

April 7, 2008

**USE OF PRIOR-YEAR FUNDS FOR NON-RECURRING MAINTENANCE (NRM)
PROJECTS**

1. PURPOSE: This Veterans Health Administration (VHA) Directive provides policy for the appropriate use of prior-year funds in an expired account in accordance with the Expired Funds Control Act of 1990, Title 31 United States Code (U.S.C.) §1551-1557, and Public Law 108-199, Consolidated Appropriations Act, 2004, which established appropriation 0162, Medical Facilities, as the appropriation to use for non-recurring maintenance (NRM) projects.

2. BACKGROUND

a. The enactment of Public Law 101-510 (Section 1405(a), known within the Department of Veterans Affairs (VA) as the “Expired Funds Control Act of 1990”) on November 5, 1990, prescribed new rules for expired appropriations in sections 1551 through 1557 of Title 31 U.S.C. The Act extends an expired appropriation’s fiscal year identity to 5 years beyond the current year and permits the recording, adjusting, and liquidating of obligations properly charged to that appropriation. Thus, an adjustment may be made to an existing obligation where the adjustment or contract change is within the scope of the original contract. After the 5-year period has lapsed, all obligated and un-obligated balances are canceled and the expired appropriation is closed.

b. For purposes of the Act, the term “contract change” means: a change to a contract under which the contractor is required to perform additional work. The change must be within the scope of the original contract, or pursuant to a provision in the original contract. The term does not include adjustments to pay claims or increases under an escalation clause. A change within the scope of the original contract, or made pursuant to a provision in the original contract, will be charged against the appropriation current at the time the contract was originally executed.

c. To Determine whether a change is within the scope of the original contract:

(1) If the upward price adjustment occurs and is enforceable under a provision in the original contract, it is to be charged against the appropriation current at the time the contract was originally executed, even though the adjustment is necessitated in a subsequent year. The reasoning is that a contractually permissible change order does not give rise to a new liability, since that liability arises at the time the original contract is executed. The subsequent price adjustment is viewed as reflecting a bona fide need of the same year in which funds were obligated for payment of the original contract price.

(2) The tests that contracting officers apply to determine whether a modification is within the general scope of the contract should be applied when determining whether prior-year funds may be charged. For example, it would not be appropriate to modify a contract to upgrade existing elevators in Buildings 1 and 2 to include the upgrade of elevators in Buildings 3 and 4 as well. The Competition in Contracting Act (41 U.S.C. § 253) would require a new procurement.

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(3) While the additional work may be necessary, or may have been included as part of a proposal for an NRM project, if it is not a change within the scope of the original contract, it should not be charged against the appropriation that originally funded the contract. The scope of the original contract is the basis for applying the test, not the scope of the NRM project as proposed.

3. POLICY: It is VHA policy that modifications to existing obligations for NRM projects, in accordance with 31 U.S.C. § 1551-1557, may be paid for from prior-year funds in an expired appropriation only when the adjustment or contract change is determined to be within the scope of the original contract or pursuant to a provision in the original contract, as defined in this Directive. *NOTE: Contract changes that are not within the scope of the original contract must be funded from a current-year appropriation.*

4. ACTION

a. **VHA Chief Financial Officer (CFO) (173A)**. The VHA CFO is responsible for:

(1) Instructing all field facilities to submit requests for additional obligational authority from the prior-year appropriation through the appropriate Veterans Integrated Service Network (VISN) officer to the VHA Accounting Policy (173A) mail box in Outlook for approval (see Att. A).

(2) Approving the use of prior-year funds for NRM project amendments deemed by the contracting officer and VISN CFO to be within the scope of the original contract.

(3) Forwarding an approved prior-year fund request to (172) for the transfer of additional funds, if required by the requesting facility.

(4) Tracking cumulative prior-year fund increases for contract changes for each expired appropriation. *NOTE: When cumulative changes in a fiscal year for an expired appropriation are projected to exceed \$4 million, a request for additional authority must be prepared and submitted to the Assistant Secretary for Management.*

(5) Preparing notifications to the appropriate Congressional Committees of VHA's need for additional prior-year funds in excess of the \$25 million authorized threshold. Pursuant to 31 U.S.C. §1553(c) (2), the notification is submitted by the Secretary of Veterans Affairs not less than 30 days before the obligation exceeding the threshold is made.

b. **VISN Director**. The VISN is responsible for:

(1) Verifying that the contracting officer has made a written determination that the effected change is within the scope of the original contract.

(2) Submitting the Prior-Year Fund Request for NRM Projects to the VHA Accounting Policy Office (173A) in Outlook for approval.

c. **Facility Director.** The Facility Director is responsible for ensuring that:

(1) The facility fiscal staff, in order to facilitate tracking of NRM prior-year obligational adjustments, ensures that all NRM projects' obligations, both new and prior-year obligational adjustments, are obligated under the correct appropriation. **NOTE:** *Beginning with Fiscal Year (FY) 2004, in compliance with the requirements of the three medical care appropriations, all new NRM projects must be obligated under the Medical Facilities appropriation (36_0162). Prior to FY 2004, NRM projects were obligated under the Medical Care appropriation (36_0160), and the rules in effect at that time still apply to the original obligation and appropriation used for those NRM projects.*

(2) The request for use of prior-year funds has been certified by the contracting officer stating that the additional work is within the scope of the original contract.

(3) All required information for prior-year fund use requiring approval by the VHA CFO (173), is submitted through the VISN CFO (see Att. A).

(4) There is full-control accounting (see Att. B).

d. **Facility Contracting Officer.** It is the sole responsibility of the facility Contracting Officer to make the determination as to whether a change that requires additional obligational authority is within the general scope of the original contract and, therefore, whether it may be charged to a prior-year appropriation. Contracting officers should consult with the Contracting Officers Technical Representative before making this determination. **NOTE:** *Auditors reviewing amendments to NRM projects involving the use of prior-year funds will look to the contracting officer for adequate documentation to support these determinations.*

e. **Facility Fiscal Officer.** The facility Fiscal Officer is responsible for:

(1) Ensuring that NRM projects initiated during FY 2004 or later are obligated and funded using appropriation 36_0162 (Medical Facilities).

(2) Ensuring that NRM projects initiated prior to FY 2004 are obligated and funded using appropriation 36_0160 (Medical Care). All rules applicable to the appropriation current at the time of the original contract remain in effect for the 5-year expiration period, at the end of which time all unobligated and obligated balances are canceled and the expired appropriation closed.

(3) Determining if the required additional funds are available locally or must be obtained from another facility.

(4) Submitting the request for use of prior-year funds through the VISN CFO to VHA CFO (173A3) for approval.

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5. REFERENCES

a. Title 31 U.S.C. § 1551-1557.

b. Office of Management and Budget (OMB) Bulletin 91-07, "Budget Execution Procedures for Closing Accounts," dated January 17, 1991.

c. Principles of Federal Appropriations Law, Second Edition, Volume 1, Chapter 5.

d. Public Law 108-199, Consolidated Appropriations Act, 2004; which created the Medical Facilities appropriation.

6. FOLLOW-UP RESPONSIBILITY: The VHA Chief Financial Officer (17) is responsible for the contents of this Directive. Questions may be addressed to 202-461-6663.

7. RESCISSION: VHA Directive 2007-011, dated March 7, 2007, is rescinded. This VHA Directive expires April 30, 2013.

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Attachments

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ATTACHMENT A

SAMPLE
PRIOR-YEAR FUND REQUEST FOR NON-RECURRING
MAINTENANCE PROJECTS

Request Date: _____

VISN #:	Stn #:	Contract Date:
Obligation #:		Contract #:
Fiscal Year and Appropriation from which Contract was Funded:		
Original Amount of Contract:		
Total Amount of Prior Amendments:		
Amount of this Amendment:		
Fiscal Year & Appropriation for this Amendment:		
Additional Amount of Funds the Facility Needs Transferred to Obligate the Increase:		
Brief Description of the Original Contract:		
Justification for the Increase:		
Does Contracting Officer Certify that the Change is Within the Scope of the Original Contract? Yes No		
Contracting Officer Name:		
VISN CFO Approval:		

ATTACHMENT B

FULL-CONTROL ACCOUNTING

1. All appropriations are subject to the rules of “full control” which prevent facilities from over-obligating expired appropriations. The facility fiscal officer must verify that prior-year funds for the increase are, in fact, available in the appropriate prior-year appropriation at the facility. If not available at the facility, the amount of additional funds required must be identified in the Prior-Year Fund Request for Non-Recurring Maintenance Projects.

2. The first source of funds should be the original account from which the obligation was made. If the funds in this account are insufficient, then the following chart provides examples of additional sources that may be used to fund a prior-year obligation.

Original Obligation	Alternative Fund Sources
3630160	362/30160 if initial obligation recorded in FY 2003 363/40160 if initial obligation recorded in FY 2003
362/30160	3630160 if initial obligation recorded in FY 2003 363/40160 if initial obligation recorded in FY 2003
3650162	364/50162 if initial obligation recorded in FY 2005 365/60162 if initial obligation recorded in FY 2005
364/50162	3640162 if initial obligation recorded in FY 2004 3650162 if initial obligation recorded in FY 2005 365/60162 if initial obligation recorded in FY 2005

NOTE: *In using an alternative funding source; e.g., 1-year, 14-month, 24-month, or no-year funds; the alternative funding source must have been available for obligation at the point in time the original obligation was created.*