Text as published on gao.gov, https://www.gao.gov/products/b-192973, archived 2026-07-10. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-192973 October 11, 1978

Number: B-192973

Date: 1978-10-11

B-192973 October 11, 1978

The Honorable Michael J. Harrington House of Representatives

Dear Mr. Harrington:

This is to confirm the telephonic response to your letter of September 21, 1978, given to Ms. Diane DeVaul of your office by Mrs. Susan W. Irwin of our Office of the General Counsel on September 27, 1978.

In your letter, you requested a clarification of whether section 836 of Pub. L. No. 95-111, 91 Stat. 866, September 21, 1977, the Department of Defense Appropriation Act, 1978, is permanent legislation which can be eliminated only by specific repealing legislation. As we indicated to Ms. DeVaul, it is our opinion that although section 836 appears at first glance to constitute permanent legislation, an analysis of the legislative histories of both Pub. L. No. 95-111 and H.R. 13635 (the fiscal year 1979 defense appropriation bill) reveals sufficient expressions of contrary congressional intent to warrant treatment of the provision at issue as one requiring reenactment if it is to be of continuing applicability in successive fiscal years.

Section 836 states as follows:

"Sec. 836. (a) The Secretary of Defense shall require all prime contractors receiving contract awards of $500,000 or more from the Department of Defense to file a report with the Secretay, at the end of the year showing the amount of Department of Defense work (in terms of dollars) each such contractor had performed by subcontractors during such year and to identify the State or States in which each subcontractor performed the work subcontracted to it.

"(b) The Secretary of Defense shall submit a report annually to the Congress showing, on a State-by-State basis, the total amount of Department of Defense funds paid to sub-contractors, during the year for which the report is submitted, by the prime contractors described in subsection (a)."

Subsection (b), which is the subject of your inquiry, provides for the annual submission to the Congress of a report on defense subcontracting on a State-by-State basis, Absent any clarifying legislative history, the word "annually" might be construed as requiring the submission of such reports in Fiscal Year 1978 and successive fiscal years without limitation. On the other hand, this Office has generally held that provisions in annual appropriation acts do not constitute permanent legislation, unless they contain words of "futurity," such as "hereafter," or "in this or any other act which may

subsequently be enacted," which make the provision permanent. See, e.g., 20 Comp. Gen. 322, 325 (1940); 21 it. 46 (1941). We don't regard the word "annually" as constituting that kind of specific term of futurity.

There is some support for the contrary position in the legislative history of section 836. In introducing the amendment that became section 836, Senator Metzenbaum expressed concern that the Department of Defense was no longer providing information about defense procurement spending on subcontracts on a State-by-State basis as it had done in the past, thereby preventing any determination by the Congress of whether such spending was being distributed so as to ensure an equitable, regional balance throughout the country. 124 Cong. Rec., July 19, 1977, Daily Ed., S 12278. He apparently intended to require the provision by the Department of Defense of such spending information on a permanent basis. However, there is nothing else in the legislative history of Pub. L. No. 95-111 that evidences a congressional intent to enact permanent legislation. In the absence of futurity language in the FY 1978 appropriation, we would look for a clear expression of congressional intent to overcome the general rule that provisions in annual appropriation acts do not survive the fiscal year for which they were enacted.

Additionally, in its report on H.R. 13635, the FY 1979 Defense appropriation bill, the House Committee on Appropriations stated as follows:

"The budget requests that section 836 of last year's Act be deleted. This section required the Department to collect and report to the Congress the distribution of defense subcontract work by states. It will take the Department four to six years to completely collect the information required. The Department believes the information required should be collected for one year and evaluated to determine its usefulness before being required to obtain it for another year. * * * The Committee agrees with the Department's position and recommends the deletion of this requirement." H.R. Rep. No. 95-1398, 95th Cong., 2d Sess., 385.

While this report is not part of the legislative history of Pub. L. No. 95-111, of course, it does provide a clearly expressed present intent. to eliminate the section 836 reporting requirement. In the absence of any additional or contrary legislative history at this time, we believe that section 836 must be regarded as an annual appropriation provision that expires at the end of Fiscal Year 1978 unless affirmatively reenacted. We have been informally advised that you and other Members of Congress believe that section 836 was intended to be permanent legislation, and hope to have it remain in effect for impending fiscal years, We were asked for some suggested language to ensure this result. We suggested to Ms. DeVaul that an amendment reenacting section 836 for Fiscal Year 1979 be prepared, with the addition of words of futurity such as "shall hereafter submit a report annually," or "shall submit in Fiscal Year 1979 and each of the five succeeding fiscal years."

We trust that this information will be helpful to you.

Sincerely yours,

R. F. Keller Deputy Comptroller General of the United States