



DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
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IN REPLY REFER TO

PAC 730.3.B.01/2011-08

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11-PAC-015(R)

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FIELD DETACHMENT, DCAA
HEADS OF PRINCIPAL STAFF ELEMENTS, HQ, DCAA

SUBJECT: Audit Guidance on Lobbying Costs Related to Legislative Earmarks

SUMMARY

This memorandum re-emphasizes the guidance in MRD 08-PAS-015(R) dated April 24, 2008, (Subject: Audit Alert – Lobbying Costs Related to Legislative Earmarks) requiring auditors to perform procedures to ensure that contractors have properly identified and accounted for costs associated with lobbying relating to legislative earmarks. In addition, this memorandum identifies updated information sources of current and historical lobbying and earmark activities.

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 Office of Management and Budget (OMB) reported that the FY 2008 Department of Defense (DoD) appropriations bill included 2,087 earmarks worth \$6.6 billion, the FY 2009 DoD appropriations bill had 2,091 earmarks worth \$5.6 billion, and the FY 2010 DoD appropriations bill had 1,759 earmarks worth \$4.5 billion.

Contractors may expend a significant amount of effort (and related costs) and/or incur professional services costs for the purpose of influencing or attempting to influence Government officials in connection with earmarks. The costs of these activities and any directly associated costs would be considered unallowable, as defined in FAR 31.205-22 and FAR 52.203-12.

The Office of Management and Budget (OMB) maintains earmark, fiscal year databases that can be downloaded from <http://earmarks.omb.gov/earmarks-public/>. This website provides a search engine that retrieves contractor earmarks by fiscal year and program. Simply enter the name of the contractor, check the pertinent fiscal year Appropriations box, and click search for a listing of all earmarks involving the specified contractor for that year.

The organization, *Taxpayers for Common Sense (TSC)*, has compiled by fiscal year an earmark database that can be downloaded from their website <http://taxpayer.net>. Earmarks are primarily identified by appropriations bill and amount, and by Congressional sponsor and state. The entity receiving the earmark funding can typically be found under the “Earmarks” or “National Earmarks” tab, when available.

The Lobbying Disclosure Act (LDA) of 1995, as amended by the Honest Leadership and Open Government Act of 2007, significantly expanded the registration and reporting requirements for those who engage in lobbying activities. Both the Office of the Clerk of the House and the Secretary of the Senate maintain databases for public viewing of these reports by fiscal year on their web pages at:

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- <http://lobbyingdisclosure.house.gov/> and
- http://www.senate.gov/legislative/Public_Disclosure/LDA_reports.htm

There is a link to the Senate web page on the DCAA intranet under “Useful Audit Links, Links by Audit Type, Incurred Costs, and Lobbying Disclosure Act (LDA) Database.”

GUIDANCE

Auditors should evaluate the contractor’s procedures for properly identifying and accounting for costs associated with lobbying activities and legislative earmarks. FAR 31.205-22 states that costs incurred associated with any attempt to influence legislation (e.g., earmark) is unallowable. The subject FAR provision requires contractors to separately identify lobbying costs in their indirect rate submissions, and to maintain adequate records to support their certification of lobbying or earmark costs as either allowable or unallowable. Moreover, FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, prohibits the cost of activities to influence the award, the extension, continuation, renewal, amendment or modification of a contract. Inadequate contractor procedures should be reported as an accounting system deficiency.

In planning and conducting audits of incurred cost submissions, forward pricing proposals, or other related examinations, auditors should:

- assess the risk of lobbying costs not correctly identified and removed;
- perform substantive tests based on the risk assessment;
- question any costs associated with unallowable lobbying activities disclosed by the substantive testing; and
- consider issuing a CAS 405, Accounting for Unallowable Costs non-compliance audit report in accordance with the guidance in CAM Chapter 8.

Note that lobbying activities or support for earmarks may involve costs for program management, contracting, public relations, travel, conferences, consultants, or technical personnel. These costs associated with earmarks or unallowable lobbying also are unallowable and should be questioned.

Audit links for the web pages discussed, and earmark databases, will be added to the DCAA intranet for historical research purposes and use by audit offices. Please direct any questions or concerns you may have to Accounting and Cost Principles Division, at (703) 767-3251 or send an e-mail to DCAA-PAC@dcaa.mil.

/Signed/
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