



DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
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IN REPLY REFER TO

PAS 730.4.A

April 24, 2008
08-PAS-015(R)

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FIELD DETACHMENT, DCAA

SUBJECT: Audit Alert — Lobbying Costs Related to Legislative Earmarks

Summary

Auditors should perform procedures to ensure contractors have properly identified and accounted for contractor effort and related costs associated with supporting legislative earmarks. Contractor costs to pursue earmarks should generally be considered unallowable legislative lobbying activity as defined in FAR 31.205-22 and 52.203-12.

Background

A legislative earmark refers to a Congressional provision directing funds to be spent on specific projects. Typically, a legislator seeks to insert earmarks in spending bills that direct a specified amount of money to a particular contractor, organization, or project in his or her home state or district. The U.S. Office of Management and Budget reported that the FY 2008 DoD Appropriations Act included 2,092 earmarks with a total value of over \$6.6 billion. Contractors may expend a significant amount of effort (and related costs) to support earmarks associated with specific contractors and programs. These costs should generally be considered unallowable lobbying cost as defined in FAR 31.205-22 and 52.203-12.

We have identified several sources for identifying earmarks. The organization *Taxpayers for Common Sense (TSC)* (<http://taxpayer.net>) has identified earmarks included in the House and Senate versions of both the FY 2008 National Defense Authorization bill and the FY 2008 DoD Appropriations bill. The House of Representatives databases include the intended recipients of each earmark, names of Congressional members requesting each earmark, and a brief description of the program or project involved. The Senate databases include a description of the programs/projects, but do not identify the intended recipient. The databases are available for downloading on the following websites. (Auditors must copy and paste the website address into the address line within Internet Explorer.) Specific earmarks can be identified by searching/sorting within the databases for the contractor (when available), the lawmaker sponsoring the earmark, or the program or project description.

- National Defense Authorization Bill (House version):
<http://www.taxpayer.net/budget/fy08earmarks/databases/hascdatabase.xls>
- National Defense Authorization Bill (Senate version):
<http://www.taxpayer.net/budget/fy08earmarks/databases/2007-06-27sascfull.xls>
- DoD Appropriations Bill (House version):
<http://www.taxpayer.net/budget/fy08earmarks/databases/hdefenseletters.xls>

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- DoD Appropriations Bill (Senate version):
<http://www.taxpayer.net/budget/fy08 earmarks/databases/sdefense.xls>

We have also identified the following Seattle Times website that identifies FY 2007 DoD earmarks:

<http://community.seattletimes.nwsourc.com/favorfactory/beneficiary.php>

These earmarks can be identified by either contractor name or lawmaker. The website also identifies the amount of lobbying costs for the company as reported to the Federal Election Commission, which may not include the costs related to earmarks.

Guidance

As part of incurred cost or other related audits, auditors should review the earmark data referenced in the above paragraphs for contractors/programs under their audit cognizance. For significant earmarks identified, auditors should make contractor inquiries to determine procedures the contractor uses to identify and collect the costs related to supporting earmarks. Recent studies have reported that lobbying effort associated with earmarks may not be limited to company executives and hired lobbyists. Contractor support for earmarks may include program management, contracting, public relations, consultants and technical personnel. Auditors should interview responsible contractor personnel to ascertain the nature and extent of effort provided to support the identified earmark. FAR 31.205-22 states that costs incurred associated with any attempt to influence legislation (e.g., earmark) is unallowable. In addition to the labor costs, auditors should consider directly associated costs, such as travel and conference expenses. Costs not properly identified as lobbying (and excluded from contractor claims and billings) should be questioned under FAR 31.205-22.

Additionally, during other audits, auditors should be alert to possible lobbying effort associated with supporting earmarks. For example, during an audit of incurred travel and meeting expenses, auditors should be alert to lobbying effort when ascertaining the purpose of travel/meetings. Many significant earmarks relating to certain contractor programs require contracting personnel to attend meetings with congressional members or their staffs to pursue earmark funding.

Policy is currently teaming with several regions and developing additional audit procedures to address earmarks and will be issuing additional guidance in the near future. Please direct any questions or concerns you may have to Policy & Plans, Auditing Standards Division, at 703 767 3250 or send an e-mail to DCAA-PAS@dcaa.mil.

/s/
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