



MEMORANDUM FOR THE RECORD

SUBJECT: Earmarks

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 method to ensure proper alignment of Earmarks obligation and cost with the appropriation available to fund that activity.

Earmarks are portions of a lump-sum appropriation designated by Congress for a particular purpose. GAO, Principles of Appropriations Law, Vol. II, at 6-26. Formal earmark vehicles include statutes (i.e., authorization or appropriations acts). "Informal earmarks" are expressions of certain congressional intentions that do not have force of law (such as a committee report not incorporated by reference in an enactment).

Guidance

Civil service labor and travel should not be charged to an earmark unless a grantee has stated the need for said support in the proposal and nothing in the Appropriation Act prevents it. Civil service labor and travel in support of an earmark grant or cooperative agreement should otherwise be severable services, that is, charged to the period in which that labor or travel was performed.

Earmarks that will result in a grant or cooperative agreement.

The Bona Fide Need for grants or cooperative agreements is met at the time of award and the original funds can be used by the grantee as the work is performed. The grant or cooperative agreement must be fully obligated by the end of the Fiscal Year in which the award was made but need not be fully costed by the end of the Fiscal Year.

Earmarks that will result in a contract.

In some cases an earmark may result in the award of a contract or the modification to an existing contract. Whether the work is found to be severable or nonseverable, all funding for the earmark must be obligated in FY2010. Although most earmarks should be for nonseverable work, the earmark effort should be reviewed to determine if the work to be performed is severable or nonseverable service. This will impact only periods of performance. If the earmark is for nonseverable work then the performance of the work may extend beyond September 30, 2010. If the earmark is for severable work then all work to be performed must be completed by September 30, 2010.

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.