



# It's the Law

## DoD Depot Maintenance

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# Agenda

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- ◆ Overview
- ◆ Depot Maintenance Defined
- ◆ Core Logistics
- ◆ 50/50
- ◆ Public-Private Partnering
- ◆ Sales/Leasing Authorities
- ◆ Required Capital Investments
- ◆ \$3 Million Rule
- ◆ Prohibition on Management by End Strength
- ◆ DOD Path Forward

# Overview

## 10 USC Chapter 146

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- ◆ Provide an efficient, ready and controlled source...necessary to ensure effective and timely response to a mobilization, national defense contingency situations, and other emergency requirements (2460, 2464)
- ◆ Ensure viability of government depots through reinvestment in infrastructure, equipment, and process (Partnering statutes, 2476)
- ◆ The remaining statutes...enable these two goals



# Definition of Depot-Level Maintenance and Repair

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- ◆ 10 USC 2460
- ◆ Materiel maintenance or repair
  - Overhaul, upgrading or rebuilding of parts, assemblies, or subassemblies
  - Testing and reclamation
  - Software maintenance
  - Interim contractor support, contractor logistics support, and any similar contractor support (depot services)
- ◆ Exceptions
  - Procurement of major modifications or upgrades designed to improve performance
  - Nuclear refueling of an aircraft carrier
  - Procurement of parts for safety modification
- ◆ Regardless of the source of funds or location performed

# 10 USC 2460

## Ambiguities/Issues

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- Hardware vs. Software Maintenance
- Minor vs. Major Modifications
- Performance vs. Safety Modifications

# 10 USC 2460

## FY12 NDAA Proposed Changes

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- ◆ LMI study said existing definition is ambiguous and interpreted differently by military services
- ◆ Sec. 321 of H.R. 1540
  - Materiel maintenance or repair also includes inspection, and “all aspects” of software maintenance
  - Cites “associated technical assistance to intermediate maintenance organizations, operational units, and other activities” vs. ICS, CLS, or similar contractor support
  - Does not address funding source or location of work
- ◆ Proposed new language is as currently defined in DODI 4151.2
- ◆ Sec. 322, S. 1253
  - Prohibits DOD changes to definition unless SECDEF submits report from Defense Science Board regarding public and private sector capacity and means of providing greater transparency in core determination process and workload 50-50 allocations



# Core Logistics Capabilities

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- ◆ 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, other emergency requirements
- ◆ The Secretary of Defense shall:
  - identify the core capabilities and sustaining workloads
  - require performance of core sustaining workloads
  - assign sufficient workload to ensure efficiency and technical competence
- ◆ Capability must be identified within four years of IOC
- ◆ Exceptions
  - Special Access Programs
  - Nuclear aircraft carriers
  - Commercial items

# 10 USC 2464

## Ambiguities/Issues

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- “Identify” vs. “Establish” Core Capability at IOC +4
- Early linkage to Acquisition Process
- Capability in Theater
- 10 USC 2464 requirements for sustaining workload vs. DoDI 4151.20 calculations
- Government “owned and operated” facilities vs. “Controlled”
- Special Access Programs (SAP) and Nuclear Refueling of Aircraft Carriers
- Waiver Authority



# 10 USC 2464

## FY12 NDAA Proposed Changes

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- ◆ LMI study said existing core determination process should be revised to ensure it is visible and readily understood
- ◆ Sec. 322 of H.R. 1540
  - Eliminates exclusion for special access programs and clarifies that carrier exclusion is for refueling of nuclear aircraft carrier
  - Expands core to “industrial facilities” (i.e., arsenals)
  - Retains requirement for performance of core workload at Government-owned and Government-operated facilities (including Government personnel and Government-owned and Government-operated equipment and facilities)

# 10 USC 2464

## FY12 NDAA Proposed Changes (continued)

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- ◆ Sec. 322 of H.R. 1540
  - Requires annual core report to Congress that includes:
    - Core logistics capability requirements
    - Depot workload needed to cost effectively support core
    - Above-core depot workload required to ensure 50/50 compliance
    - CITE workload allocations
    - Capital investment required to establish organic capability within 4 years of IOC
  - Report will enhance:
    - Congressional oversight
    - Aligning capital investment to emerging core capability requirements
    - Aligning sustainment planning with acquisition and development

# Limitation on Performance of Depot-level Maintenance of Materiel (aka 50/50)

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- ◆ 10 USC 2466
- ◆ Establishes the 50 percent limit on contracting for depot maintenance by a Military Department or Defense Agency
- ◆ Requires annual reporting to the Congress
- ◆ Allows waiver by SECDEF based on reasons of national security (may not be delegated)



# Partnering Provisions

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- ◆ 10 USC 2474: CITEs and Partnering
- ◆ 10 USC 4544: Army Cooperative Activities with Non-Army Entities



# CITE & Partnerships

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- ◆ 10 USC 2474
- ◆ Service Secretaries required to designate each depot activity as a Center for Industrial and Technical Excellence (CITE) in their core competencies
- ◆ CITE-enabled partnerships allow:
  - Employees of Center, private industry, and others to perform work related to core competencies
  - Private industry and others to use facilities or equipment of the Center that are not fully utilized
- ◆ Private sector use of excess equipment
  - There must be no adverse impact on readiness
  - Must reimburse direct and indirect costs
  - “Hold harmless” provisions apply
- ◆ Accounting for partnering compensation
  - Consideration (e.g., rental payments or other forms of consideration) may be accepted for use of property
  - Funds received by the government are credited to the appropriation or working capital fund that incurs the cost

# 10 USC 2474

## Ambiguities/Issues

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- Workload assignment vs. CITE designation
- Cross-Service CITE designations
- Implications of “Hold Harmless” on PPP’s and PBLs

# 10 USC 2474

## FY12 NDAA Proposed Changes

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- ◆ Sec. 323 of H.R. 1540
  - Expands CITE designation authority to include arsenals
    - Allows arsenals to enter into public-private partnerships as provided for in 10 USC 2474
    - Partnerships should enhance arsenals' core competencies
- ◆ Sec. 324 of H.R. 1540
  - Changes “core competencies” to “core logistics capabilities”
  - With depot workload reducing, CITEs need to be aligned with core determination process
    - Misalignment results in:
      - Inefficiencies
      - Lack of organizational integration
      - Inability to respond to workload uncertainties
- ◆ Sec. 323, S. 1253
  - Authorizes all military industrial facilities to be designated CITEs



# Army Industrial Facilities

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- ◆ 10 USC 4544
- ◆ Authorizes working capital funded Army Industrial facility to enter into a contract or cooperative agreement with a non-Army entity for:
  - Sale of articles manufactured by the facility or services performed by the facility to persons outside of the Dept of Army
  - Performance of work by a non-Army entity at the facility
  - Performance of work by the facility for a non-Army entity
  - Sharing of work by the facility and a non-Army entity
  - Leasing of the facility or equipment by a non-Army entity
  - Preparation or submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal Agency
- ◆ Non-Army entity defined as a Federal Agency, an entity in industrial or commercial sales, a State or political subdivision of a State, an institution of higher learning or vocational training institute
- ◆ Limitation of 8 contracts or cooperative agreements in addition to those already in place when issued in NDAA FY08



# 10 USC 4544

## FY12 NDAA Proposed Changes

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- ◆ Sec. 325, H.R. 1540
  - Repeals cap on number of cooperative arrangements between Army industrial facilities and non-Army entities
  - Makes partnering authority permanent
  - Amends reporting requirement to:
    - Require an assessment of effectiveness of partnering authorities in terms of impact on hourly rates
      - HASC seeking contrast to Arsenal Support Program Initiative (ASPI)
    - Solicit Army's recommendations for improving competitiveness for contracts
- ◆ Sec. 341, S. 1253
  - Increases cap on number of cooperative arrangements to 15
  - Extends authority from 2014 to 2025
  - Partnerships require approval by Commander, Army Materiel Command



# Sales & Leasing Authorities

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- ◆ 10 USC 2563: Sales of Articles and Services
- ◆ 10 USC 2208(j): Sales of Manufacturing, Remanufacturing, and Engineering Services
- ◆ 10 USC 2667: Leasing of Non-Excess Real or Personal Property
- ◆ 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
- ◆ 10 USC 4543 – Sales of manufacturing articles and services by Army arsenals

# Minimum Capital Investment for Certain Depots

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- ◆ 10 USC 2476
- ◆ Military Departments must make annual 6% capital investments
  - includes investment funds spent on depot infrastructure, equipment, and process improvement
  - applies to all major depots and arsenals
- ◆ SECDEF
  - shall submit an annual report containing budget justification documents summarizing the level of capital investment for each military department
  - may waive the 6% requirement for national security reasons; must notify Congress
- ◆ Annual report must include:
  - any statutory, regulatory, or operational impediments to achieving the 6% requirement
  - 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



# 10 USC 2476

## FY12 NDAA Proposed Changes

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- ◆ Sec. 328, H.R. 1540
  - Amends to read “not less than 6% of the average total combined ‘maintenance, repair, and overhaul’ workload”
  - Specifies that infrastructure is facilities
  - Adds to reporting requirement a table showing preceding 3 fiscal years’ workload for each depot and CIP funds actually invested in each depot
- ◆ Sec. 321, S. 1253
  - Clarifies that investment funds go directly to modernize or improve efficiency of depot facilities, equipment, work environment, or processes in direct support of depot operations
  - Clarifies that CIP does not include funds spent to repair, maintain, or sustain existing facilities, infrastructure, or equipment
  - Adds Tooele Army Depot and Army ammo plants to covered depots

# Requirement for Competition

## “The \$3 Million Rule”

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- ◆ 10 USC 2469
- ◆ Cannot change location of performance for workloads at DoD depots valued at \$3M or greater (including labor and 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

# Prohibition on Management by End Strength

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- ◆ 10 USC 2472
- ◆ Civilian employees of the DoD who perform depot-level maintenance and 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



# DoD Path Forward

Areas	322 Report recommended actions	DoD / Congressional actions
Statutory Framework of Depot Maintenance	Craft single Title 10 section covering: "The DoD Organic Industrial Base" Align core and 50/50 in a single statute	IPT to revise Title 10 Chapter 146 statutes (2460, 2464, 2466, 2474, others)
Acquisition and Sustainment Alignment / Coordination	Modify 5000.01, 5000.02, 4151 series to facilitate better integrated depot maintenance support of weapon systems	<b>Implementation of Sec. 805 of Public Law 111-84</b> <b>Sec. 801 of H.R. 1540, core logistics capabilities in acquisition milestones</b>
Strengthen Core Determination Process	Use core as the foundation for a powerful business process affecting: programming requirements, baseline budgets, and capital investments	IPT to update DoD policy to include the FMR & DoDIs 5000.02 and 4151.20 and others <b>Army Industrial Organic Base Strategic Plan</b>
Reporting Metrics	Gain budget visibility of all depot maintenance funding; Develop outcome-oriented approach to weapon systems sustainment	<b>HAC-D provision requiring inclusion of Air Force CLS costs as part of depot maintenance budget request</b>
Commission / Forum	Effect enhanced, integrated management of the execution of depot maintenance	



# Web Resources

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**For additional information  
regarding maintenance policy subjects:**

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

**For additional training  
on maintenance policy subjects:**

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





Questions?

# Definition of Depot Maintenance and What's Included in 50/50?



	Procurement of parts	Installation
<b>Maintenance and repair</b>	<b>Yes (law and practice)</b>	<b>Yes (law and practice)</b>
<b>Safety mods</b>	<b>No (By law)</b>	<b>Yes (By law &amp; practice)</b>
	<b>No (By practice)</b>	
<b>Major mods and upgrades designed to improve performance</b>	<b>No (By law)</b>	<b>No (By Law)</b>
	<b>No (By practice)</b>	<b>Yes (By Practice)</b>

**By Law**  
(10 USC 2460/2466)

**By Practice**  
(DoD 50-50 Processes)

# Sense of Congress

## FY 2010 NDAA Conference Report

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- ◆ SEC. 323. Policy Regarding Installation Of Major Modifications And Upgrades (10 USC 2460)
- ◆ It is the Sense of Congress that no changes should be made to—
  - (1) the policy of the Department of Defense that in the annual allocation of depot-level maintenance and repair required under section 2466 of title 10, United States Code, the installation of major modifications and upgrades are considered to be part of the definition of depot-level maintenance; and
  - (2) the interpretation and application of that policy as of the date of the enactment of this Act.



# Sales of Articles and Services

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- ◆ 10 USC 2563
- ◆ Authorizes working capital fund industrial facilities to sell articles and services not commercially available
- ◆ Conditions
  - Hold government harmless for damages or injuries arising from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract
  - 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 DoD
- ◆ Proceeds go to fund that incurs the cost, including working capital fund

# Sales of Manufactured, Remanufactured Articles and Engineering Services

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- ◆ 10 USC 2208(j)
- ◆ Permits sale of manufactured and remanufactured articles, services, and engineering services by working capital fund industrial facility if:
  - fulfilling DoD contract or subcontract and solicitation is open to public-private competition, or
  - advances objectives of 10 USC 2474 (CITEs)



# Leasing of Non-Excess Real or Personal Property

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- ◆ 10 USC 2667
- ◆ Lease of non-excess real or personal property
  - If longer than five years Secretary must determine it promotes national defense or is in the public interest
  - Payment may not be less than fair market value, but can be in-kind, to include:
    - Maintenance, protection, alteration, repair, improvement (including environmental)
    - Construction of new facilities
    - Provision of facilities
    - Facility operation
    - Provision of other services
- ◆ Personal property-only leases of more than \$100K per year must be competitively awarded



# Partnering Authority Observations

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- ◆ Many authorities with differing conditions and restrictions
- ◆ The provisions of 10 USC 2474 are by far the broadest and most flexible
  - All Services have designated their maintenance depots as CITEs
- ◆ Parties tend to use those provisions they are most familiar with as long as they can achieve their objective
- ◆ Extension of amended 10 USC 4544 to all Services could simplify partnering authority



# Rules of the Road for 50-50 Accounting





# Who Accounts?

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- ◆ The military department, Defense Agency or other activity receiving the original appropriation
  - accountable and responsible for reporting
  - “... funds made available in a fiscal year to a military department or Defense Agency ...”
- ◆ Inter-service work is reported by the Principal, not the Service performing or contracting for the work



# What Appropriations?

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- ◆ “... 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, or location that governs



# What Locations?

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



# What Is Included?

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- ◆ 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?

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- ◆ 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



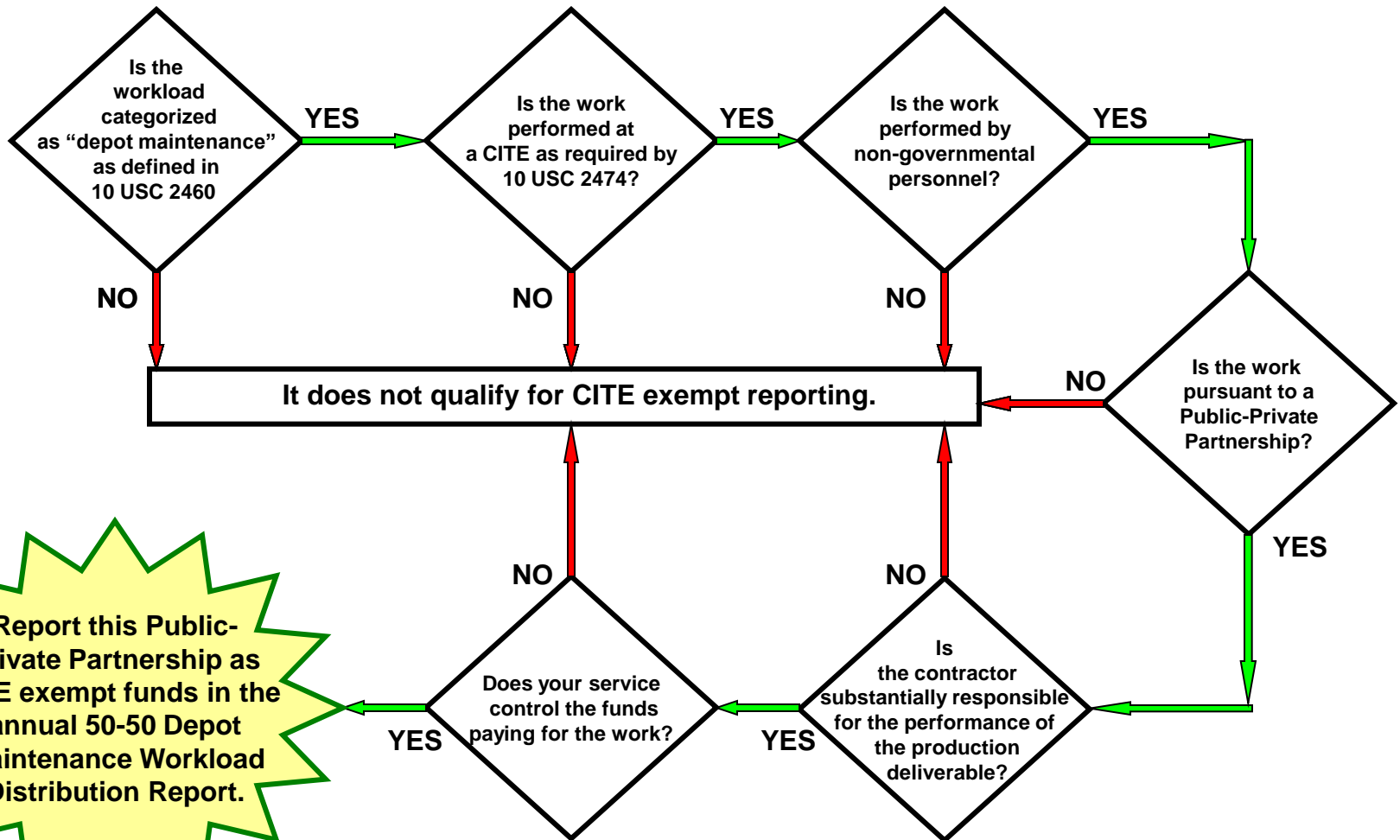
# Is It Contract or Organic?

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- ◆ The key:
  - “... 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”
- ◆ Contract CLIN or government production system determines
  - how the work order or contract will be accounted
  - how all the other factors of production will be accounted, either public or private



# 50-50 Reporting Exemption Matrix





# 50/50 Accounting Guidance

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- ◆ Reported by the Military Department, Agency, or other activity receiving the original appropriation
  - Inter-service work is reported by the Principal, not the Service performing or contracting for the work
- ◆ Contract CLIN or government production system determines contract or organic
- ◆ It is the nature of the work as defined by 10 USC 2460, not the appropriation type or location, that governs
- ◆ All factors of production are included: labor, material, parts, indirect and overhead
- ◆ Not included in calculations are:
  - Procurement of modifications and upgrades
  - Nuclear refueling of aircraft carriers
  - Remanufacturing when chassis, airframes and other major assemblies are utilized in new production





# 50/50 Accounting Guidance

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- ◆ 10 USC 2474 creates exemption to 50 percent limitation on contracting for depot maintenance
- ◆ Work performed at a Center of Industrial and Technical Excellence (CITE) by a contractor as part of a partnership is not counted towards the 50 percent limitation
- ◆ Partnering exceptions are reported separately in the congressional reports to include the value and nature