not counted for purposes of applying the 50 percent limitation**
  - **Each exception shall include amount and nature as a separate item in the 50-50 report**



# Partnering Provisions (and other Sales & Leasing)

---



- **10 USC 2474: CITE & Partnering**
- **10 USC 2563: Sales of Articles & Services**
- **10 USC 2208(j): Sales of Mfg, Re-mfg & Eng Services**
- **10 USC 4543: Sales of Mfg Articles & Services by Army Arsenalns**
- **Other Sales Authorities**
- **10 USC 2667: Leasing of Non-Excess Real or Personal Property**
- **Federal Acquisition Regulation (FAR)**



# CITE & Partnerships

## 10 USC 2474



- **Service Secretaries required to designate Centers of Industrial & Technical Excellence (CITE)**
- **Head of CITE authority to enter into partnerships**
  - **Employees of Center, private industry, & others to perform work related to core competencies**
  - **Private industry & others to use facilities or equipment of the Center that are not fully utilized**
- **Private sector use of excess capacity**
  - **Facilities or equipment may be used by private industry to perform maintenance or produce goods**
  - **Formerly in 10 USC 2471 (now repealed)**



# CITE & Partnerships

## 10 USC 2474: (cont)



- **Crediting Amounts**
  - Credited to the appropriation or working capital fund
  - Consideration in the form of rental payments or other forms may be accepted for use of property
- **Private sector use of excess equipment**
  - No adverse impact on readiness
  - Must reimburse direct & indirect costs
  - Hold harmless provisions of 10 USC 2563 or in case of war or national emergency



# CITE & Partnerships

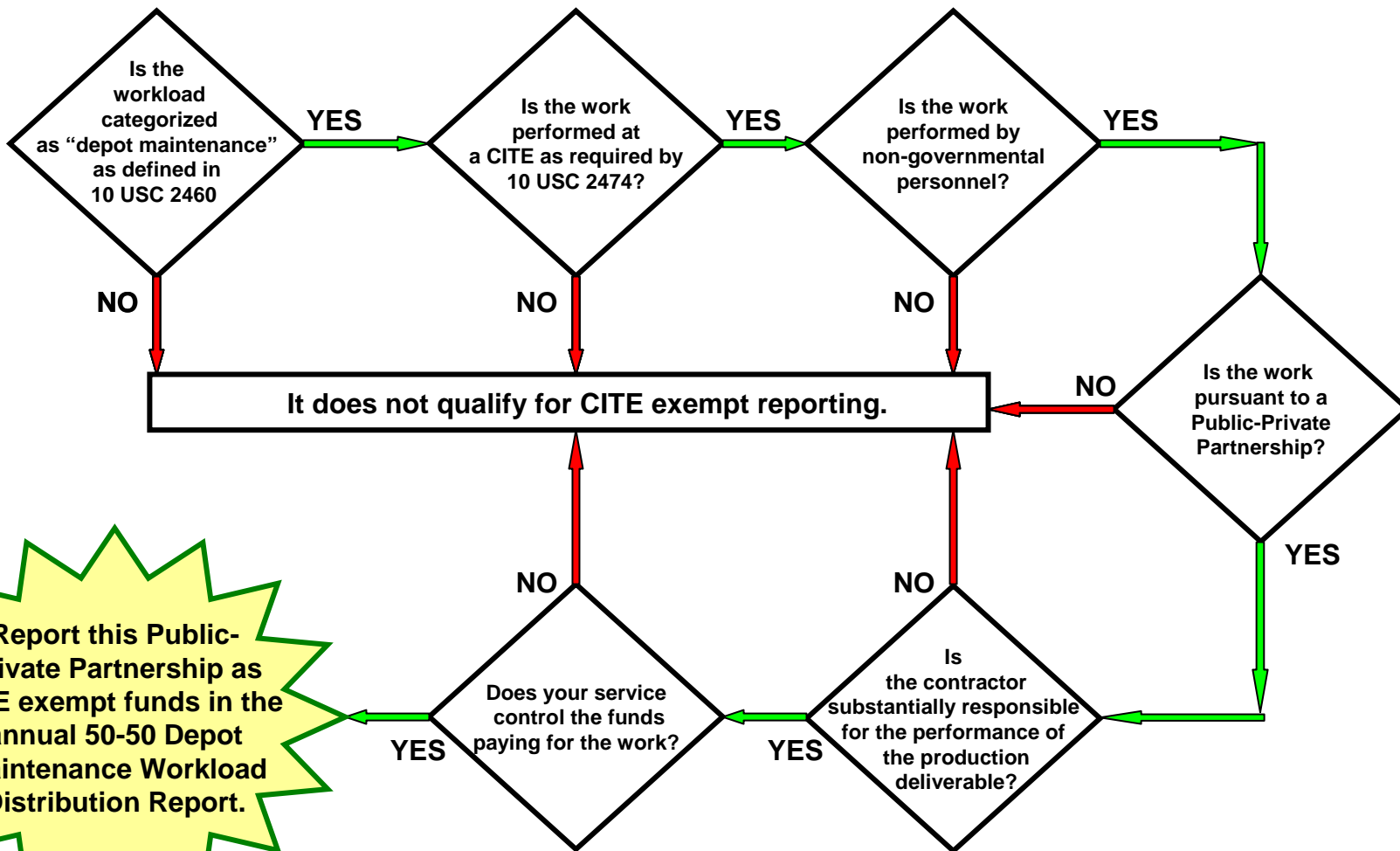
## 10 USC 2474: (cont)



- **Exemption from 50-50 limit (10 USC 2466)**
  - **Depot must be designated a CITE**
  - **Work must be performed on the depot by industry personnel**
  - **Work must be pursuant to a partnership**
  - **Each exception shall include amount and nature as a separate item in the 50-50 report**



# Decision Matrix for 50-50 Reporting Exemption for Non-Governmental Labor Performed in a Public-Private Partnership at a CITE Activity







# Sales of Articles & Services 10 USC 2563



- **Sale of articles & services by working capital fund industrial facilities not commercially available**
  - **Army 10 USC 4543 sales excluded**
- **Conditions**
  - **Hold harmless except willful misconduct, gross negligence, quality, schedule, or cost**
  - **Only incidental subcontracting**
  - **In the public interest**
  - **Not interfere with the military mission of the industrial facility involved**
  - **Not interfere with the work performed for the Department of Defense**



# Sales of Articles & Services 10 USC 2563

---



- **Methods of sales**
  - **Advanced incremental funding allowable**
  - **Full cost, either reimbursable or fixed price**
- **Proceeds to fund, including working capital fund**
- **Not commercially available = unavailable in required**
  - **Quantity,**
  - **Quality, or**
  - **Time**



# Sales of Mfg, Re-mfg & Eng Services 10 USC 2208(j)

---



- **Sale of manufacturing, remanufacturing & engineering services by working capital fund industrial facility**
  - **Fulfilling DoD contract or subcontract & solicitation is open to public-private competition, or**
  - **Advances objectives of 10 USC 2474 (sustain core capabilities)**



# Sales of Mfg Articles & Services by Army Arsenal 10 USC 4543

---



- **Working capital funded Army facilities that manufacture cannons, gun mounts, recoil mechanisms, ammo, munitions or components to sell manufactured articles and services**
- **Conditions**
  - **US manufacturer**
  - **Services must be performed in US**
  - **Not commercially available**
  - **Not interfere with the military mission of the industrial facility involved**
  - **Not interfere with the work performed for the Department of Defense**



# Sales of Mfg Articles & Services by Army Arsenals 10 USC 4543(cont)

---



- **Conditions (continued)**
  - **Hold harmless except for willful misconduct or gross negligence**
  - **Only incidental subcontracting**
  - **In the public interest**



# Other Sales Authorities



- **10 USC 2539b – Services for testing of materials, equipment, models, computer software and other items**
- **10 USC 7300 – Naval shipyard sales of articles or services to private shipyards for fulfillment of contracts for nuclear ships**
- **22 USC 2754 – Sales or lease of articles or services to friendly countries under certain conditions**
- **22 USC 2770 – Sales of articles and services to US companies for incorporation in end items to be sold to a friendly country or international organization under certain conditions**



# Leasing of Non Excess Real or Personal Property

## 10 USC 2667

---



- **Lease of non-excess real or personal property**
  - **Secretary determination if for more than 5 years**
  - **Payment not less than fair market value, but payment can be in kind**
    - **Maintenance, protection, alteration, repair, improvement (including environmental)**
    - **Construction of new facilities**
    - **Provision of facilities**
    - **Facility operation**
    - **Provision of other services**



# Leasing of Non Excess Real or Personal Property

## 10 USC 2667 (cont)

---



- **Payments for utilities and services furnished credited to appropriation or working capital fund furnishing utilities or services**
- **Other payments to special account used for maintenance, protection, alteration, repair construction, restoration, construction, leases or support operations of Service**
  - **At least 50 percent of proceeds to same military installation**
- **Personal property only leases of more than \$100K per year must be competitively awarded**





# Partnering Authority Conclusions



- **Many authorities with differing conditions and restrictions**
- **Parties tend to use those provisions they are most familiar with as long as they can achieve their objective**
- **The provisions of 10 USC 2474 are by far the broadest and most flexible**
  - **All Services have designated their maintenance depots as CITEs**



# Minimum Capital Investment for Certain Depots (10 USC 2476)

---



- Each fiscal year, Military Departments shall invest six percent of the average total combined workload funded at all the depots of that military department
  - Average is based on the preceding three fiscal years
- Capital Budget includes investment funds spent on depot infrastructure, equipment, and process improvement in direct support of depot operations
- SECDEF may waive the requirement for national security reasons
  - Must notify Congress of the reasons and the plan of action
- SECDEF shall submit a report containing budget justification documents summarizing the level of capital investment for each military department not later than 45 days after the date on which the President submits the budget
- Report Must Include:
  - A specification of any statutory, regulatory, or operational impediments to achieving the requirement
  - A description of the benchmarks for capital investment established for each covered depot and military department and the relationship of the benchmarks to applicable performance measurement methods used in the private sector



# Minimum Capital Investment for Certain Depots (10 USC 2476)-(Cont)

---



- **Two Year Phase-In for Departments of the Army and the Navy:**
  - **FY 2007: 4%**
  - **FY 2008: 5%**
  - **FY 2009+: 6%**



# Web Resources

---



**For Additional Information Regarding Maintenance Policy Subjects:**

***<http://www.acq.osd.mil/log/mppr/index.htm>***

**For Additional Training on Maintenance Policy Subjects:**

***<https://learn.test.dau.mil/html/clc/Clc.jsp?cl=>***



# Questions?

