



## CROSS-AGENCY TRANSITION TEAM WHITE PAPER

**SUBJECT:** Funding procurement of Fuels and Petroleum, Oil & Lubricants (POL)

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### Issue

The NASA FY 2010 Appropriations Bill provides that NASA's Cross-Agency Support Funds (CASX) are limited to a one-year period of availability and will expire on September 30, 2010. This paper addresses the requirements for funding procurement of Fuels and Petroleum, Oil & Lubricants (POL). Under fiscal law principles, goods and materials that are purchased in one fiscal year but delivered in the next, must meet the bona fide need of the year purchased. As discussed here, the words "fuels and POLs," includes all types of motor, aviation, and heating fuels, and includes related petroleum, oils, and lubricants not used as fuels.

This memorandum reflects that a review has been completed in the subject matter. Fuels and POL are commodity or stock items. NASA's fuel and POL needs, however, vary by Center, location and mission. Acceptable stock levels of fuels and POL, therefore, also vary with location and mission, but must be maintained at levels sufficient for continuous service and operation. Further, in that NASA has specific quantity and quality requirements, NASA's fuel and POL requirements cannot be always or reliably met by standard commercial items or practice. That is, NASA's needs for fuels and POL are for amounts and qualities that may require long lead-times to maintain sufficient stock levels. There may be a lag of up to 45 days from the time of fuel purchase to receipt of invoice and costing in NASA's SAP system.

Therefore, fuel purchases for FY 11 needs should generally not be purchased with FY 10 funds. However, a reasonable and sufficient inventory of fuels and POL must be continuously maintained so as to not disrupt services. The fact that delivery may occur in the subsequent fiscal year does not necessarily mean that it is not a bona fide need of the earlier fiscal year. If we require a certain amount of fuel on hand, and that stock is depleted in FY 10, it would be appropriate to order replacement fuel with expiring funds even if delivery will occur in the subsequent fiscal year. However, purchases at the end of the fiscal year for delivery in the subsequent fiscal year should not be for amounts in excess of those necessary to maintain the standard inventory. Purchases that cross fiscal years for amounts beyond that necessary for a standard inventory would violate the bona fide needs rule.

If materials cannot be obtained in the same fiscal year in which they are needed and contracted for, delivery in the subsequent fiscal year adheres to the bona fide needs rule, as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial items readily available from other sources. 38 Comp. Gen. 628, 630 (1959).

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Special Note: Although these white papers provide general guidance on the application of the Bona Fide Needs rule to common situations, you should still review your specific circumstances with local procurement, finance, and legal specialists. GAO has repeatedly emphasized that what constitutes a bona fide need of a particular fiscal year depends largely on the facts and circumstances of each particular case. Also note that while this guidance was developed to address the issues arising from the change to a one-year appropriation for CAS, it is also applicable to other expiring appropriations.

If deliveries are scheduled only for a subsequent fiscal year, or if the timing of the procurement effectively precludes delivery until the following fiscal year, GAO assumes that the contract was made in the earlier fiscal year only to obligate expiring funds and that the goods were not intended to meet a bona fide need of the earlier fiscal year. Finally, a contract for replacement of stock is viewed as meeting a bona fide need of the year in which the contract is made as long as it is intended to replace stock used in that year, even if delivery or use of the replacement stock will not be until the subsequent fiscal year. 44 Comp. Gen. 695, 697 (1965).

## **Guidance**

Fuel and POL are not standard commercial items in the amounts and/or quality as required by NASA. NASA also requires sufficient stock levels on hand to avoid disruptions in mission accomplishment. Accordingly, for the quantity and quality of fuels and POL necessary for NASA missions, considering necessary lead-time, where necessary to replace stock used, or to maintain sufficient stock levels, FY 2010 CASX funds may be utilized to fund orders for fuel and POL actually delivered in the next fiscal year.