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United States Government Accountability Office
Washington, DC 20548

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April 28, 2006

The Honorable Tom Davis
Chairman, Committee on Government Reform
House of Representatives

Subject: *Procurement Provisions in Appropriations Acts*

Dear Mr. Chairman:

Legislation such as the Competition in Contracting Act and the Federal Acquisition Streamlining Act established a comprehensive acquisition framework to accommodate the needs of individual agencies while maximizing uniformity across the federal government. In your letter of July 1, 2005, you noted the committee's concern about the potential impact of other legislation on Congress's efforts to promote a consistent, government-wide approach to procurement and asked GAO to review procurement related provisions appearing in recent appropriations legislation.

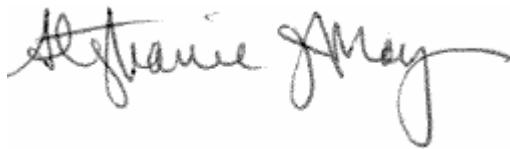
Based on discussions with your staff, we agreed to identify and summarize procurement related provisions in several major annual appropriations acts over the past few years. In total, we examined thirty appropriations acts, or relevant divisions of consolidated acts, covering the Department of Defense (Table 1); Foreign Operations (Table 2); Interior (Table 3); Veterans Affairs and Housing and Urban Development (Table 4); Transportation and Treasury (Table 5); and Homeland Security (Table 6). Our review encompassed legislation passed for fiscal years 2001 through 2005.

We defined procurement-related provisions as those pertaining to the acquisition of goods or services by contract with appropriated funds. In this regard, we did not include provisions pertaining exclusively to grants or cooperative agreements, provisions dealing with acquisition of real property, provisions imposing programmatic restrictions, and provisions concerning nonappropriated fund acquisitions. Generally, the provisions we included in the enclosed tables created new acquisition requirements, carved specific exceptions to existing requirements, or reiterated existing requirements.

Although we found a wide variety of procurement related provisions, three distinct categories emerged in our review: domestic preferences, notification and reporting

requirements, and competitive sourcing provisions. The enclosed tables include each of these categories as well as a fourth miscellaneous category. Each table is made up of three column headings. The first includes a summary of the provision. The second lists the appropriations act heading under which the provision appears and includes the legislative text with citation. The last contains short citations to similar or identical provisions appearing in other appropriations legislation for fiscal years 2001 through 2005.

Please contact me at (202) 512-6293 or Noah Bleicher at (202) 512-5078, if you have any questions about this review.

A handwritten signature in black ink that reads "Stephanie J. May". The signature is written in a cursive, flowing style.

Stephanie J. May
Managing Associate General Counsel

Enclosures

**Table 1: Department of Defense Appropriations Act
Fiscal Years 2001-2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions¹
Prohibits major component of a naval vessel being constructed or converted in US shipyards from being constructed in a foreign facility or shipyard.	<p><u>Appropriations Act Heading:</u> TITLE III – PROCUREMENT; SHIPBUILDING AND CONVERSION, NAVY</p> <p><u>Text:</u> “For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law . . . <i>Provided Further</i>, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel. . . .”</p> <p>Pub. L. No. 108-287, 118 Stat. 962 (FY 05)</p>	<p>FY 04: 117 Stat. 1064 FY 03: 116 Stat. 1530 FY 02: 115 Stat. 2240 FY 01: 114 Stat. 667</p>
In new contracts, requires certain components (auxiliary equipment, propulsion system components; shipboard cranes and spreaders) to be manufactured in the U.S.; permits waiver if certain conditions are met.	<p><u>Appropriations Act Heading:</u> TITLE V – REVOLVING AND MANAGEMENT FUNDS; NATIONAL DEFENSE SEALIFT FUND</p> <p><u>Text:</u> “For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve the national security needs of the United States . . . <i>Provided</i>, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all shipboard services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes <i>Provided further</i>, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: <i>Provided further</i>, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes.”</p> <p>Pub. L. No. 108-287, 118 Stat. 966 (FY 05)</p>	<p>FY 04: 117 Stat. 1068 FY 03: 116 Stat. 1534 FY 02: 115 Stat. 2244 FY 01: 114 Stat. 671</p>

¹ Similar or identical provisions in other Department of Defense appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. The five acts reviewed are the Department of Defense Appropriations Act, 2005, Pub. L. No. 108-287, 118 Stat. 951 (2004); Department of Defense Appropriations Act, 2004, Pub. L. No. 108-87, 117 Stat. 1054 (2003); Department of Defense Appropriations Act, 2003, Pub. L. No. 107-248, 116 Stat. 1519 (2002); Department of Defense Appropriations Act, 2002, Pub. L. No. 107-117, Div. A, 115 Stat. 2230 (2002); and the Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, 114 Stat. 656 (2000).

<p>Requires certain welded shipboard anchor and mooring chain to be manufactured in the U.S. from components substantially manufactured in the US; permits waiver if certain conditions are met.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds in this Act may be available for the purchase by the Department of Defense (and its departments and agencies) of welded shipboard anchor and mooring chain 4 inches in diameter and under unless the anchor and mooring chain are manufactured in the United States from components which are substantially manufactured in the United States: <i>Provided</i>, That for the purpose of this section manufactured will include cutting, heat treating, quality control, testing of chain and welding (including the forging and shot blasting Process): <i>Provided further</i>, That for the purpose of this section substantially all of the components of anchor and mooring chain shall be considered to be produced or manufactured in the United States if the aggregate cost of the components produced or manufactured in the United States exceeds the aggregate cost of the components produced or manufactured outside the United States: <i>Provided further</i>, That when adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis, the Secretary of the service responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations that such an acquisition must be made in order to acquire capability for national security purposes.”</p> <p>Pub. L. No. 108-287, § 8016, 118 Stat. 973 (FY 05)</p>	<p>FY 04: § 8016 FY 03: § 8016 FY 02: § 8014 FY 01: § 8016</p>
<p>For new contracts, requires carbon, alloy or armor steel plate for use in government-owned or DOD controlled facilities to be melted and rolled in the U.S. or Canada; permits waiver if certain conditions are met.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated or made available in this Act shall be used to procure carbon, alloy or armor steel plate for use in any Government-owned facility or property under the control of the Department of Defense which were not melted and rolled in the United States or Canada: <i>Provided</i>, That these procurement restrictions shall apply to any and all Federal Supply Class 9515, American Society of Testing and Materials (ASTM) or American Iron and Steel Institute (AISI) specifications of carbon, alloy or armor steel plate: <i>Provided further</i>, That the Secretary of the military department responsible for the procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: <i>Provided further</i>, That these restrictions shall not apply to contracts which are in being as of the date of the enactment of this Act.”</p> <p>Pub. L. No. 108-287, § 8029, 118 Stat. 977 (FY 05)</p>	<p>FY 04: § 8030 FY 03: § 8030 FY 02: § 8033 FY 01: § 8033</p>

<p>Requires Secretary of Defense to rescind blanket waiver of Buy American Act if a country violates existing reciprocal defense procurement MOU by discriminating against certain U.S. products covered by the MOU. Requires report of foreign purchases.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a)(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.</p> <p>(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.</p> <p>(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2005. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.</p> <p>(c) For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).”²</p> <p>Pub. L. No. 108-287, § 8032, 118 Stat. 977 (FY 05)</p>	<p>FY 04: § 8033 FY 03: § 8033 FY 02: § 8036 FY 01: § 8036</p>
<p>Requires Buy American Act compliance. Requires that Secretary of Defense determine whether to debar a person convicted of affixing “Made in America” label to foreign-made products.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).</p> <p>(b) If the Secretary of Defense determines that a person has been convicted of intentionally affixing a label bearing a “Made in America” inscription to any product sold in or shipped to the United States that is not made in America, the Secretary shall determine, in accordance with section 2410f of title 10, United States Code, whether the person should be debarred from contracting with the Department of Defense.</p> <p>(c) In the case of any equipment or products purchased with appropriations provided under this Act, it is the sense of the Congress that any entity of the Department of Defense, in expending the appropriation, purchase only American-made equipment and products, provided that American-made equipment and products are cost-competitive, quality-competitive, and available in a timely fashion.”</p> <p>Pub. L. No. 108-287, § 8045, 118 Stat. 980 (FY 05)</p>	<p>FY 04: § 8045 FY 03: § 8046 FY 02: § 8050 FY 01: § 8050</p>

² Note that part (b) is a reporting requirement. It is cited in the Notification/Reporting Requirements section below as well.

<p>Requires ball and roller bearings to be produced by a domestic source and of domestic origin. Restriction does not apply to commercial items, but does apply to ball and roller bearings purchased as end items. Permits waiver if certain conditions are met.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated in this Act may be used for the procurement of ball and roller bearings other than those produced by a domestic source and of domestic origin: <i>Provided</i>, That the Secretary of the military department responsible for such procurement may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate, that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: <i>Provided further</i>; That this restriction shall not apply to the purchase of “commercial items”, as defined by section 4(12) of the Office of Federal Procurement Policy Act, except that the restriction shall apply to ball or roller bearings purchased as end items.”</p> <p>Pub. L. No. 108-287, § 8059, 118 Stat. 984 (FY 05)</p>	<p>FY 04: § 8059 FY 03: § 8060 FY 02: § 8065 FY 01: § 8064</p>
<p>Requires supercomputers to be manufactured in the U.S.; provides for exception for national security purposes.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds in this Act may be used to purchase any supercomputer which is not manufactured in the United States, unless the Secretary of Defense certifies to the congressional defense committees that such an acquisition must be made in order to acquire capability for national security purposes that is not available from United States manufacturers.”</p> <p>Pub. L. No. 108-287, § 8061, 118 Stat. 984 (FY 05)</p>	<p>FY 04: § 8061 FY 03: § 8062 FY 02: § 8067 FY 01: § 8066</p>

<p>For new contracts and certain options, existing limitations on procurement of certain defense items from foreign sources may be waived by the Secretary of Defense if the limitation would invalidate certain agreements between DOD and the foreign country and that country does not discriminate against the same U.S.-made defense item.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) The Secretary of Defense may, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of defense items from foreign sources provided in law if the Secretary determines that the application of the limitation with respect to that country would invalidate cooperative programs entered into between the Department of Defense and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under section 2531 of title 10, United States Code, and the country does not discriminate against the same or similar defense items produced in the United States for that country.</p> <p>(b) Subsection (a) applies with respect to—</p> <p>(1) contracts and subcontracts entered into on or after the date of the enactment of this Act; and</p> <p>(2) options for the procurement of items that are exercised after such date under contracts that are entered into before such date if the option prices are adjusted for any reason other than the application of a waiver granted under subsection (a).</p> <p>(c) Subsection (a) does not apply to a limitation regarding construction of public vessels, ball and roller bearings, food, and clothing or textile materials as defined by section 11 (chapters 50-65) of the Harmonized Tariff Schedule and products classified under headings 4010, 4202, 4203, 6401 through 6406, 6505, 7019, 7218 through 7229, 7304.41 through 7304.49, 7306.40, 7502 through 7508, 8105, 8108, 8109, 8211, 8215, and 9404.”</p> <p>Pub. L. No. 108-287, § 8075, 118 Stat. 987 (FY 05)</p>	<p>FY 04: § 8076 FY 03: § 8078 FY 02: § 8089 FY 01: § 8088</p>
<p>Requires the main propulsion diesel engines and propulsors of any T-AKE class of ships to be manufactured in the U.S. by a domestically operated entity; permits waiver if certain conditions are met.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated or made available in this Act to the Department of the Navy shall be used to develop, lease or procure the T-AKE class of ships unless the main propulsion diesel engines and propulsors are manufactured in the United States by a domestically operated entity: <i>Provided</i>, That the Secretary of Defense may waive this restriction on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes or there exists a significant cost or quality difference.”</p> <p>Pub. L. No. 108-287, § 8078, 118 Stat. 988 (FY 05)</p>	<p>FY 04: § 8079 FY 03: § 8083 FY 02: § 8096 FY 01: § 8095</p>

<p>Exception at 10 U.S.C. 2533a(f) (Berry Amendment) is inapplicable to fish, shellfish or seafood product. States that section applies to commercial items.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “Notwithstanding any other provision of law, section 2533a(f) of title 10, United States Code, shall hereafter not apply to any fish, shellfish, or seafood product. This section applies to contracts and subcontracts for the procurement of commercial items notwithstanding section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430).”</p> <p>Pub. L. No. 108-287, § 8118, 118 Stat. 998 (FY 05)</p>	<p>FY 04: None FY 03: § 8136 FY 02: None FY 01: None</p>
<p>Reaffirms Congress’s sense that DOD buy items that are wholly of domestic content and manufacture to maintain a domestic manufacturing base and avoid vulnerability.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) FINDINGS.—The Congress finds that— (1) in times when our national security is threatened by possible attacks from foreign and domestic enemies, it is necessary that the United States have a sufficient supply of certain products that are essential for defending this Nation; and (2) it has been the consistent intent of Congress that the Department of Defense, when purchasing items to support the Armed Forces, choose items that are wholly of domestic content and manufacture, especially items identified as essential to our national defense.</p> <p>(b) SENSE OF CONGRESS.—It is the sense of Congress that— (1) it is vital that the United States maintain a domestic manufacturing base for certain products necessary to national security, so that our Nation does not become reliant on foreign sources for such products and thereby vulnerable to disruptions in international trade; and (2) in cases where such domestic manufacturing base is threatened, the United States should take action to preserve such manufacturing base.”</p> <p>Pub. L. No. 107-117, § 8156, 115 Stat. 2283 (FY 02)</p>	<p>None</p>
<p>Allows agreements for heating at certain DOD installations in Germany if provisions are included for the consideration of U.S. coal as an energy source.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “Using funds available by this Act or any other Act, the Secretary of the Air Force, pursuant to a determination under section 2690 of title 10, United States Code, may implement cost-effective agreements for required heating facility modernization in the Kaiserslautern Military Community in the Federal Republic of Germany: <i>Provided</i>, That in the City of Kaiserslautern such agreements will include the use of United States anthracite as the base load energy for municipal district heat to the United States Defense installations: <i>Provided further</i>, That at Landstuhl Army Regional Medical Center and Ramstein Air Base, furnished heat may be obtained from private, regional or municipal services, if provisions are included for the consideration of United States coal as an energy source.”</p> <p>Pub. L. No. 106-259, § 8082, 114 Stat. 692 (FY 01)</p>	<p>None</p>

<p>Strikes a provision from the fiscal year 2000 Defense appropriations act that prohibited the procurement of a nuclear-capable shipyard crane from a foreign source.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “Section 8093 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79; 113 Stat. 1253) is amended by striking subsection (d), relating to a prohibition on the use of Department of Defense funds to procure a nuclear-capable shipyard crane from a foreign source.”</p> <p>Pub. L. No. 106-259, § 8144, 114 Stat. 705 (FY 01)</p>	<p>None</p>
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Notification/Reporting Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Requires 10-day congressional notice before a multiyear contract can be terminated.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year . . . <i>Provided Further</i>; That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees. . . .”</p> <p>Pub. L. No. 108-287, § 8008, 118 Stat. 970 (FY 05)</p>	<p>FY 04: § 8008 FY 03: § 8008 FY 02: § 8008 FY 01: § 8008</p>
Requires a report to Congress on the amount of purchases from foreign entities. Requires separate accounting for items under Buy American Act waivers pursuant to trade or international agreement.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(b) The Secretary of Defense shall submit to the Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 2005. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2), the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.”</p> <p>Pub. L. No. 108-287, § 8032(b), 118 Stat. 977 (FY 05)</p>	<p>FY 04: § 8033 FY 03: § 8033 FY 02: § 8036 FY 01: § 8036</p>

Competitive Sourcing Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Imposes limitations on conversion to contractor performance of any activity or function performed by more than 10 civilian employees; provides for exceptions.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees unless—</p> <p style="padding-left: 40px;">(1) the conversion is based on the result of a public-private competition that includes a most efficient and cost effective organization plan developed by such activity or function;</p> <p style="padding-left: 40px;">(2) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of—</p> <p style="padding-left: 80px;">(A) 10 percent of the most efficient organization’s personnel-related costs for performance of that activity or function by Federal employees; or</p> <p style="padding-left: 80px;">(B) \$10,000,000; and</p> <p style="padding-left: 40px;">(3) the contractor does not receive an advantage for a proposal that would reduce costs for the Department of Defense by—</p> <p style="padding-left: 80px;">(A) not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or</p> <p style="padding-left: 80px;">(B) offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the Department of Defense for health benefits for civilian employees under chapter 89 of title 5, United States Code.</p> <p style="padding-left: 40px;">(b) EXCEPTIONS.—</p> <p style="padding-left: 80px;">(1) The Department of Defense, without regard to subsection (a) of this section or subsections (a), (b), or (c) of section 2461 of title 10, United States Code, and notwithstanding any administrative regulation, requirement, or policy to the contrary shall have full authority to enter into a contract for the performance of any commercial or industrial type function of the Department of Defense that—</p> <p style="padding-left: 120px;">(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);</p> <p style="padding-left: 120px;">(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or</p> <p style="padding-left: 120px;">(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).</p> <p style="padding-left: 80px;">(2) This section shall not apply to depot contracts or contracts for depot maintenance as provided in sections 2469 and 2474 of title 10, United States Code.</p>	<p>FY 04: § 8014 FY 03: see below FY 02: see below FY 01: see below</p>

	<p>(c) TREATMENT OF CONVERSION.—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy and is deemed to be awarded under the authority of, and in compliance with, subsection (h) of section 2304 of title 10, United States Code, for the competition or outsourcing of commercial activities.”</p> <p>Pub. L. No. 108-287, § 8014, 118 Stat. 972 (FY 05)</p>	
Requires A-76 cost studies to be completed within two years for single function activities or four years for multi-function activities.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated by this Act shall be available to perform any cost study pursuant to the provisions of OMB Circular A-76 if the study being performed exceeds a period of 24 months after initiation of such study with respect to a single function activity or 48 months after initiation of such study for a multi-function activity.”</p> <p>Pub. L. No. 108-287, § 8022, 118 Stat. 975 (FY 05)</p>	<p>FY 04: § 8022 FY 03: § 8022 FY 02: § 8024 FY 01: § 8024</p>
Allows public/private competition for certain depot related activities; requires all bids include estimates of direct and indirect costs for DOD and private bids; states that A-76 does not apply to these competitions.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: <i>Provided</i>, That the Senior Acquisition Executive of the military department or Defense Agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and indirect costs for both public and private bids: <i>Provided further</i>, That Office of Management and Budget Circular A-76 shall not apply to competitions conducted under this section.”</p> <p>Pub. L. No. 108-287, § 8031, 118 Stat. 977 (FY 05)</p>	<p>FY 04: § 8032 FY 03: § 8032 FY 02: § 8035 FY 01: § 8035</p>

<p>Imposes limitations on conversion to contractor performance of any activity or function performed by more than 10 civilian employees; provides for exceptions.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of the Department of Defense that, on or after the date of the enactment of this Act, is performed by more than 10 Department of Defense civilian employees until a most efficient and cost-effective organization analysis is completed on such activity or function and certification of the analysis is made to the Committees on Appropriations of the House of Representatives and the Senate: Provided, That this section and subsections (a), (b), and (c) of 10 U.S.C. 2461 shall not apply to a commercial or industrial type function of the Department of Defense that: (1) is included on the procurement list established pursuant to section 2 of the Act of June 25, 1938 (41 U.S.C. 47), popularly referred to as the Javits-Wagner-O'Day Act; (2) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or (3) is planned to be converted to performance by a qualified firm under 51 percent ownership by an Indian tribe, as defined in section 450b(e) of title 25, United States Code, or a Native Hawaiian organization, as defined in section 637(a)(15) of title 15, United States Code.”</p> <p>Pub. L. No. 107-248, § 8014, 116 Stat. 1539 (FY 03)</p>	<p>FY 05: see above FY 04: see above FY 02: § 8014 FY 01: § 8014</p>
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Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Prohibits funds from being used to enter into a multiyear contract over certain thresholds unless the act specifically allows it.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds provided in this Act shall be available to initiate: (1) a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year of the contract or that includes an unfunded contingent liability in excess of \$20,000,000; or (2) a contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of \$20,000,000 in any 1 year . . . <i>Provided further</i>, That no part of any appropriation contained in this Act shall be available to initiate multiyear procurement contracts for any systems or component thereof if the value of the multiyear contract would exceed \$500,000,000 unless specifically provided in this Act: <i>Provided Further</i>, That no multiyear procurement contract can be terminated without 10-day prior notification to the congressional defense committees: <i>Provided further</i>, That the execution of multiyear authority shall require the use of a present value analysis to determine lowest cost compared to an annual procurement. . . .”³</p> <p>Pub. L. No. 108-287, § 8008, 118 Stat. 970 (FY 05)</p>	<p>FY 04: § 8008 FY 03: § 8008 FY 02: § 8008 FY 01: § 8008</p>
Allows a prime contractor or subcontractor to qualify for the additional compensation under 25 U.S.C. 1544 for subcontracting with an Indian organization or Indian-owned enterprise. States that section applies to contracts or subcontracts for commercial items.	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “In addition to the funds provided elsewhere in this Act, \$8,000,000 is appropriated only for incentive payments authorized by section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544): <i>Provided</i>, That a prime contractor or a subcontractor at any tier that makes a subcontract award to any subcontractor or supplier as defined in 25 U.S.C. 1544 or a small business owned and controlled by an individual or individuals defined under 25 U.S.C. 4221(9) shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) whenever the prime contract or subcontract amount is over \$500,000 and involves the expenditure of funds appropriated by an Act making Appropriations for the Department of Defense with respect to any fiscal year: <i>Provided further</i>, That notwithstanding 41 U.S.C. 430, this section shall be applicable to any Department of Defense acquisition of supplies or services, including any contract and any subcontract at any tier for acquisition of commercial items produced or manufactured, in whole or in part by any subcontractor or supplier defined in 25 U.S.C. 1544 or a small business owned and controlled by an individual or individuals defined under 25 U.S.C. 4221(9): <i>Provided further</i>, That businesses certified as 8(a) by the Small Business Administration pursuant to section 8(a)(15) of Public Law 85-536, as amended, shall have the same status as other program participants under section 602 of Public Law 100-656, 102 Stat. 3825 (Business Opportunity Development Reform Act of 1988) for purposes of contracting with agencies of the Department of Defense.”</p> <p>Pub. L. No. 108-287, § 8021, 118 Stat. 974 (FY 05)</p>	<p>FY 04: § 8021 FY 03: § 8021 FY 02: § 8022 FY 01: § 8022</p>

³ Note that a notification requirement appears in this provision. It is cited in the Notification/Reporting Requirements section above as well.

<p>Requires certain determinations for noncompetitive awards of contracts for studies, analysis, or consulting services entered into based on unsolicited proposals; provides for exceptions.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated by this Act shall be available for a contract for studies, analysis, or consulting services entered into without competition on the basis of an unsolicited proposal unless the head of the activity responsible for the procurement determines—</p> <p>(1) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work;</p> <p>(2) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or</p> <p>(3) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support: <i>Provided</i>, That this limitation shall not apply to contracts in an amount of less than \$25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense, who has been confirmed by the Senate, determines that the award of such contract is in the interest of the national defense.”</p> <p>Pub. L. No. 108-287, § 8046, 118 Stat. 980 (FY 05)</p>	<p>FY 04: § 8046 FY 03: § 8047 FY 02: § 8051 FY 01: § 8051</p>
<p>Establishes local employment requirements for construction or service contracts performed in certain states. Permits waiver in the interest of national security.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “Notwithstanding any other provision of law, each contract awarded by the Department of Defense during the current fiscal year for construction or service performed in whole or in part in a State (as defined in section 381(d) of title 10, United States Code) which is not contiguous with another State and has an unemployment rate in excess of the national average rate of unemployment as determined by the Secretary of Labor, shall include a provision requiring the contractor to employ, for the purpose of performing that portion of the contract in such State that is not contiguous with another State, individuals who are residents of such State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills: <i>Provided</i>, That the Secretary of Defense may waive the requirements of this section, on a case-by-case basis, in the interest of national security.”</p> <p>Pub. L. No. 108-287, § 8062, 118 Stat. 984 (FY 05)</p>	<p>FY 04: § 8061 FY 03: § 8064 FY 02: § 8069 FY 01: § 8068</p>

<p>Requires qualified nonprofit agencies for the blind or other severely handicapped be afforded the maximum practicable opportunity to participate as subcontractors and suppliers. Requires that business concerns get credit towards certain subcontracting goals for such purchases.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) Of the funds for the procurement of supplies or services appropriated by this Act, qualified nonprofit agencies for the blind or other severely handicapped shall be afforded the maximum practicable opportunity to participate as subcontractors and suppliers in the performance of contracts let by the Department of Defense.</p> <p>(b) During the current fiscal year, a business concern which has negotiated with a military service or defense agency a subcontracting plan for the participation by small business concerns pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) shall be given credit toward meeting that subcontracting goal for any purchases made from qualified nonprofit agencies for the blind or other severely handicapped.</p> <p>(c) For the purpose of this section, the phrase “qualified nonprofit agency for the blind or other severely handicapped” means a nonprofit agency for the blind or other severely handicapped that has been approved by the Committee for the Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O’Day Act (41 U.S.C. 46-48).”</p> <p>Pub. L. No. 108-87, § 8025, 117 Stat. 1077 (FY 04)</p>	<p>FY 05: None FY 03: § 8025 FY 02: § 8028 FY 01: § 8028</p>
<p>Requires competitive procedures for leasing of transport/VIP aircraft.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated by this Act may be used for leasing of transport/VIP aircraft under any contract entered into under any procurement procedures other than pursuant to the Competition and Contracting Act.”</p> <p>Pub. L. No. 107-248, § 8147, 116 Stat. 1572 (FY 03)</p>	<p>None</p>
<p>Allows 2 year extension of certain TRICARE contracts if the Secretary of Defense determines it is in the government’s best interest. Allows future contracts to include up to seven 1-year options.</p>	<p><u>Appropriations Act Heading:</u> TITLE VIII – GENERAL PROVISIONS</p> <p><u>Text:</u> “Notwithstanding any other provision of law, the TRICARE managed care support contracts in effect, or in final stages of acquisition as of September 30, 2000, may be extended for 2 years: <i>Provided</i>, That any such extension may only take place if the Secretary of Defense determines that it is in the best interest of the Government: <i>Provided further</i>, That any contract extension shall be based on the price in the final best and final offer for the last year of the existing contract as adjusted for inflation and other factors mutually agreed to by the contractor and the Government: <i>Provided further</i>, That notwithstanding any other provision of law, all future TRICARE managed care support contracts replacing contracts in effect, or in the final stages of acquisition as of September 30, 2000, may include a base contract period for transition and up to seven 1-year option periods.”</p> <p>Pub. L. No. 106-259, § 8090, 114 Stat. 694 (FY 01)</p>	<p>None</p>

**Table 2: Foreign Operations, Export Financing,
And Related Programs Appropriations Act
Fiscal Years 2001-2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions ⁴
Requires condoms purchased to be manufactured in the U.S.	<p><u>Appropriations Act Heading:</u> TITLE II – BILATERAL ECONOMIC ASSISTANCE; FUNDS APPROPRIATED TO THE PRESIDENT; UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT; CHILD SURVIVAL AND HEALTH PROGRAMS FUND</p> <p><u>Text:</u> “For necessary expenses to carry out the provisions of chapters 1 and 10 of part I of the Foreign Assistance Act of 1961, for child survival, health, and family planning/reproductive health activities, in addition to funds otherwise available for such purposes, \$1,835,000,000, to remain available until September 30, 2005 . . . <i>Provided further,</i> That to the maximum extent feasible, taking into consideration cost, timely availability, and best health practices, funds appropriated in this Act or prior appropriations Acts that are made available for condom procurement shall be made available only for the procurement of condoms manufactured in the United States. . . .”</p> <p>Pub. L. No. 108-199, Div. D, 118 Stat. 145 (FY 04)</p>	None
To the maximum extent practicable, consistent with full and open competition, contracts for certain air service shall be entered into with U.S. carriers.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; DELIVERY OF ASSISTANCE BY AIR</p> <p><u>Text:</u> “The Secretary of State and the Administrator of the United States Agency for International Development shall seek to ensure that, where appropriate, dedicated air service is provided for transportation to areas where scheduled air service is not adequate to meet assistance requirements on a timely basis: <i>Provided,</i> That to the maximum extent practicable and in a manner consistent with the use of full and open competition (as that term is defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6)), contracts for such dedicated air service shall be entered into with United States air carriers.”</p> <p>Pub. L. No. 108-199, Div. D, § 599A, 118 Stat. 210 (FY 04)</p>	None

⁴ Similar or identical provisions in other Foreign Operations, Export Financing, and Related Programs appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. The five acts reviewed are the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, Pub. L. No. 108-447, Div. D, 118 Stat. 2968 (2004); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2004, Pub. L. No. 108-199, Div. D, 118 Stat. 143 (2004); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2003, Pub. L. No. 108-7, Div. E, 117 Stat. 159 (2003); Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002, Pub. L. No. 107-115, 115 Stat. 2118 (2002); and the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, Pub. L. No. 106-429, 114 Stat. 1900 (2000).

<p>Provides that assistance under the Act make use of American resources to the maximum extent practicable.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS</p> <p><u>Text:</u> “To the maximum extent practicable, assistance provided under this Act should make full use of American resources, including commodities, products, and services.”</p> <p>Pub. L. No. 107-115, § 541, 115 Stat. 2154 (FY 02)</p>	<p>FY 05: None FY 04: None FY 03: None FY 01: § 545(a)⁵</p>
<p>Provides that all USAID contracts shall include a clause requiring U.S. insurance companies to have a fair opportunity to bid for insurance.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; COMPETITIVE INSURANCE</p> <p><u>Text:</u> “All Agency for International Development contracts and solicitations, and subcontract entered into under such contracts, shall include a clause requiring that United States insurance companies have a fair opportunity to bid for insurance when such insurance is necessary or appropriate.”</p> <p>Pub. L. No. 106-429, App. A, § 529, 114 Stat. 1900A-31 (FY 01)</p>	<p>None</p>
<p>Provides that, to the maximum extent practicable, articles and services used to assist Eastern Europe and the Baltic States to be of U.S. origin.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; RESTRICTION ON UNITED STATES ASSISTANCE FOR CERTAIN RECONSTRUCTION EFFORTS IN CENTRAL EUROPE</p> <p><u>Text:</u> “Funds appropriated or otherwise made available by this Act for United States assistance for Eastern Europe and the Baltic States should to the maximum extent practicable be used for the procurement of articles and services of United States origin.”</p> <p>Pub. L. No. 106-429, App. A, § 582, 114 Stat. 1900A-55 (FY 01)</p>	<p>None</p>

⁵ This section also required notice to contractors of a sense of Congress that items purchased should be American-made to the greatest extent practicable.

Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Requires significant weight be given to contractors who invest their own resources in certain projects in the Independent States of the Former Soviet Union.	<p>Appropriations Act Heading: TITLE V – GENERAL PROVISIONS; INDEPENDENT STATES OF THE FORMER SOVIET UNION</p> <p>Text: “In issuing new task orders, entering into contracts, or making grants, with funds appropriated in this Act or prior appropriations Acts under the heading “Assistance for the Independent States of the Former Soviet Union” and under comparable headings in prior appropriations Acts, for projects or activities that have as one of their primary purposes the fostering of private sector development, the Coordinator for United States Assistance to Europe and Eurasia and the implementing agency shall encourage the participation of and give significant weight to contractors and grantees who propose investing a significant amount of their own resources (including volunteer services and in-kind contributions) in such projects and activities.”</p> <p>Pub. L. No. 108-447, Div. D, § 517(e), 118 Stat. 2997 (FY 05)</p>	<p>FY 04: § 517(g) FY 03: § 517(g) FY 02: § 517(g) FY 01: § 517(g)</p>
Allows USAID to place task orders with small or small disadvantaged businesses as an exception to providing a fair opportunity to all firms holding multiple award IDIQ contracts.	<p>Appropriations Act Heading: TITLE V – GENERAL PROVISIONS; SPECIAL AUTHORITIES</p> <p>Text: “SMALL BUSINESS.—In entering into multiple award indefinite-quantity contracts with funds appropriated by this Act, the United States Agency for International Development may provide an exception to the fair opportunity process for placing task orders under such contracts when the order is placed with any category of small or small disadvantaged business.”</p> <p>Pub. L. No. 108-447, Div. D, § 534(e), 118 Stat. 3006 (FY 05)</p>	<p>FY 04: §534(e) FY 03: § 534(f) FY 02: § 534(f) FY 01: None</p>
Requires contracts to comply with statutory subcontracting plan requirements.	<p>Appropriations Act Heading: TITLE V – GENERAL PROVISIONS; LIMITATION ON CONTRACTS</p> <p>Text: “None of the funds made available under this Act may be used to fund any contract in contravention of section 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6)).”</p> <p>Pub. L. No. 108-447, Div. D, § 573, 118 Stat. 3027 (FY 05)</p>	<p>None</p>

<p>Limits contracts for consulting services to those which are a matter of public record and included in a publicly available list, with exception.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; CONSULTING SERVICES</p> <p><u>Text:</u> “The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order pursuant to existing law.”</p> <p>Pub. L. No. 106-429, App. A, § 547, 114 Stat. 1900A-40 (FY 01)</p>	<p>None</p>
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**Table 3: Department of the Interior and Related Agencies Appropriations Act
Fiscal Years 2001–2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions ⁶
Prohibits entities contracted to operate the National Recreation Reservation Service from using a foreign contract center or reservation agent who does not live in the U.S.	<p><u>Appropriation Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) IN GENERAL.—An entity that enters into a contract with the United States to operate the National Recreation Reservation Service (as solicited by the solicitation numbered WO–04–06vm) shall not carry out any duties under the contract using:</p> <p style="padding-left: 40px;">(1) a contact center located outside the United States; or</p> <p style="padding-left: 40px;">(2) a reservation agent who does not live in the United States.</p> <p>(b) NO WAIVER.—The Secretary of Agriculture may not waive the requirements of subsection (a).</p> <p>(c) TELECOMMUTING.—A reservation agent who is carrying out duties under the contract described in subsection (a) may not telecommute from a location outside the United States.</p> <p>(d) LIMITATIONS.—Nothing in this Act shall be construed to apply to any employee of the entity who is not a reservation agent carrying out the duties under the contract described in subsection (a) or who provides managerial or support services.”</p> <p>Pub. L. No. 108-447, Div. E, § 338, 118 Stat. 3103 (FY 05)</p>	None

⁶ Similar or identical provisions in other Department of Interior appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. The five acts reviewed are the Department of the Interior and Related Agencies Appropriations Act, 2005, Pub. L. No. 108-447, Div. E, 118 Stat. 3039 (2004); Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. No. 108-108, 117 Stat. 1241 (2003); Department of the Interior and Related Agencies Appropriations Act, 2003, Pub. L. No. 108-7, Div. F, 117 Stat. 216 (2003); Department of the Interior and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-63, 115 Stat. 414 (2001); and the Department of the Interior and Related Agencies Appropriations Act, 2001, Pub. L. No. 106-291, 114 Stat. 922 (2000).

Notification/Reporting Requirements

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Requires a report to Congress on the amount of Interior acquisitions of articles, materials, or supplies that were manufactured outside the U.S. and an itemized list of all Buy American Act waivers.</p>	<p><u>Appropriations Act Heading:</u> TITLE I – DEPARTMENT OF THE INTERIOR; DEPARTMENTAL MANAGEMENT; SALARIES AND EXPENSES</p> <p><u>Text:</u> “For necessary expenses for management of the Department of the Interior, . . . <i>Provided,</i> That of this amount, sufficient funds shall be available for the Secretary of the Interior, not later than 60 days after the last day of the fiscal year, to submit to Congress a report on the amount of acquisitions made by the Department of the Interior during such fiscal year of articles, materials, or supplies that were manufactured outside the United States. Such report shall separately indicate the dollar value of any articles, materials, or supplies purchased by the Department of the Interior that were manufactured outside the United States, an itemized list of all waivers under the Buy American Act (41 U.S.C. 10a et seq.) that were granted with respect to such articles, materials, or supplies, and a summary of total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States. The Secretary of the Interior shall make the report publicly available by posting the report on an Internet website. . . .”</p> <p>Pub. L. No. 108-108, 117 Stat. 1262 (FY 04)</p>	<p>None</p>

Competitive Sourcing

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Limits funding of competitive sourcing studies until Energy and Interior comply with specified reprogramming requirements; limits funds for Forest Service competitive sourcing studies; exempts certain Forest Service studies from A-76 commitment and review procedures; requires congressional reports concerning competitive sourcing studies to capture costs attributable to the studies.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “(a) LIMITATION ON COMPETITIVE SOURCING STUDIES.—</p> <p>(1) Of the funds made available by this or any other Act to the Department of Energy or the Department of the Interior for fiscal year 2005, not more than the maximum amount specified in paragraph (2) may be used by the Secretary of Energy or the Secretary of the Interior to initiate or continue competitive sourcing studies in fiscal year 2005 for programs, projects, and activities for which funds are appropriated by this Act until such time as the Secretary concerned submits a reprogramming proposal to the Committees on Appropriations of the Senate and the House of Representatives, and such proposal has been processed consistent with the reprogramming guidelines in House Report 108–330.</p> <p>(2) For the purposes of paragraph (1) the maximum amount—</p> <p>(A) with respect to the Department of Energy is \$500,000; and</p> <p>(B) with respect to the Department of the Interior is \$3,250,000.</p> <p>(3) Of the funds appropriated by this Act, not more than \$2,000,000 may be used in fiscal year 2005 for competitive sourcing studies and related activities by the Forest Service.</p> <p>(b) COMPETITIVE SOURCING STUDY DEFINED.—In this section, the term “competitive sourcing study” means a study on subjecting work performed by Federal Government employees or private contractors to public-private competition or on converting the Federal Government employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A–76 or any other administrative regulation, directive, or policy.</p> <p>(c) Section 340(b) of Public Law 108–108 is hereby repealed.</p> <p>(d) COMPETITIVE SOURCING EXEMPTION FOR FOREST SERVICE STUDIES CONDUCTED PRIOR TO FISCAL YEAR 2005.—Notwithstanding requirements of Office of Management and Budget Circular A–76, Attachment B, the Forest Service is hereby exempted from implementing the Letter of Obligation and post-competition accountability guidelines where a competitive sourcing study involved 65 or fewer full-time equivalents, the performance decision was made in favor of the agency provider; no net savings was achieved by conducting the study, and the study was completed prior to the date of this Act.</p> <p>(e) In preparing any reports to the Committees on Appropriations on competitive sourcing activities, agencies funded in this Act shall include the incremental cost directly attributable to conducting the competitive sourcing competitions, including costs attributable to paying outside consultants and contractors and, in accordance with full cost accounting principles, all costs attributable to developing, implementing, supporting, managing, monitoring, and reporting on competitive sourcing, including personnel, consultant, travel, and training costs associated with program management.”</p> <p>Pub. L. No. 108-447, Div. E, § 332, 118 Stat. 3099-00 (FY 05)</p>	<p>None</p>

<p>Requires Interior, Energy, and the Forest Service to separately budget for competitive sourcing studies; requires annual reports on competitive sourcing activities (this requirement repealed in fiscal year 2005); requires Interior, Energy, and the Forest Service to submit detailed proposals for competitive sourcing studies to appropriations committees; limits funding of competitive sourcing studies until Energy and Interior comply with specified reprogramming requirements; limits funds for Forest Service competitive sourcing studies; imposes limitations on conversion to contractor performance of any activity or function performed by more than 10 Federal employees; provides for exceptions.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> (a) JUSTIFICATION OF COMPETITIVE SOURCING ACTIVITIES.—</p> <p>(1) In each budget submitted by the President to Congress under section 1105 of title 31, United States Code, for a fiscal year, beginning with fiscal year 2005, amounts requested to perform competitive sourcing studies for programs, projects, and activities listed in paragraph (2) shall be set forth separately from other amounts requested.</p> <p>(2) Paragraph (1) applies to programs, projects, and activities—</p> <p>(A) of the Department of the Interior for which funds are appropriated by this Act;</p> <p>(B) of the Forest Service; and</p> <p>(C) of the Department of Energy for which funds are appropriated by this Act.</p> <p>(b) ANNUAL REPORTING REQUIREMENTS ON COMPETITIVE SOURCING ACTIVITIES.—</p> <p>(1) Not later than December 31 of each year, beginning with December 31, 2003, the Secretary concerned shall submit to the Committees on Appropriations of the Senate and the House of Representatives a report, covering the preceding fiscal year, on the competitive sourcing studies conducted by the Department of the Interior, the Forest Service, or the Department of Energy, as appropriate, and the costs and cost savings to the citizens of the United States of such studies.</p> <p>(2) In this subsection, the term “Secretary concerned” means—</p> <p>(A) the Secretary of the Interior, with respect to the Department of the Interior programs, projects, and activities for which funds are appropriated by this Act;</p> <p>(B) the Secretary of Agriculture, with respect to the Forest Service; and</p> <p>(C) the Secretary of Energy, with respect to the Department of Energy programs, projects, and activities for which funds are appropriated by this Act.</p> <p>(3) The report under this subsection shall include, for the fiscal year covered—</p> <p>(A) the total number of competitions completed;</p> <p>(B) the total number of competitions announced, together with a list of the activities covered by such competitions;</p> <p>(C) the total number of full-time equivalent Federal employees studied under completed competitions;</p> <p>(D) the total number of full-time equivalent Federal employees being studied under competitions announced, but not completed;</p> <p>(E) the incremental cost directly attributable to conducting the competitions identified under subparagraphs (A) and (B), including costs attributable to paying outside consultants and contractors;</p> <p>(F) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;</p> <p>(G) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions;</p> <p>(H) the total projected number of full-time equivalent Federal employees covered by competitions scheduled to be announced in the fiscal year; and</p> <p>(I) a description of how the competitive sourcing decision making processes are aligned with strategic workforce plans.</p> <p>(c) DECLARATION OF COMPETITIVE SOURCING STUDIES.—For fiscal year 2004, each of the Secretaries of executive departments referred to in subsection (b)(2) shall submit a detailed competitive sourcing</p>	<p>None</p>
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proposal to the Committees on Appropriations of the Senate and the House of Representatives not later than 60 days after the date of the enactment of this Act. The proposal shall include, for each competitive sourcing study proposed to be carried out by or for the Secretary concerned, the number of positions to be studied, the amount of funds needed for the study, and the program, project, and activity from which the funds will be expended.

(d) LIMITATION ON COMPETITIVE SOURCING STUDIES.—

(1) Of the funds made available by this or any other Act to the Department of Energy or the Department of the Interior for fiscal year 2004, not more than the maximum amount specified in paragraph (2)(A) may be used by the Secretary of Energy or the Secretary of the Interior to initiate or continue competitive sourcing studies in fiscal year 2004 for programs, projects, and activities for which funds are appropriated by this Act until such time as the Secretary concerned submits a reprogramming proposal to the Committees on Appropriations of the Senate and the House of Representatives, and such proposal has been processed consistent with the fiscal year 2004 reprogramming guidelines.

(2) For the purposes of paragraph (1)—

(A) the maximum amount—

(i) with respect to the Department of Energy is \$500,000; and

(ii) with respect to the Department of the Interior is \$2,500,000; and

(B) the fiscal year 2004 reprogramming guidelines referred to in such paragraph are the reprogramming guidelines set forth in the joint explanatory statement accompanying the Act (H.R. 2691, 108th Congress, 1st session), making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004, and for other purposes.

(3) Of the funds appropriated by this Act, not more than \$5,000,000 may be used in fiscal year 2004 for competitive sourcing studies and related activities by the Forest Service.

(e) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—

(1) None of the funds made available in this or any other Act may be used to convert to contractor performance an activity or function of the Forest Service, an activity or function of the Department of the Interior performed under programs, projects, and activities for which funds are appropriated by this Act, or an activity or function of the Department of Energy performed under programs, projects, and activities for which funds are appropriated by this Act, if such activity or function is performed on or after the date of the enactment of this Act by more than 10 Federal employees unless—

(A) the conversion is based on the result of a public-private competition that includes a more efficient and cost effective organization plan developed by such activity or function; and (B) the Competitive Sourcing Official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Federal Government by an amount that equals or exceeds the lesser of—

(i) 10 percent of the more efficient organization's personnel-related costs for performance of that activity or function by Federal employees; or

(ii) \$10,000,000.

(2) This subsection shall not apply to a commercial or industrial type function that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 47);

(B) is planned to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

	<p>(C) is planned to be converted to performance by a qualified firm under at least 51 percent ownership by an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)), or a Native Hawaiian Organization, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).</p> <p>(3) The conversion of any activity or function under the authority provided by this subsection shall be credited toward any competitive or outsourcing goal, target, or measurement that may be established by statute, regulation, or policy.</p> <p>(f) COMPETITIVE SOURCING STUDY DEFINED.—In this subsection, the term “competitive sourcing study” means a study on subjecting work performed by Federal Government employees or private contractors to public-private competition or on converting the Federal Government employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy.”</p> <p>Pub. L. No. 108-108, § 340, 117 Stat. 1315-17 (FY 04)</p>	
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Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Notwithstanding CICA requirements, allows competition for hazardous fuels reduction activities to be limited to specified groups or entities.	<p>Appropriations Act Heading: TITLE I – DEPARTMENT OF THE INTERIOR; BUREAU OF LAND MANAGEMENT; WILDLAND FIRE MANAGEMENT</p> <p>Text: “For necessary expenses for fire preparedness, suppression operations, fire science and research, emergency rehabilitation, hazardous fuels reduction, and rural fire assistance by the Department of the Interior . . . <i>Provided further</i>, That notwithstanding requirements of the Competition in Contracting Act, the Secretary, for purposes of hazardous fuels reduction activities, may obtain maximum practicable competition among: (1) local private, nonprofit, or cooperative entities; (2) Youth Conservation Corps crews or related partnerships with State, local, or non-profit youth groups; (3) small or microbusinesses; or (4) other entities that will hire or train locally a significant percentage, defined as 50 percent or more, of the project workforce to complete such contracts. . . .”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3040 (FY 05)</p>	<p>FY 04: 117 Stat. 1242 FY 03: 117 Stat. 217 FY 02: 115 Stat. 415 FY 01: 114 Stat. 1007</p>
Requires National Park Service contracts and grants to include the text of a law prohibiting lobbying with appropriated moneys.	<p>Appropriations Act Heading: TITLE I – DEPARTMENT OF THE INTERIOR; NATIONAL PARK SERVICE; ADMINISTRATIVE PROVISIONS</p> <p>Text: “. . . <i>Provided</i>, That none of the funds appropriated to the National Park Service may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913. . . .”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3050 (FY 05)</p>	<p>FY 04: 117 Stat. 1253 FY 03: 117 Stat. 227 FY 02: 115 Stat. 426 FY 01: 114 Stat. 930</p>
Allows the U.S. Geological Survey to enter into contracts without competition for the services of students or recent graduates.	<p>Appropriations Act Heading: TITLE I – DEPARTMENT OF THE INTERIOR; UNITED STATES GEOLOGICAL SURVEY; ADMINISTRATIVE PROVISIONS</p> <p>Text: “. . . [T]he United States Geological Survey may enter into contracts or cooperative agreements directly with individuals or indirectly with institutions or nonprofit organizations, without regard to 41 U.S.C. 5, for the temporary or intermittent services of students or recent graduates, who shall be considered employees for the purpose of chapters 57 and 81 of title 5, United States Code, relating to compensation for travel and work injuries, and chapter 171 of title 28, United States Code, relating to tort claims, but shall not be considered to be Federal employees for any other purposes.”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3052 (FY 05)</p>	<p>None</p>

<p>Allows the Bureau of Indian Affairs to contract for support services for the Power Division of the San Carlos Irrigation Project without submitting to Congress a copy of the contract and reasons for proposing the contract.</p>	<p><u>Appropriations Act Heading:</u> TITLE I – DEPARTMENT OF THE INTERIOR; BUREAU OF INDIAN AFFAIRS; ADMINISTRATIVE PROVISIONS</p> <p><u>Text:</u> “Notwithstanding 25 U.S.C. 15, the Bureau of Indian Affairs may contract for services in support of the management, operation, and maintenance of the Power Division of the San Carlos Irrigation Project.”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3057 (FY 05)</p>	<p>FY 04: 117 Stat. 1259 FY 03: 117 Stat. 233 FY 02: None FY 01: None</p>
<p>Allows certain contracts for the Smithsonian Institution to be negotiated with selected contractors and awarded on the basis of contractor qualification as well as price.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – RELATED AGENCIES; OTHER RELATED AGENCIES; SMITHSONIAN INSTITUTION; FACILITIES CAPITAL</p> <p><u>Text:</u> “For necessary expenses of repair, revitalization, and alteration of facilities owned or occupied by the Smithsonian Institution . . . <i>Provided</i>, That contracts awarded for environmental systems, protection systems, and repair or restoration of facilities of the Smithsonian Institution may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3088-89 (FY 05)</p>	<p>FY 04: 117 Stat. 1298 FY 03: 117 Stat. 266 FY 02: 115 Stat. 461 FY 01: 114 Stat. 983</p>
<p>Allows National Gallery of Art to contract for services for restoration and repair or artwork without competition and under terms and conditions deemed proper by the Gallery.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – RELATED AGENCIES; OTHER RELATED AGENCIES; NATIONAL GALLERY OF ART; SALARIES AND EXPENSES</p> <p><u>Text:</u> “For . . . purchase of services for restoration and repair of works of art for the National Gallery of Art by contracts made, without advertising, with individuals, firms, or organizations at such rates or prices and under such terms and conditions as the Gallery may deem proper. . . .”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3089 (FY 05)</p>	<p>FY 04: 117 Stat. 1299 FY 03: 117 Stat. 267 FY 02: 115 Stat. 461 FY 01: 114 Stat. 983</p>

<p>Allows certain contracts for the National Gallery of Art to be negotiated with selected contractors and awarded on the basis of contractor qualification as well as price.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – RELATED AGENCIES; OTHER RELATED AGENCIES; NATIONAL GALLERY OF ART; REPAIR, RESTORATION AND RENOVATION OF BUILDINGS</p> <p><u>Text:</u> “For necessary expenses of repair, restoration and renovation of buildings, grounds and facilities owned or occupied by the National Gallery of Art, by contract or otherwise, as authorized, \$11,100,000, to remain available until expended: <i>Provided</i>, That contracts awarded for environmental systems, protection systems, and exterior repair or renovation of buildings of the National Gallery of Art may be negotiated with selected contractors and awarded on the basis of contractor qualifications as well as price.”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3090 (FY 05)</p>	<p>FY 04: 117 Stat. 1299 FY 03: 117 Stat. 267 FY 02: 115 Stat. 462 FY 01: 114 Stat. 984</p>
<p>Requires National Foundation of the Arts and the Humanities contracts and grants to include the text of a law prohibiting lobbying with appropriated moneys.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – RELATED AGENCIES; OTHER RELATED AGENCIES; NATIONAL GALLERY OF ART; ADMINISTRATIVE PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated to the National Foundation on the Arts and the Humanities may be used to process any grant or contract documents which do not include the text of 18 U.S.C. 1913. . . .”</p> <p>Pub. L. No. 108-447, Div. E, 118 Stat. 3091 (FY 05)</p>	<p>FY 04: 117 Stat. 1300 FY 03: 117 Stat. 268 FY 02: 115 Stat. 463 FY 01: 114 Stat. 985</p>
<p>Limits contracts for consulting service to those which are a matter of public record and included in a publicly available list, with exception.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “The expenditure of any appropriation under this Act for any consulting service through procurement contract, pursuant to 5 U.S.C. 3109, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.”</p> <p>Pub. L. No. 108-447, Div. E, § 301, 118 Stat. 3092 (FY 05)</p>	<p>FY 04: § 301 FY 03: § 301 FY 02: § 301 FY 01: § 301</p>
<p>Allows limited competition for certain watershed restoration project contracts.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “Notwithstanding any other provision of law, for fiscal year 2005 the Secretaries of Agriculture and the Interior are authorized to limit competition for watershed restoration project contracts as part of the “Jobs in the Woods” Program established in Region 10 of the Forest Service to individuals and entities in historically timber-dependent areas in the States of Washington, Oregon, northern California, Idaho, Montana, and Alaska that have been affected by reduced timber harvesting on Federal lands. The Secretaries shall consider the benefits to the local economy in evaluating bids and designing procurements which create economic opportunities for local contractors.”</p> <p>Pub. L. No. 108-447, Div. E, § 314, 118 Stat. 3095 (FY 05)</p>	<p>FY 04: § 315 FY 03: § 315 FY 02: § 311 FY 01: § 313</p>

<p>In evaluating bids or proposals for certain contracts, the Secretary may give consideration to local contractors from economically disadvantaged rural communities; notwithstanding Federal Government procurement and contracting laws, allows competition for certain contracts to be limited to specified groups or entities.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “In awarding a Federal contract with funds made available by this Act, the Secretary of Agriculture and the Secretary of the Interior (the “Secretaries”) may, in evaluating bids and proposals, give consideration to local contractors who are from, and who provide employment and training for, dislocated and displaced workers in an economically disadvantaged rural community, including those historically timber-dependent areas that have been affected by reduced timber harvesting on Federal lands and other forest-dependent rural communities isolated from significant alternative employment opportunities: <i>Provided</i>, That notwithstanding Federal Government procurement and contracting laws the Secretaries may award contracts, grants or cooperative agreements to local non-profit entities, Youth Conservation Corps or related partnerships with State, local or non-profit youth groups, or small or disadvantaged business: <i>Provided further</i>; That the contract, grant, or cooperative agreement is for forest hazardous fuels reduction, watershed or water quality monitoring or restoration, wildlife or fish population monitoring, or habitat restoration or management: <i>Provided further</i>; That the terms “rural community” and “economically disadvantaged” shall have the same meanings as in section 2374 of Public Law 101–624: <i>Provided further</i>; That the Secretaries shall develop guidance to implement this section: <i>Provided further</i>; That nothing in this section shall be construed as relieving the Secretaries of any duty under applicable procurement laws, except as provided in this section.”</p> <p>Pub. L. No. 108-447, Div. E, § 328, 118 Stat. 3098-99 (FY 05)</p>	<p>None</p>
<p>In evaluating bids and proposals for certain contracts, the Secretary may give consideration to local contractors from economically disadvantaged rural communities; states that Secretary may award certain contracts to specified groups or entities.</p>	<p><u>Appropriation Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “In awarding a Federal Contract with funds made available by this Act, the Secretary of Agriculture and the Secretary of the Interior (the “Secretaries”) may, in evaluating bids and proposals, give consideration to local contractors who are from, and who provide employment and training for, dislocated and displaced workers in an economically disadvantaged rural community, including those historically timber-dependent areas that have been affected by reduced timber harvesting on Federal lands and other forest-dependent rural communities isolated from significant alternative employment opportunities: <i>Provided</i>, That the Secretaries may award grants or cooperative agreements to local non-profit entities, Youth Conservation Corps or related partnerships with State, local or non-profit youth groups, or small or disadvantaged business: <i>Provided further</i>; That the contract, grant, or cooperative agreement is for forest hazardous fuels reduction, watershed or water quality monitoring or restoration, wildlife or fish population monitoring, or habitat restoration or management: <i>Provided further</i>; That the terms “rural community” and “economically disadvantaged” shall have the same meanings as in section 2374 of Public Law 101–624: <i>Provided further</i>; That the Secretaries shall develop guidance to implement this section: <i>Provided further</i>; That nothing in this section shall be construed as relieving the Secretaries of any duty under applicable procurement laws, except as provided in this section.”</p> <p>Pub. L. No. 108-108, § 330, 117 Stat. 1309 (FY 04)</p>	<p>FY 03: § 333</p>

<p>Allows Secretary of Agriculture to contract, including sole source, with the state of Utah for certain services on National Forest System lands.</p>	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “FEDERAL AND STATE COOPERATIVE FOREST, RANGELAND, AND WATERSHED RESTORATION IN UTAH. (a) AUTHORITY.—Until September 30, 2006, the Secretary of Agriculture, via cooperative agreement or contract (including sole source contract) as appropriate, may permit the State Forester of the State of Utah to perform forest, rangeland, and watershed restoration services on National Forest System lands in the State of Utah. Restoration services provided are to be on a project to project basis as planned or made ready for implementation under existing authorities of the Forest Service. The types of restoration services that may be contracted under this authority include treatment of insect infected trees, reduction of hazardous fuels, and other activities to restore or improve forest, rangeland, and watershed health including fish and wildlife habitat. . . .”</p> <p>Pub. L. No 108-447, Div. E, § 337, 118 Stat. 3102-03 (FY 05)</p>	<p>None</p>
<p>Notwithstanding Federal Government procurement and contracting laws, allows contracts for hazardous fuel reduction activities to be awarded to specified groups or entities.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – RELATED AGENCIES; DEPARTMENT OF AGRICULTURE; FOREST SERVICE; WILDLAND FIRE MANAGEMENT</p> <p><u>Text :</u> “For necessary expenses for forest fire presuppression activities on National Forest System lands . . . <i>Provided further,</i> That in using the funds provided in this Act for hazardous fuels reduction activities, the Secretary of Agriculture may conduct fuel reduction treatments on Federal lands using all contracting and hiring authorities available to the Secretary applicable to hazardous fuel reduction activities under the wildland fire management accounts: <i>Provided further,</i> That notwithstanding Federal Government procurement and contracting laws, the Secretaries may conduct fuel reduction treatments, rehabilitation and restoration, and other activities authorized under this heading on and adjacent to Federal lands using grants and cooperative agreements: <i>Provided further,</i> That notwithstanding Federal Government procurement and contracting laws, in order to provide employment and training opportunities to people in rural communities, the Secretaries may award contracts, including contracts for monitoring activities, to local private, non-profit, or cooperative entities; Youth Conservation Corps crews or related partnerships, with State, local and nonprofit youth groups; small or micro-businesses; or other entities that will hire or train a significant percentage of local people to complete such contracts. . . .”</p> <p>Pub. .L. No. 108-108, 117 Stat. 1283-85 (FY 04)</p>	<p>FY 05: None FY 03: 117 Stat. 251 FY 02: 115 Stat. 445 FY 01: 114 Stat. 1008</p>
<p>Authorizes limited competition for contracts under the Flathead and Kootenai National Forest Rehabilitation Act of 2003.</p>	<p><u>Appropriation Act Heading:</u> TITLE IV – THE FLATHEAD AND KOOTENAI NATIONAL FOREST REHABILITATION ACT</p> <p><u>Text:</u> “CONTRACTING AND COOPERATIVE AGREEMENTS. (a) IN GENERAL.—Notwithstanding chapter 63 of title 31, United States Code, the Secretary may enter into contract or cooperative agreements to carry out a project under this title [projects necessary to rehabilitate and restore, and conduct salvage harvest on, National Forest System lands in the North Fork drainage on the Flathead National Forest]. (b) EXEMPTION.—Notwithstanding any other provisions of law, the Secretary may limit competition for a contract or a cooperative agreement under subsection (a).”</p> <p>Pub. L. No. 108-108, § 404, 117 Stat. 1320 (FY 04)</p>	<p>None</p>

<p>Authorizes limited competition and stipulates employment preferences for certain fire and fuel treatment and watershed restoration contracts.</p>	<p><u>Appropriation Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “Notwithstanding any other provision of law, for fiscal year 2001, the Secretary of Agriculture is authorized to limit competition for fire and fuel treatment and watershed restoration contracts in the Giant Sequoia National Monument and the Sequoia National Forest. Preference for employment shall be given to dislocated and displaced workers in Tulare, Kern and Fresno Counties, California, for work associated with the establishment of the Giant Sequoia National Monument.”</p> <p>Pub. L. No. 106-291, § 341, 114 Stat. 998 (FY 01)</p>	<p>None</p>
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**Table 4: Departments of Veterans Affairs and Housing and Urban Development,
And Independent Agencies Appropriations Act
Fiscal Years 2001-2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions ⁷
States Congress's sense that funds should be used to buy products made in America. To the greatest extent practicable, requires contracts to include notice of the "sense of Congress."	<p><u>Appropriations Act Heading:</u> TITLE IV – GENERAL PROVISIONS</p> <p><u>Text:</u> "(a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.</p> <p>(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by Congress."</p> <p>Pub. L. No. 108-447, Div. I, § 410, 118 Stat. 3338 (FY 05)</p>	<p>FY 04: § 410 FY 03: § 409 FY 02: § 415 FY 01: § 415</p>
Establishes a 50% cost evaluation preference for U.S. origin ice-breaking research vessels.	<p><u>Appropriations Act Heading:</u> TITLE III – INDEPENDENT AGENCIES; NATIONAL SCIENCE FOUNDATION; RESEARCH AND RELATED ACTIVITIES</p> <p><u>Text:</u> "For necessary expenses in carrying out the National Science Foundation Act of 1950 . . . <i>Provided further,</i> That no funds in this or any other Act shall be used to acquire or lease a research vessel with ice-breaking capability built or retrofitted by a shipyard located in a foreign country if such a vessel of United States origin can be obtained at a cost no more than 50 per centum above that of the least expensive technically acceptable foreign vessel bid. . . ."</p> <p>Pub. L. No. 106-377, 114 Stat. 1441A-50 (FY 01)</p>	None

⁷ Similar or identical provisions in other Departments of Veterans Affairs and Housing and Urban Development appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. The five acts reviewed are the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2005, Pub. L. No. 108-447, Div. I, 118 Stat. 3285 (2004); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004, Pub. L. No. 108-199, Div. G, 118 Stat. 363 (2004); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003, Pub. L. No. 108-7, Div. K, 117 Stat. 474 (2003); Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002, Pub. L. No. 107-73, 115 Stat. 651 (2001); and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001, Pub. L. No. 106-377, 114 Stat. 1441 (2000).

Notification/Reporting Requirements

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Requires HUD to submit to certain congressional committees an information technology plan before HUD can award a new contract for HITS.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; MANAGEMENT AND ADMINISTRATION; WORKING CAPITAL FUND</p> <p><u>Text:</u> “For additional capital for the Working Capital Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, and for the continuing operation of both Department-wide and program-specific information systems . . . <i>Provided further;</i> That none of the funds made available to the Department in this Act, or any other Act, may be used to award a new contract for the HUD Information Technology Services (HITS) project until 90 days after the Department has submitted to the Committees on Appropriations of the House of Representatives and the Senate a comprehensive 5-year information technology plan in accordance with the direction included in the report accompanying this Act.”</p> <p>Pub. L. No. 108-7, Div. K, 117 Stat. 500 (FY 03)</p>	<p>None</p>

Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Requires renewal of expiring contracts before awarding new contracts for permanent supportive housing funded under section 854(c)(3) of the AIDS Housing Opportunity Act.	<p>Appropriations Act Heading: TITLE I – DEPARTMENT OF VETERANS AFFAIRS; COMMUNITY PLANNING AND DEVELOPMENT; HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS</p> <p>Text: “For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), \$284,000,000, to remain available until September 30, 2006: <i>Provided</i>, That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section. . . .”</p> <p>Pub. L. No. 108-447, Div. I, 118 Stat. 3300 (FY 05)</p>	<p>FY 04: 118 Stat. 377 FY 03: 117 Stat. 489 FY 02: 115 Stat. 664 FY 01: 114 Stat. 1441A-15</p>
Requires renewal of needed shelter plus care contracts.	<p>Appropriations Act Heading: TITLE II – DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; COMMUNITY PLANNING AND DEVELOPMENT; HOMELESS ASSISTANCE GRANTS</p> <p>Text: “For . . . the shelter plus care program as authorized under subtitle F of title IV of [the McKinney-Vento Homeless Assistance Act] . . . <i>Provided further</i>; That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary. . . .”</p> <p>Pub. L. No. 108-447, Div. I, 118 Stat. 3306 (FY 05)</p>	<p>FY 04: 118 Stat. 383 FY 03: 117 Stat. 493 FY 02: 115 Stat. 667 FY 01: 114 Stat. 1441A-18</p>
Limits contracts for consulting service to those which are a matter of public record and included in a publicly available list.	<p>Appropriations Act Heading: TITLE IV – GENERAL PROVISIONS</p> <p>Text: “Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.”</p> <p>Pub. L. No. 108-447, Div. I, § 407, 118 Stat. 3338 (FY 05)</p>	<p>FY 04: § 407 FY 03: § 407 FY 02: § 410 FY 01: § 410</p>

<p>Requires that service contracts comply with the Office of Federal Procurement Policy Act. Reports prepared under, or derived from a contract must identify the contract and the contractor.</p>	<p><u>Appropriations Act Heading:</u> TITLE IV – GENERAL PROVISIONS</p> <p><u>Text:</u> “Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), for a contract for services unless such executive agency: (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder; and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning: (A) the contract pursuant to which the report was prepared; and (B) the contractor who prepared the report pursuant to such contract.”</p> <p>Pub. L. No. 108-7, Div. K, § 408, 117 Stat. 524 (FY 03)</p>	<p>FY 05: None FY 04: None FY 02: § 411 FY 01: § 411</p>
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**Table 5: Transportation, Treasury, Independent Agencies,
And General Government Appropriations Act
Fiscal Years 2001-2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions ⁸
Requires compliance with the Buy American Act.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p><u>Text:</u> “No funds appropriated pursuant to this Act may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Buy American Act (41 U.S.C. 10a-10c).”</p> <p>Pub. L. No. 108-447, Div. H, § 508, 118 Stat. 3265 (FY 05)</p>	<p>FY 04: § 523</p> <p>FY 03: § 324(a) (Trans.)</p> <p>FY 03: § 505 (Treas.)</p> <p>FY 02: § 326(a) (Trans.)</p> <p>FY 02: § 506 (Treas.)</p> <p>FY 01: § 325(a) (Trans.)</p> <p>FY 01: § 506 (Treas.)</p>
Prohibits funds from being used by a person or entity convicted of violating the Buy American Act.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p><u>Text:</u> “No funds appropriated or otherwise made available under this Act shall be made available to any person or entity that has been convicted of violating the Buy American Act (41 U.S.C. 10a—10c).”</p> <p>Pub. L. No. 108-447, Div. H, § 509, 118 Stat. 3265 (FY 05)</p>	<p>FY 04: § 530</p> <p>FY 03: § 358 (Trans.)</p> <p>FY 03: § 512 (Treas.)</p> <p>FY 02: § 346 (Trans.)</p> <p>FY 02: § 515 (Treas.)</p>

⁸ Similar or identical provisions in other Departments of Transportation and Treasury appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. In fiscal years 2004 and 2005, the Departments of Transportation and Treasury were covered by the same appropriations acts. We reviewed both of these acts, the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005, Pub. L. No. 108-447, Div. H, 118 Stat. 3199 (2004) and the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004, Pub. L. No. 108-199, Div. F, 118 Stat. 279 (2004). From fiscal years 2001-2003, the Departments fell under separate appropriations acts. The three appropriations acts covering the Department of Transportation during this time that we reviewed are the Transportation and Related Agencies Appropriations Act, 2003, Pub. L. No. 108-7, Div. I, 117 Stat. 384 (2003); Department of Transportation and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-87, 115 Stat. 833 (2001); and the Department of Transportation and Related Agencies Appropriations, 2001, Pub. L. No. 106-346, 114 Stat. 1356 (2000). The three Department of Treasury appropriations acts reviewed are the Treasury and General Government Appropriations Act, 2003, Pub. L. No. 108-7, Div. J, 117 Stat. 428 (2003); Treasury and General Government Appropriations Act, 2002, Pub. L. No. 107-67, 115 Stat. 514 (2001); and the Treasury and General Government Appropriations Act, 2001, Pub. L. No. 106-554, App. C, 114 Stat. 2763A-125 (2000).

States that the Buy American Act does not apply to information technology that is a commercial item.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p><u>Text:</u> “In order to promote Government access to commercial information technology, the restriction on purchasing nondomestic articles, materials, and supplies set forth in the Buy American Act (41 U.S.C. 10a et seq.), shall not apply to the acquisition by the Federal Government of information technology (as defined in section 11101 of title 40, United States Code, that is a commercial item (as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)).”</p> <p>Pub. L. No. 108-447, Div. H, § 517, 118 Stat. 3267 (FY 05)</p>	FY 04: § 535 FY 03: None FY 02: None FY 01: None
Requires steel, iron and manufactured products for certain bridge alteration projects to be produced in the U.S.; provides for exceptions.	<p><u>Appropriations Act Heading:</u> TITLE I – DEPARTMENT OF TRANSPORTATION; COAST GUARD; ALTERATION OF BRIDGES</p> <p><u>Text:</u> “For necessary expenses for alteration or removal of obstructive bridges . . . <i>Provided,</i> That funds for bridge alteration projects conducted pursuant to 33 U.S.C. 511 are available only to the extent that the steel, iron, and manufactured products used in such projects are produced in the United States, unless contrary to law or international agreement, or unless the Commandant of the Coast Guard determines such action to be inconsistent with the public interest or the cost unreasonable.”</p> <p>Pub. L. No. 108-7, Div. I, 117 Stat. 389 (FY 03)</p>	None ⁹
Requires ships purchased by the Coast Guard to be compliant with the Buy American Act.	<p><u>Appropriations Act Heading:</u> TITLE III – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds in this Act shall be used to procure Coast Guard ships, including main diesel engines, unless such procurement is in compliance with the Buy American Act, 41 U.S.C. 10(a)-10(d).”</p> <p>Pub. L. No. 108-7, Div. I, § 353, 117 Stat. 421 (FY 03)</p>	None
Provides for purchase of American-made motorcycles.	<p><u>Appropriations Act Heading:</u> TITLE I – DEPARTMENT OF THE TREASURY; UNITED STATES SECRET SERVICE; SALARIES AND EXPENSES</p> <p><u>Text:</u> “For necessary expenses of the United States Secret Service, including . . . purchase of American-made side-car compatible motorcycles.”</p> <p>Pub. L. No. 108-7, Div. J, 117 Stat. 437 (FY 03)</p>	FY 05: None ¹⁰ FY 04: None FY 02: 115 Stat. 523 (Treas.) FY 01: 114 Stat. 2763A-133 (Treas.)

⁹ In fiscal years 2001-2003 the Coast Guard was covered under the Department of Transportation. In fiscal years 2004-2005 the Coast Guard was covered under the Department of Homeland Security. A similar provision appears in the 2004 DHS appropriations act.

¹⁰ In fiscal years 2001-2003 the Secret Service was covered under the Department of the Treasury. In fiscal years 2004-2005 the Secret Service was covered under the Department of Homeland Security. A similar provision appears in the 2004 and 2005 DHS appropriations acts.

Notification/Reporting Requirements

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Requires congressional approval of an IRS plan for expenditure for IT systems acquisitions that complies with the acquisition rules of the federal government.	<p><u>Appropriations Act Heading:</u> TITLE II – DEPARTMENT OF THE TREASURY; INTERNAL REVENUE SERVICE; BUSINESS SYSTEMS MODERNIZATION</p> <p><u>Text:</u> “For necessary expenses of the Internal Revenue Service, \$205,000,000, to remain available until September 30, 2007, for the capital asset acquisition of information technology systems, including management and related contractual costs of said acquisitions, including contractual costs associated with operations authorized by 5 U.S.C. 3109: <i>Provided</i>, That none of these funds may be obligated until the Internal Revenue Service submits to the Committees on Appropriations, and such Committees approve, a plan for expenditure that . . . (6) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government.”</p> <p>Pub. L. No. 108-447, Div. H, 118 Stat. 3240 (FY 05)</p>	<p>FY 04: 118 Stat. 318 FY 03: 117 Stat. 436 (Treas.) FY 02: 115 Stat. 522 (Treas.) FY 01: None</p>
Requires congressional approval of a Customs Service plan for expenditure for the Automated Commercial Environment that complies with the acquisition rules of the federal government.	<p><u>Appropriations Act Heading:</u> TITLE I – DEPARTMENT OF THE TREASURY; UNITED STATES CUSTOMS SERVICE; AUTOMATION MODERNIZATION</p> <p><u>Text:</u> “For expenses not otherwise provided for Customs automated systems, \$435,332,000, to remain available until expended, of which not less than \$312,900,000 shall be for the development of the Automated Commercial Environment: <i>Provided</i>, That none of the funds appropriated under this heading may be obligated for the Automated Commercial Environment until the United States Customs Service prepares and submits to the Committees on Appropriations a plan for expenditure that . . . (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government. . . .”</p> <p>Pub. L. No. 108-7, Div. J, 117 Stat. 434 (FY 03)</p>	<p>FY 05: None¹¹ FY 04: None FY 02: 115 Stat. 520 (Treas.) FY 01: 114 Stat. 2763A-131 (Treas.)</p>

¹¹ In fiscal years 2001-2003 the Customs Service was covered under the Department of the Treasury. In fiscal years 2004-2005 what was the Customs Service was restructured into *Customs and Border Protection* and *Immigration and Customs Enforcement*, both covered under the Department of Homeland Security. Similar provisions appear in the 2004 and 2005 DHS appropriations acts.

<p>Requires federal agencies to report to Congress concerning the acquisition of articles, materials, or supplies manufactured outside the U.S.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; DEPARTMENTS, AGENCIES, AND CORPORATIONS</p> <p><u>Text:</u> “(a) Not later than 180 days after the end of the fiscal year, the head of each Federal agency shall submit a report to Congress on the amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in that fiscal year.</p> <p>(b) The report required by subsection (a) shall separately indicate—</p> <p>(1) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States;</p> <p>(2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act (41 U.S.C. 10a et seq.); and</p> <p>(3) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.</p> <p>(c) The head of each Federal agency submitting a report under subsection (a) shall make the report publicly available to the maximum extent practicable.</p> <p>(d) This section shall not apply to acquisitions made by an agency, or component thereof, that is an element of the intelligence community as set forth in or designated under section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).”</p> <p>Pub. L. No. 108-447, Div. H, § 641, 118 Stat. 3282 (FY 05)</p>	<p>FY 04: § 645 FY 03: None FY 02: None FY 01: None</p>
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Competitive Sourcing Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Stipulates various conditions before an agency can contract out an activity or function that is being performed by more than 10 federal employees; requires report on competitive sourcing activities; prohibits performance by a contractor outside the U.S. unless the activity or function was previously performed by Federal Government employees outside the U.S.</p>	<p><u>Appropriations Act Heading:</u> TITLE VI – GENERAL PROVISIONS; DEPARTMENTS, AGENCIES, AND CORPORATIONS</p> <p><u>Text:</u> “(a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE.—None of the funds appropriated by this Act shall be available to convert to contractor performance an activity or function of an executive agency, that on or after the date of enactment of this Act, is performed by more than 10 Federal employees unless—</p> <p style="padding-left: 40px;">(1) the conversion is based on the result of a public-private competition plan that includes a most efficient and cost effective organization plan developed by such activity or function; and</p> <p style="padding-left: 40px;">(2) the Competitive Sourcing Official considers, as part of the cost or price evaluation, whether over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the executive agency by an amount that equals or exceeds the lesser of—</p> <p style="padding-left: 80px;">(A) 10 percent of the most efficient organization’s personnel-related costs for performance of that activity or function by Federal employees; or</p> <p style="padding-left: 80px;">(B) \$10,000,000.</p> <p style="padding-left: 40px;">(b) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress a report on the competitive sourcing activities on the list required under the Federal Activities Inventory Reform Act of 1998 (Public Law 105-270; 31 U.S.C. 501 note) that were performed for such executive agency during the previous fiscal year by Federal Government sources. The report shall include—</p> <p style="padding-left: 40px;">(1) the total number of competitions completed;</p> <p style="padding-left: 40px;">(2) the total number of competitions announced, together with a list of the activities covered by such competitions;</p> <p style="padding-left: 40px;">(3) the total number (expressed as a full-time employee equivalent number) of the Federal employees studied under completed competitions;</p> <p style="padding-left: 40px;">(4) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;</p> <p style="padding-left: 40px;">(5) the incremental cost directly attributable to conducting the competitions identified under paragraphs (1) and (2), including costs attributable to paying outside consultants and contractors;</p> <p style="padding-left: 40px;">(6) an estimate of the total anticipated savings, or a quantifiable description of improvements in service or performance, derived from completed competitions;</p> <p style="padding-left: 40px;">(7) actual savings, or a quantifiable description of improvements in service or performance, derived from the implementation of competitions completed after May 29, 2003;</p> <p style="padding-left: 40px;">(8) the total projected number (expressed as a full-time employee equivalent number) of the Federal employees that are to be covered by competitions scheduled to be announced in the fiscal year covered by the next report required under this section; and</p>	<p>None</p>

	<p>(9) a general description of how the competitive sourcing decisionmaking processes of the executive agency are aligned with the strategic workforce plan of that executive agency.</p> <p>(c) The head of an executive agency may not be required, under Office of Management and Budget Circular A-76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of obligation, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.</p> <p>(d) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget Circular A-76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.</p> <p>(e) An activity or function of an executive agency that is converted to contractor performance under Office of Management and Budget Circular A-76 may not be performed by the contractor at a location outside the United States except to the extent that such activity or function was previously performed by Federal Government employees outside the United States.</p> <p>(f) In this section, the term “executive agency” has the meaning given such term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).”</p> <p>Pub. L. No. 108-199, Div. F, § 647, 118 Stat. 361 (FY 04)</p>	
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Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Permits the Financial Crimes Enforcement Network to procure personal services.	<p>Appropriations Act Heading: TITLE II – DEPARTMENT OF THE TREASURY; FINANCIAL CRIMES ENFORCEMENT NETWORK; SALARIES AND EXPENSES</p> <p>Text: “For necessary expenses of the Financial Crimes Enforcement Network . . . <i>Provided</i>, That funds appropriated in this account may be used to procure personal services contracts. . . .”</p> <p>Pub. L. No. 108-447, Div. H, 118 Stat. 3238 (FY 05)</p>	<p>FY 04: 118 Stat. 316 FY 03: 117 Stat. 430 (Treas.) FY 02: 115 Stat. 516 (Treas.) FY 01: 114 Stat. 2763A-127 (Treas.)</p>
Limits contracts for consulting service to those which are a matter of public record and included in a publicly available list, with exception.	<p>Appropriations Act Heading: TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p>Text: “The expenditure of any appropriation under this Act for any consulting service through procurement contract pursuant to section 3109 of title 5, United States Code, shall be limited to those contracts where such expenditures are a matter of public record and available for public inspection, except where otherwise provided under existing law, or under existing Executive order issued pursuant to existing law.”</p> <p>Pub. L. No. 108-447, Div. H, § 504, 118 Stat. 3265 (FY 05)</p>	<p>FY 04: § 507 FY 03: § 307 (Trans.) FY 03: § 502 (Treas.) FY 02: § 307 (Trans.) FY 02: § 502 (Treas.) FY 01: § 308 (Trans.) FY 01: § 502 (Treas.)</p>
Cost accounting standards do not apply to contracts under the FEHBP.	<p>Appropriations Act Heading: TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p>Text: “The cost accounting standards promulgated under section 26 of the Office of Federal Procurement Policy Act (Public Law 93-400; 41 U.S.C. 422) shall not apply with respect to a contract under the Federal Employees Health Benefits Program established under chapter 89 of title 5, United States Code.”</p> <p>Pub. L. No. 108-447, Div. H, § 513, 118 Stat. 3267 (FY 05)</p>	<p>FY 04: § 528 FY 03: § 510 (Treas.) FY 02: § 513 (Treas.) FY 01: § 513 (Treas.)</p>

<p>Requires contracts that have a provision for prescription drug coverage to include a provision for contraceptive coverage too; inapplicable to certain religious plans.</p>	<p><u>Appropriations Act Heading:</u> TITLE VI – GENERAL PROVISIONS; DEPARTMENTS, AGENCIES, AND CORPORATIONS</p> <p><u>Text:</u> “(a) None of the funds appropriated by this Act may be used to enter into or renew a contract which includes a provision providing prescription drug coverage, except where the contract also includes a provision for contraceptive coverage.</p> <p>(b) Nothing in this section shall apply to a contract with-- (1) any of the following religious plans: (A) Personal Care's HMO; and (B) OSF Health Plans, Inc.; and (2) any existing or future plan, if the carrier for the plan objects to such coverage on the basis of religious beliefs.</p> <p>(c) In implementing this section, any plan that enters into or renews a contract under this section may not subject any individual to discrimination on the basis that the individual refuses to prescribe or otherwise provide for contraceptives because such activities would be contrary to the individual's religious beliefs or moral convictions.</p> <p>(d) Nothing in this section shall be construed to require coverage of abortion or abortion-related services.</p> <p>Pub. L. No. 108-447, Div. H, § 634, 118 Stat. 3280 (FY 05)</p>	<p>FY 04: § 634 FY 03: § 635 (Treas.) FY 02: § 643 (Treas.) FY 01: § 630 (Treas.)</p>
<p>Requires agency to determine that purchases of products or services offered by Federal Prison Industries, Inc. is the best value to the agency.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; DEPARTMENTS, AGENCIES, AND CORPORATIONS</p> <p><u>Text:</u> “None of the funds made available under this or any other Act for fiscal year 2005 and each fiscal year thereafter shall be expended for the purchase of a product or service offered by Federal Prison Industries, Inc., unless the agency making such purchase determines that such offered product or service provides the best value to the buying agency pursuant to governmentwide procurement regulations, issued pursuant to section 25(c)(1) of the Office of Federal Procurement Act (41 U.S.C. 421(c)(1)) that impose procedures, standards, and limitations of section 2410n of title 10, United States Code.”</p> <p>Pub. L. No. 108-447, Div. H, § 637, 118 Stat. 3281 (FY 05)</p>	<p>FY 04: § 637 FY 03: None FY 02: None FY 01: None</p>

<p>Prohibits contracting with individuals who falsely labeled products as “Made in America.”</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS; THIS ACT</p> <p><u>Text:</u> “Hereafter, if it has been finally determined by a court or Federal agency that any person intentionally affixed a label bearing a “Made in America” inscription, or any inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, such person shall be ineligible to receive any contract or subcontract made with funds provided pursuant to this Act, pursuant to the debarment, suspension, and ineligibility procedures described in sections 9.400 through 9.409 of title 48, Code of Federal Regulations.”</p> <p>Pub. L. No. 108-199, Div. F, § 525, 118 Stat. 344 (FY 04)</p>	<p>FY 05: None FY 03: § 324(c) (Trans.) FY 03: § 507 (Treas.) FY 02: § 326(c) (Trans.) FY 02: § 508 (Treas.) FY 01: § 325(c) (Trans.) FY 01: § 508 (Treas.)</p>
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**Table 6: Department of Homeland Security Appropriations Act
Fiscal Years 2004-2005**

Domestic Preferences		
Summary/Effect	Procurement Related Provision	Similar/Identical Provisions¹²
Provides for purchase of American-made motorcycles.	<p><u>Appropriations Act Heading:</u> TITLE II – SECURITY, ENFORCEMENT, AND INVESTIGATIONS; UNITED STATES SECRET SERVICE; SALARIES AND EXPENSES</p> <p><u>Text:</u> “For necessary expenses of the United States Secret Service, including . . . purchase of American-made motorcycles. . . .”</p> <p>Pub. L. No. 108-334, 118 Stat. 1308 (FY 05)</p>	FY 04: 117 Stat. 1145
Requires Buy American Act compliance.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds in this Act may be used in contravention of the applicable provisions of the Buy American Act (41 U.S.C. 10a et seq.).”</p> <p>Pub. L. No. 108-334, § 512, 118 Stat. 1317 (FY 05)</p>	FY 04: § 518
Requires steel, iron and manufactured products for certain bridge alteration projects to be produced in the U.S.; provides for exceptions.	<p><u>Appropriations Act Heading:</u> TITLE II – SECURITY, ENFORCEMENT, AND INVESTIGATIONS; UNITED STATES COAST GUARD; ALTERATION OF BRIDGES</p> <p><u>Text:</u> “For necessary expenses for alteration or removal of obstructive bridges . . . <i>Provided</i>, That in fiscal year 2004 and thereafter, funds for bridge alteration projects conducted pursuant to the Act of June 21, 1940 (33 U.S.C. 511 et seq.) shall be available for such projects only to the extent that the steel, iron, and manufactured products used in such projects are produced in the United States, unless contrary to law or international agreement, or unless the Commandant of the Coast Guard determines such action to be inconsistent with the public interest or the cost unreasonable.”</p> <p>Pub. L. No. 108-90, 117 Stat. 1144 (FY 04)</p>	FY 05: None

¹² Similar or identical provisions in other Department of Homeland Security appropriations acts are listed under this heading. If the provision has a section number, the number is listed. For those provisions that do not have section numbers, the statute-at-large citation is provided. The two acts reviewed are the Department of Homeland Security Appropriations Act, 2005, Pub. L. No. 108-334, 118 Stat. 1298 (2004) and the Department of Homeland Security Appropriations Act, 2004, Pub. L. No. 108-90, 117 Stat. 1137 (2003).

Notification/Reporting Requirements

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Requires congressional approval of a plan for expenditure for immigration tracking system that complies with the acquisition rules of the federal government.</p>	<p>Appropriations Act Heading: TITLE II – SECURITY, ENFORCEMENT, AND INVESTIGATIONS; BORDER AND TRANSPORTATION SECURITY; OFFICE OF THE UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY; UNITED STATES VISITOR AND IMMIGRANT STATUS INDICATOR TECHNOLOGY</p> <p>Text: “For necessary expenses for the development of the United States Visitor and Immigrant Status Indicator Technology project . . . <i>Provided</i>, That of the funds appropriated under this heading, \$254,000,000 may not be obligated . . . until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Secretary of Homeland Security that . . . (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government. . . .”</p> <p>Pub. L. No. 108-334, 118 Stat. 1299 (FY 05)</p>	<p>FY 04: 117 Stat. 1138</p>
<p>Requires congressional approval of a Customs and Border Protection plan for expenditure for the Automated Commercial Environment that complies with the acquisition rules of the federal government.</p>	<p>Appropriations Act Heading: TITLE II – SECURITY, ENFORCEMENT, AND INVESTIGATIONS; BORDER AND TRANSPORTATION SECURITY; CUSTOMS AND BORDER PROTECTION; AUTOMATION MODERNIZATION</p> <p>Text: “For expenses for customs and border protection automated systems . . . <i>Provided</i>, That none of the funds appropriated under this heading may be obligated for the Automated Commercial Environment until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Under Secretary for Border and Transportation Security that . . . (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government. . . .”</p> <p>Pub. L. No. 108-334, 118 Stat. 1301 (FY 05)</p>	<p>FY 04: 117 Stat. 1139</p>

<p>Requires congressional approval of an Immigration and Customs Enforcement plan for expenditure for automation modernization that complies with the acquisition rules of the federal government.</p>	<p><u>Appropriations Act Heading:</u> TITLE II – SECURITY, ENFORCEMENT, AND INVESTIGATIONS; BORDER AND TRANSPORTATION SECURITY; IMMIGRATION AND CUSTOMS ENFORCEMENT; AUTOMATION MODERNIZATION</p> <p><u>Text:</u> “For expenses of immigration and customs enforcement automated systems . . . <i>Provided</i>, That none of the funds appropriated under this heading may be obligated until the Committees on Appropriations of the Senate and the House of Representatives receive and approve a plan for expenditure prepared by the Under Secretary for Border and Transportation Security that . . . (3) complies with the acquisition rules, requirements, guidelines, and systems acquisition management practices of the Federal Government. . . .”</p> <p>Pub. L. No. 108-334, 118 Stat. 1302 (FY 05)</p>	<p>FY 04: 117 Stat. 1140</p>
<p>Requires quarterly reporting to Congress on the use of certain sole source contracts.</p>	<p><u>Appropriations Act Heading:</u> TITLE IV – RESEARCH AND DEVELOPMENT, TRAINING, ASSESSMENTS, AND SERVICES; INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION; ASSESSMENTS AND EVALUATIONS</p> <p><u>Text:</u> “For necessary expenses for information analysis and infrastructure protection . . . <i>Provided</i>, That the Under Secretary for Information Analysis and Infrastructure Protection shall submit a report at the end of each quarter of the fiscal year to the Committees on Appropriations of the Senate and the House of Representatives on each sole-source contractual agreement entered into through the commitment of amounts available from funds appropriated under this heading by this or previous appropriations Acts, including the amount, recipient and purpose of the agreement.”</p> <p>Pub. L. No. 108-334, 118 Stat. 1314 (FY 05)</p>	<p>FY 04: None</p>
<p>Requires notification to Congress before DHS awards a discretionary grant or contract in excess of \$1,000,000 in available funds.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds in this Act may be used 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 unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and House of Representatives at least 3 full business days in advance: <i>Provided</i>, That no notification shall involve funds that are not available for obligation.”</p> <p>Pub. L. No. 108-334, § 507, 118 Stat. 1316 (FY 05)</p>	<p>FY 04: None</p>

Competitive Sourcing

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
<p>Prohibits application of OMB Circular A-76 to services provided by certain employees of Citizenship and Immigration Services.</p>	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS</p> <p><u>Text:</u> “None of the funds appropriated by this Act may be used to process or approve a competition under Office of Management and Budget Circular A-76 for services provided as of June 1, 2004, by employees (including employees serving on a temporary or term basis) of Citizenship and Immigration Services of the Department of Homeland Security who are known as of that date as Immigration Information Officers, Contact Representatives, or Investigative Assistants.”</p> <p>Pub. L. No. 108-334, § 527, 118 Stat. 1320 (FY 05)</p>	<p>FY 04: None</p>

Miscellaneous Provisions

Summary/Effect	Procurement Related Provision	Similar/Identical Provisions
Extends application of TSA's acquisition management system to the procurement of services.	<p><u>Appropriations Act Heading:</u> TITLE V – GENERAL PROVISIONS</p> <p><u>Text:</u> “The acquisition management system of the Transportation Security Administration shall apply to the acquisition of services, as well as equipment, supplies, and materials.”</p> <p>Pub. L. No. 108-334, § 517, 118 Stat. 1318 (FY 05)</p>	FY 04: None