

Public Law 95-269
95th Congress

An Act

Apr. 26, 1978
[H.R. 7744]

To amend the Acts of August 11, 1888, and March 2, 1919, pertaining to carrying out projects for improvements of rivers and harbors by contract or otherwise, and for other purposes.

Rivers and
harbors,
improvements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Act of August 11, 1888 (25 Stat. 423; 33 U.S.C. 622), is amended to read as follows:

"SEC. 3. (a) The Secretary of the Army, acting through the Chief of Engineers (hereinafter referred to as the 'Secretary'), in carrying out projects for improvement of rivers and harbors (other than surveys, estimates, and gagings) shall, by contract or otherwise, carry out such work in the manner most economical and advantageous to the United States. The Secretary shall have dredging and related work done by contract if he determines private industry has the capability to do such work and it can be done at reasonable prices and in a timely manner. During the four-year period which begins on the date of enactment of this subsection, the Secretary may limit the application of the second sentence of this subsection for work for which the federally owned fleet is available to achieve an orderly transition to full implementation of this subsection.

"(b) As private industry reasonably demonstrates its capability under subsection (a) to perform the work done by the federally owned fleet, at reasonable prices and in a timely manner, the federally owned fleet shall be reduced in an orderly manner, as determined by the Secretary, by retirement of plant. To carry out emergency and national defense work the Secretary shall retain only the minimum federally owned fleet capable of performing such work and he may exempt from the provisions of this section such amount of work as he determines to be reasonably necessary to keep such fleet fully operational, as determined by the Secretary, after the minimum fleet requirements have been determined. Notwithstanding the preceding sentence, in carrying out the reduction of the federally owned fleet, the Secretary may retain so much of the federally owned fleet as he determines necessary, for so long as he determines necessary, to insure the capability of the Federal Government and private industry together to carry out projects for improvements of rivers and harbors. For the purpose of making the determination required by the preceding sentence the Secretary shall not exempt any work from the requirements of this section. The minimum federally owned fleet shall be maintained to technologically modern and efficient standards, including replacement as necessary. The Secretary is authorized and directed to undertake a study to determine the minimum federally owned fleet required to perform emergency and national defense work. The study, which shall be submitted to Congress within two years after enactment of this subsection, shall also include preservation of employee rights of persons presently employed on the existing federally owned fleet."

Study.

Submittal to
Congress.

SEC. 2. Section 8 of the Act of March 2, 1919 (40 Stat. 1290; 33 U.S.C. 624), is amended to read as follows:

“SEC. 8. (a) No works of river and harbor improvement shall be done by private contract—

“(1) if the Secretary of the Army, acting through the Chief of Engineers, determines that Government plant is reasonably available to perform the subject work and the contract price for doing the work is more than 25 per centum in excess of the estimated comparable cost of doing the work by Government plant; or

“(2) in any other circumstance where the Secretary of the Army, acting through the Chief of Engineers, determines that the contract price is more than 25 per centum in excess of what he determines to be a fair and reasonable estimated cost of a well-equipped contractor doing the work.

“(b) In estimating the comparable cost of doing the work under subsection (a) (1) by Government plant the Secretary of the Army, acting through the Chief of Engineers shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all supervising and overhead expenses, interest on the capital invested in the Government plant (but the rate of interest shall not exceed the maximum prevailing rate being paid by the United States on current issues of bonds or other evidences of indebtedness) and such other Government expenses and charges as the Chief of Engineers determines to be appropriate.

“(c) In determining a fair and reasonable estimated cost of doing work by private contract under subsection (a) (2), the Secretary of the Army, acting through the Chief of Engineers, shall, in addition to the cost of labor and materials, take into account proper charges for depreciation of plant, all expenses for supervision, overhead, workmen's compensation, general liability insurance, taxes (State and local), interest on capital invested in plant, and such other expenses and charges the Secretary of the Army, acting through the Chief of Engineers, determines to be appropriate.”.

Approved April 26, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-605 (Comm. on Public Works and Transportation).

SENATE REPORT No. 95-722 (Comm. on Environment and Public Works).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Sept. 27, considered and passed House.

Vol. 124 (1978): Apr. 5, considered and passed Senate, amended.

Apr. 13, House agreed to Senate amendments.