

**§ 622. Contracts, etc., with private industry for implementation of projects for improvements and dredging; reduction of federally owned fleet**

**(a) Contracts for dredging and related work**

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 April 26, 1978, 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) Reduction of federally owned fleet**

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 April 26, 1978, shall also include preservation of employee rights of persons presently employed on the existing federally owned fleet.

**(c) Program to increase use of private hopper dredges**

**(1) Initiation**

The Secretary shall initiate a program to increase the use of private-industry hopper dredges for the construction and maintenance of Federal navigation channels.

**(2) Ready reserve status for hopper dredge Wheeler**

In order to carry out this subsection, the Secretary shall place the Federal hopper dredge Wheeler in a ready reserve status not later than the earlier of 90 days after the date of completion of the rehabilitation of the hopper dredge McFarland pursuant to section 563 of the Water Resources Development Act of 1996 or October 1, 1997.

**(3) Testing and use of ready reserve hopper dredge**

The Secretary may periodically perform routine tests of the equipment of the vessel placed in a ready reserve status under paragraph (2) to ensure the vessel's ability to perform emergency work. The Secretary shall not assign any scheduled hopper dredging work to such vessel but shall perform any repairs needed to maintain the vessel in a fully operational condition. The Secretary may place the vessel in active status in order to perform any dredging work only if the Secretary determines that private industry has failed to submit a responsive and responsible bid for work advertised by the Secretary or to carry out the project as required pursuant to a contract with the Secretary.

**(4) Repair and rehabilitation**

The Secretary may undertake any repair and rehabilitation of any Federal hopper dredge, including the vessel placed in ready reserve status under paragraph (2) to allow the vessel to be placed in active status as provided in paragraph (3).

**(5) Procedures**

The Secretary shall develop and implement procedures to ensure that, to the maximum extent practicable, private industry hopper dredge capacity is available to meet both routine and time-sensitive dredging needs. Such procedures shall include—

(A) scheduling of contract solicitations to effectively distribute dredging work throughout the dredging season; and

(B) use of expedited contracting procedures to allow dredges performing routine work to be made available to meet time-sensitive, urgent, or emergency dredging needs.

**(6) Report**

Not later than 2 years after October 12, 1996, the Secretary shall report to Congress on whether the vessel placed in ready reserve status under paragraph (2) is needed to be returned to active status or continued in a ready reserve status or whether another Federal hopper dredge should be placed in a ready reserve status.

**(7) Limitations**

**(A) Reductions in status**

The Secretary may not further reduce the readiness status of any Federal hopper dredge below a ready reserve status except any vessel placed in such status for not less than 5 years that the Secretary determines has not been used sufficiently to justify retaining the vessel in such status.

**(B) Increase in assignments of dredging work**

For each fiscal year beginning after October 12, 1996, the Secretary shall not assign any greater quantity of dredging work to any Federal hopper dredge in active status than was assigned to that vessel in the average of the 3 prior fiscal years. This subparagraph shall not apply to the Federal hopper dredges Essayons and Yaquina of the Corps of Engineers.

**(C) Remaining dredges**

In carrying out the program under this section, the Secretary shall not reduce the availability and utilization of Federal hopper dredge vessels stationed on the Pacific and Atlantic coasts below that which occurred in fiscal year 1996 to meet the navigation dredging needs of the ports on those coasts.

**(8) Contracts; payment of capital costs**

The Secretary may enter into a contract for the maintenance and crewing of any Federal hopper dredge retained in a ready reserve status. The capital costs (including depreciation costs) of any dredge retained in such status shall be paid for out of funds made available from the Harbor Maintenance Trust Fund and shall not be charged against the Corps of Engineers' Revolving Fund Account or any individual project cost unless the dredge is specifically used in connection with that project.

(Aug. 11, 1888, ch. 860, § 3, 25 Stat. 423; July 25, 1912, ch. 253, § 1, 37 Stat. 222; Mar. 2, 1919, ch. 95, § 3, 40 Stat. 1287; Pub. L. 95-269, § 1, Apr. 26, 1978, 92 Stat. 218; Pub. L. 104-303, title II, § 237, Oct. 12, 1996, 110 Stat. 3705; Pub. L. 110-114, title II, § 2047(b), Nov. 8, 2007, 121 Stat. 1106.)

## REFERENCES IN TEXT

Section 563 of the Water Resources Development Act of 1996, referred to in subsec. (c)(2), is section 563 of Pub. L. 104-303, Oct. 12, 1996, 110 Stat. 3784, which is not classified to the Code.

## CODIFICATION

Prior to the general amendment by Pub. L. 95-269, this section was a composite of several Acts as follows:

The first sentence was from a part of section 3 of Act of Aug. 11, 1888, the Rivers and Harbors Appropriation Act of 1888. The remainder of section 3 was classified to section 623 of this title.

The second sentence, which provided that all improvement works authorized by contract may, in the discretion of the Secretary of War [now Army], be carried on by contract or otherwise, as may be most economical or advantageous to the United States, was from section 1 of the Act of July 25, 1912, the Rivers and Harbors Appropriation Act of 1912. Previous similar provisions were contained in Acts Mar. 2, 1907, ch. 2509, § 1, 34 Stat. 1110; Feb. 27, 1911, ch. 166, § 1, 36 Stat. 952.

The third sentence, which provided that in all cases where the project for a work of river or harbor improvement provides for the construction or use of Government dredging plant, the Secretary of War [now Army] may, in his discretion, have the work done by contract if reasonable prices can be obtained, was from section 3 of the Act of Mar. 2, 1919, the Rivers and Harbors Appropriation Act of 1919, which superseded a somewhat similar provision in section 3 of the Act of Aug. 8, 1917, ch. 49, 40 Stat. 261. Section 1 of the 1917 Act, 40 Stat. 255, provided in part that "the work pro-

posed under the project adopted by the river and harbor Act approved July twenty-fifth, nineteen hundred and twelve, may be done by contract if reasonable prices can be obtained".

## AMENDMENTS

2007—Subsec. (c)(7)(B). Pub. L. 110-114 inserted "This subparagraph shall not apply to the Federal hopper dredges Essayons and Yaquina of the Corps of Engineers." at end.

1996—Subsec. (c). Pub. L. 104-303 added subsec. (c).

1978—Pub. L. 95-269 designated existing provision as subsec. (a), substituted provisions relating to authority of Secretary of the Army, acting through the Chief of Engineers, to implement improvement projects by contract or otherwise and dredging and related work by contract with private industry, for provisions relating to authority of the Secretary of the Army to apply moneys appropriated for improvements by contract or otherwise and for construction or use of a Government dredging plant by contract, and added subsec. (b).

**§ 623. Repealed. Oct. 31, 1951, ch. 654, § 1(57), 65 Stat. 703**

Section, act Aug. 11, 1888, ch. 860, § 3, 25 Stat. 423, related to letting of contracts to lowest responsible bidder.

**§ 624. Limitation on improvement work by private contract****(a) Determinations respecting comparison of private contract price with estimation of cost of performance of work by Government plant or by well-equipped contractor**

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) Considerations involved in determinations of estimation of cost of performance of work by Government plant**

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) Considerations involved in determinations of estimation of cost of performance of work by well-equipped contractor**

In determining a fair and reasonable estimated cost of doing work by private contract