



**PSC Summary of Contractor Related Provisions in the  
“Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009”  
(As enacted September 30, 2008, Public Law 110-329)**

**The Bill Text Includes the Following Provisions:**

Linking Award Fees to Acquisition Outcomes

- Section 8105 prohibits award fees to any defense contractor contrary to the provisions of Section 814 of the FY07 NDAA, which required the creation of guidelines linking award fees to acquisition outcomes.
- Section 533 requires the Secretary of Homeland Security to require that all DHS contracts that provide award fees link such fees to successful acquisition outcomes (which shall be specified in terms of cost, schedule, and performance).

Statute of Limitations

Section 8117 extends the statute of limitations for crimes relating to wartime contracting to five years from the end of the conflict.

E-Verify

Section 143 extends the authorization for E-Verify to March 6, 2009. Division D Title IV provides \$100 million to fund the program for the entire fiscal year.

Competitive Sourcing

The bill text includes several provisions that address competitive sourcing initiatives, including:

- Section 8023 prohibiting DoD from using funds to conduct any A-76 cost study if it exceeds a period of 24 months after initiation with respect to a single function activity or 30 months after initiation for a multi-function activity.
- Section 514 prohibiting the use of funds to process or approve an A-76 competition for services provided by employees (including employees serving on a temporary or term basis) of United States Citizenship and Immigration Services of the Department of Homeland Security who were known as Immigration Information Officers, Contact Representatives, or Investigative Assistants as of June 1, 2004.
- Section 532 prohibiting the use of funds to conduct or implement the results of an A-76 competition with respect to the Coast Guard National Vessel Documentation Center.

Congressional Notification for Certain DHS Awards

Section 507 prohibits the use of funds to make a grant allocation, discretionary grant award, discretionary contract award, or to issue a letter of intent totaling in excess of \$1,000,000, or to announce publicly the intention to make such an award, including a contract covered by the Federal Acquisition Regulation, unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and the House of Representatives at least 3 full business days in advance of making such an award or issuing such a letter. The notification shall include the amount of the award, the fiscal year in which the funds for the award were appropriated, and the account from which the funds are being drawn. An exemption to this requirement is provided in instances that pose a substantial risk to human life, health, or safety.

Full and Open Competition

Section 525 continues and modifies a provision prohibiting the obligation of funds for grants or contracts awarded by certain DHS headquarters offices through other than full and open competitive procedures. The section includes certain exemptions for small business awards, awards below the simplified acquisition threshold, and others. The section also allows the Secretary of Homeland Security to waive the

requirements of this section, but requires that the Appropriations Committees receive notification of the waiver and an explanation as to why this section was waived.

#### DHS Other Transactional Authority

Section 537 requires the Secretary of Homeland Security to issue policy guidance detailing the appropriate uses of other transactional authority and provide training to each employee that has authority to handle procurement under this authority.

#### **The Explanatory Statement Includes the Following Requirements:**

##### “Soft” Power and Inter-Agency Burden Sharing

Congress expressed concern with the Department of Defense’s apparent consolidation of U.S. security assistance, foreign aid, and humanitarian assistance and development programs that have traditionally been conducted by the Department of State and USAID. It provides that “given the tremendous strains the services face in the current operational environment, [DoD] should refrain from assuming additional soft power roles and work with Congress and the next Administration toward a more rational balance of inter-agency burden sharing and resource allocation.”

##### Gansler Commission Report

The Secretary of the Army is directed to submit, within 60 days of enactment, a report to the congressional defense committees detailing the Army’s progress in implementing the key recommendations of the Gansler Commission.

##### Defense Contract Management Agency

The Secretary of Defense is directed to provide a report to the congressional defense committees, within 60 days of enactment, addressing the justification (if any) for reducing the \$14 million that was provided in the FY08 NDAA to eliminate reductions in DCMA full-time staff, the impact of the reduction on full-time DCMA staff, and DoD’s plan for restoring any full-time staff that may have been lost as a result of DoD’s reduction. The report must also include DoD’s plan for spending an additional \$52 million that was provided to DCMA in the FY08 Emergency Supplemental Appropriation Act for the purpose of hiring 250 new full-time contract-management personnel, and an assessment of future additional staffing requirements DCMA will have in order to ensure proper oversight and management of the anticipated contracting work load.

##### Acquisition Costs

DoD is required to provide a report to the congressional defense committees prior to March 1, 2009 that shows which Acquisition Category I (ACAT I) programs did not use the DoD Cost Analysis Improvement Group (CAIG) estimate as the official program estimate at a milestone decision and an explanation as to why the CAIG estimate was not used. The report must encompass the period from FY04 through FY08.

##### Air Force Acquisition

The Secretary of Defense is directed to provide a report to the congressional defense committees no later than March 31, 2009 about DoD’s plans to reform the Air Force acquisition process to address continuing difficulties in acquiring major systems.

##### DHS Office of the Chief Procurement Officer (OCPO)

DHS OCPO is required to conduct a two year pilot with the Science and Technology (S&T) Directorate under which S&T will hire their own contracting officers to determine whether assigning more procurement responsibility to S&T will result in more efficient procurements. OCPO is also directed to identify more contracting opportunities for minority and small business entities and to consider replacing contractors with full-time government employees.

##### Investment Review Process

The Department of Homeland Security is required, within 45 days of enactment, to identify and submit to Congress a list of investments to be reviewed and a description of the formal investment review process the Investment Review Board will follow.