



Department of Veterans Affairs Office of Inspector General

Audit of Procurements Using Prior-Year Funds to Maintain VA Healthcare Facilities

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Executive Summary

Results in Brief

The Office of Inspector General (OIG) conducted an audit to determine whether controls over the use of expired funds for procurements to maintain VA healthcare facilities were effective. The audit assessed whether Veterans Health Administration (VHA) obtained proper approval to use expired funds as well as whether contract changes were within the scope of the original contracts. In addition, the audit determined if contract changes were executed and funded in accordance with acquisition and appropriations law and regulations.

The audit identified unapproved and improper use of expired funds in at least 80 percent of Veterans Integrated Service Network (VISN) contracting activities nationwide amounting to a total of \$16.4 million during fiscal year (FY) 2007. This widespread improper use of expired funds occurred primarily because of a lack of policy clarity and other weaknesses in internal controls. While VHA has taken steps to centralize the process to track and approve the use of prior-year funds, it needs to clarify relevant policies and further strengthen controls over these funds. In addition, appropriate administrative action is needed to address personnel who improperly awarded new contracts using expired appropriations.

Background

In May 2007, the OIG substantiated a complaint that officials in Boston improperly used expired appropriations. A series of out-of-scope modifications to maintenance contracts were in violation of Federal law. This audit was initiated to determine whether appropriation and procurement issues previously identified by the OIG at the Boston Healthcare System occurred at other locations.

Federal appropriations law provides the balance of an appropriation is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability (31 U.S.C. §1502). For contract changes, a *bona fide* need exists when the need for a change arises from an antecedent liability in the original contract that is enforceable by the contractor. An appropriation is considered to have “expired” after the period when it was available for new obligations has passed. In VA, approval from the Secretary or his designee, the Assistant Secretary for Management, is necessary for obligations from expired accounts that exceed a cumulative total of \$4 million in a fiscal year within a program, project, or activity (31 U.S.C. §1553(c), 38 C.F.R. §2.6(c)(2)).

Procurements to maintain VA healthcare facilities are funded with an annual Medical Facilities Appropriation. VA maintenance activities include the Non-Recurring

Maintenance (NRM) construction program. This program involves capitalized projects controlled at the VISN level involving replacement and repair of major building systems; structural components of buildings, building service equipment, maintenance and repair of roads, grounds, and structures; and site preparation necessary to support installation of replacement medical equipment. Contracting activities for VHA field stations are also operated at the VISN level.

In 1999, VHA issued a policy that assigned contracting officers the responsibility to determine whether contract changes are within the scope of the original contracts and whether the changes may be charged to an expired appropriation. The 1999 policy permitted VISN fiscal officers to approve the use of expired funds up to a threshold of \$4 million. Once the cumulative threshold was reached, VHA needed to obtain approval for additional obligation authority from the Assistant Secretary for Management. The VHA Chief Financial Officer was responsible for monitoring the obligation of expired funds to determine when approvals from the Assistant Secretary became necessary.

Findings

VHA permitted expired funds to be used without necessary approval to fund new contracts and for contract changes that were out-of-scope and did not meet a *bona fide* need of the appropriation year. A total of \$16.4 million in unapproved or improper use of expired funds in transactions during FY 2007 and in the original procurements from prior years were associated with these transactions.

Widespread unapproved and improper use of expired funds was possible because VHA had not established effective internal controls to ensure compliance with statutory restrictions regarding how they were used. Furthermore, the lack of internal controls prevented an accurate assessment of the total amount of funds at risk.

VHA Used Expired Funds without Required Approvals. VHA officials did not obtain approvals required by law for obligations of expired funds after cumulative obligations in FY 2007 necessitated a requirement for approvals by the Secretary. We projected that VHA improperly obligated \$6.5 million in expired funds without obtaining legally sufficient approvals to obligate expired funds for 410 (43.5 percent) of 942 contract modifications between the period April 27 through September 30, 2007. We determined that the NRM program spent \$4 million in expired FY 2006 funds by April 27, 2007, based on a combination of our sample data and VHA finance records. By law, VHA was authorized to obligate up to \$4 million in expired funds without obtaining higher approval. However, upon exceeding this threshold, each additional obligation of expired funds required approval from the Secretary or his designee (31 U.S.C. §1553(c)).

Then in August 2007, VHA obtained approval “to use” \$1.8 million in additional expired funds from the Secretary’s designee, the Assistant Secretary for Management, to cover an estimate of total expired funds needed for the remainder of the fiscal year. The Assistant

Secretary for Management told VHA he approved the use of \$1.8 million in expired funds for contract changes. However, the request for his approval did not contain sufficient information to approve the use of expired funds for specific obligations or purposes, as the law required, and the approval did not fulfill the legal requirement to approve individual obligations.

VHA Used Expired Funds for Additional Work Not Required in Original Contracts. VHA used expired funds to perform additional work that was out-of-scope of the original contract and/or did not arise based on an antecedent liability in the original contract, that is, a *bona fide* need. We estimated officials used expired funds for 285 obligations in 2007 valued at \$3.6 million in this category.

VHA Funded New Contracts with Expired Funds. Contracting officers improperly awarded new contracts with expired funds or funded modifications with appropriations that had expired prior to the original award. As a result, we estimated that a total of 52 obligations in 2007 valued at \$3.1 million were made with appropriations that had expired before the original contracts were awarded. Furthermore, in six of these procurements, contracting officers improperly used an additional total of \$5.8 million in expired funds prior to FY 2007.

VHA Needed to Strengthen Internal Controls over Expired Funds. VHA internal controls over the use of expired funds needed strengthening to ensure compliance with Federal appropriations law. VHA did not ensure that cumulative contract changes exceeding \$4 million received necessary approval, in part, because it lacked an accurate method to track such changes. In addition, it did not submit the requests for changes that exceeded the \$4 million limit to the Assistant Secretary for Management before allowing VHA facilities to obligate the funds.

VHA Needed to Clarify Policy. VHA field personnel made erroneous decisions to use expired funds, in part, because VHA policy did not clearly explain appropriation law requirements. Although VHA policy required the contracting officer to make a determination whether the modification is within the general scope of the contract, this was just one criterion that must be considered in making a *bona fide* needs determination that allows the use of expired funds to pay for any increase in cost. The contracting officer must also determine whether the upward price adjustment is attributable to an antecedent liability—whether the Government’s liability arises and is enforceable under a provision in the original contract. The use of expired funds for new contracts occurred because fiscal employees recorded obligations based on inaccurate entries created by contracting officers in the electronic procurement accounting system during year-end spending, rather than verifying acceptable obligation documentation.

VHA Making Improvement Efforts. VHA revised its expired funds directive for the NRM program in April 2008 to increase centralized control. Further action was needed to ensure that each request to obligate expired funds above the \$4 million threshold is

submitted to the Assistant Secretary for Management for approval. In addition, VHA was monitoring cumulative contract changes using expired funds for NRM projects only, whereas the law requires monitoring and controlling contract changes in all programs, projects, and activities funded with appropriations with specific time limitations.

Conclusion

VHA policies needed to be clarified, controls strengthened, and personnel held accountable regarding the appropriate use of expired funds. The improper use of expired funds was widespread within the NRM program during FY 2007. VHA used expired funds without approval or for improper purposes in at least 80 percent of VISN contracting activities nationwide. The audit identified \$16.4 million in improperly used or unapproved expired funds for FY 2007 transactions and in the original procurements from prior years associated with these transactions. This amount included a \$2.6 million adjustment to eliminate duplication in our projections for transactions having more than one exception.

Expired funds were used improperly because VHA had not provided clear policies or implemented effective internal controls over them, including an effective approval process. VHA did not have a satisfactory process in place to track the use of expired funds and obtain higher level approvals when required. VHA policy erroneously implied that an in-scope contract modification necessarily represented a *bona fide* need of the year when the original funding was available. In addition, VHA improperly recorded obligations for contracts that were not awarded until after the appropriations had expired. This occurred, in part, because fiscal employees recorded obligations without reviewing obligation documentation. All of these issues needed to be addressed to ensure proper obligation and use of millions of VA appropriation dollars.

Recommendations

1. We recommended the Under Secretary for Health establish effective controls and processes to centrally track, review, and obtain approval for requests to fund all NRM contract actions using expired appropriations.
2. We recommended the Under Secretary for Health revise VHA policy to require requests to use expired funds include justifications that specifically address legal elements necessary for approval, such as whether the additional work is based on an antecedent liability in the original contract and meets a *bona fide* need of the appropriation year.
3. We recommended the Under Secretary for Health ensure that VHA officials with responsibilities concerning use of expired funds receive appropriate training on the revised VHA policy and relevant appropriations law.

4. We recommended the Under Secretary for Health revise VHA policy to require fiscal employees to verify that obligations recorded during year-end spending are supported by adequate documentation prepared while the funds were legally available for obligation.
5. We recommended the Under Secretary for Health initiate appropriate administrative action against contracting officers who entered inaccurate contract award dates in the electronic procurement accounting system and later signed the contracts after they should have known the funds had expired.
6. We recommended the Under Secretary for Health ensure that necessary accounting adjustments are made to correct the funding of contract actions with expired funds, including obtaining any additional approvals necessary from the Assistant Secretary for Management.
7. We recommended the Under Secretary for Health consult with the Assistant Secretary for Management to develop plans to implement controls over obligation of expired funds in other VHA programs, projects, or activities.

Under Secretary for Health Comments

The Under Secretary for Health agreed with our findings, recommendations, and estimated monetary benefits. The Under Secretary said that revisions to VHA policies during the audit improved controls concerning the use of prior-year funds for NRM maintenance and that the recent reorganization of VHA's procurement oversight responsibilities would further enhance relevant controls. He also agreed to initiate additional policy revisions needed to address issues presented in the report. He stated that, under new procedures, requests to use prior-year funds and related obligation records would be reconciled quarterly and requests to use expired funds will be required to address the legal justification issues we identified.

The Under Secretary said that financial and acquisitions staff would receive appropriate training on revised VHA policies and appropriation law. VHA would consult with the Assistant Secretary for Management to develop plans to implement controls over the use of prior-year funds in other VHA activities. The Under Secretary's action plan provided that VHA would implement appropriate procedures to verify obligations recorded during year-end spending, take action regarding contracting officers who misused prior-year funds, and make appropriate accounting adjustments to correct funding issues identified in the report. (See Appendix C for the full text of the Under Secretary's comments and action plan.)

Office of Inspector General Comments

We consider the planned actions acceptable and will follow up on their implementation.

(original signed by:)

BELINDA J. FINN
Assistant Inspector General
For Auditing

Introduction

Purpose

The OIG conducted an audit to determine whether VHA controls over the use of expired funds for maintenance activities were effective. The audit assessed whether VHA facilities obtained proper approval to use expired funds as well as whether contract changes were within the scope of the original contracts. In addition, the audit determined if contract changes were funded in accordance with appropriations law and met acquisition requirements.

Background

VA maintenance activities include the Non-Recurring Maintenance (NRM) construction program. This program involves capitalized projects controlled at the VISN level involving replacement and repair of major building systems; structural components of buildings, building service equipment, maintenance and repair of roads, grounds, and structures; and site preparation necessary to support installation of replacement medical equipment. In addition to the VISN-administered NRM program, healthcare facilities with additional maintenance needs and funding may conduct station-level maintenance projects.

Congress provides VA an annual Medical Facilities Appropriation for the maintenance and operations of VHA facilities. Most funding in this appropriation is available for a 1-year period, although a small portion is available for a 2-year period. For example, the FY 2008 appropriation included \$4.1 billion, of which \$350 million is available through FY 2009 and \$325 million for NRM (Consolidated Appropriations Act, 2008).

Prior OIG Audits. A previous OIG audit reported that weak controls permitted medical facilities to use expired funds improperly to perform additional project work that was out-of-scope of the original contracts.¹ The audit report stated that VA's control process focused on NRM projects only, permitting facilities to misuse expired funds for station-level projects and for other purposes, such as the installation of equipment. As a result, VA transferred responsibility for monitoring the use of expired funds from the Office of Financial Policy within the VA Office of Management to VHA, which had responsibility for managing the NRM program.

The Under Secretary for Health developed new controls on the use of expired funds and provided medical facilities with detailed policy guidance and training on their use. The resulting VHA directive, "Use of Prior-Year Funds for Non-Recurring Maintenance

¹VA OIG, *Audit of VA Medical Center Use of Prior Year Funds for Nonrecurring Maintenance Construction Projects*; Report No. 8R8-D04-013; October 10, 1997.

(NRM) Construction Projects,” was issued in October 1999 (VHA Directive 99-048).² The policy assigned contracting officers, who were responsible for determining whether contract changes are within scope of the original contract, with the additional responsibility to determine whether the change may be charged to an expired appropriation. The policy permitted VISN fiscal officers to approve the use of expired funds until the cumulative threshold was reached requiring approval from the Assistant Secretary for Management for additional obligation authority. The VHA Chief Financial Officer was responsible for monitoring the obligation of expired funds to determine when approvals from the Assistant Secretary became necessary.

In May 2007, the OIG reported that from 2002 to 2006 officials at the VA Boston Healthcare System misused \$5.4 million in expired funds for out-of-scope contract modifications. In response to the audit, the VISN strengthened its controls over relevant procurement and fiscal processes and took administrative action on related employee conduct issues.³ In addition, the VA Office of Acquisition and Logistics took action against the contracting warrant of a supervisory contract specialist involved in the incidents.

Scope and Methodology

We conducted audit work from November 2007 to May 2008. We conducted interviews at VA Central Office located in Washington, DC, and VHA healthcare facilities or VISN offices located in Cincinnati, OH; Mare Island, CA; Portland, OR; San Francisco, CA; and Seattle, WA. We also reviewed related Federal law, regulations, and VA policies.

To determine whether procurements using expired appropriations were funded and processed appropriately, we used automated data from VA’s Financial Management System to identify the sampling universe of maintenance-related transactions greater than \$1,000 in FY 2007 that were funded with appropriations during the 3-year period October 2003–September 2006. The universe consisted of 1,511 transactions totaling approximately \$51 million, from which we selected a stratified statistical sample of 166 maintenance-related transactions valued at \$32 million. In addition to testing FY 2007 contract modifications, we tested whether the awards for the original contracts had been made prior to expiration of the appropriations used. Our audit obtained information from 65 VHA facilities, 21 VISNs, VHA’s Office of Finance, and the VA Office of Acquisition and Logistics.

²VHA issued three directives concerning the use of prior year funds for the NRM program. VHA Directive 99-048 was issued in October 1999; the directive was reissued in March 2007 as VHA Directive 2007-011 with only minor changes from the original VHA directive. The directive was further revised and reissued in April 2008 as VHA Directive 2008-019.

³VA OIG, *Audit of Alleged Mismanagement of Government Funds at the VA Boston Healthcare System*, Report No. 06-00931-139, May 31, 2007.

To assess the reliability of computer-processed data, we compared automated data from the Financial Management System to source documentation supporting the transactions. We concluded that computer-processed data was sufficiently reliable for the purposes of the audit. (For more information regarding our sampling methodology, see Appendix A). We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results and Conclusions

Need for VHA to Strengthen Controls over Millions in Expired Funds

Findings

VHA used expired funds without approval or for improper purposes in healthcare facilities nationwide. Sample data identified misuse in 17 (81 percent) of 21 VISN contracting activities. Expired funds were used improperly because VHA had not implemented effective internal controls including an effective approval process.

VHA did not have an effective process in place to track the use of expired funds and obtain higher-level approvals when required; VHA policy erroneously implies that an in-scope contract modification was necessarily a *bona fide* need of the year when the original funding was available.⁴ In addition, VHA improperly funded unawarded contracts when appropriations were about to expire. This occurred, in part, because fiscal employees recorded obligations without reviewing obligation documentation. Our audit identified a total of \$16.4 million in unapproved or improper use of expired funds in transactions during FY 2007 and in the original procurements from prior years associated with these transactions.⁵ This amount includes a \$2.6 million adjustment to eliminate duplication in our projections for transactions having more than one exception.

VHA Used Expired Funds without Required Approvals. VHA officials did not obtain approvals required by law for contract modifications using expired funds. The audit determined that 410 obligations using expired funds for NRM were permitted without necessary approvals. This occurred because VHA did not implement a reliable method to centrally track expired funds obligations, and the process to obtain approval from the authorized approving official was inadequate.

The National Defense Authorization Act of 1991 (commonly referred to within VA as the Expired Funds Control Act) provides that when obligations in expired accounts for contract changes that cumulatively exceed \$4 million in a fiscal year within a program, project, or activity, an additional obligation from that account may only be made if the head of the agency or designee has approved the obligation (31 U.S.C. §1553(c)). The Assistant Secretary for Management has been delegated the authority to approve an obligation of expired funds above the \$4 million threshold in VA (38 C.F.R. § 2.6(c) (2)).

⁴VHA Directives 99-048, October 22, 1999 and 2007-011, March 7, 2007.

⁵The numbers presented in the report results section represent the point estimate from statistical projections of audit results. The overall amounts could be higher or lower based on standard errors from statistical projections, which are described in Appendix A.

We projected that during the period April 27 through September 30, 2007, expired funds valued at \$6.5 million of the FY 2006 appropriation were obligated without review and approval by the Secretary or the Assistant Secretary for Management.

For the NRM program, VHA directives 99-048 and 2007-011 permitted VISNs to approve requests to use expired funds until the cumulative threshold requiring the Assistant Secretary's approval for additional requests was reached. The directives require field facilities to use special accounting codes for the NRM and station-level obligations to permit the VHA finance office to monitor progress toward meeting the thresholds. Once total contract changes using expired funds reach \$4 million, the VHA finance office is responsible for informing VISN fiscal officers when the threshold is met so that higher approvals can be obtained, as required, and that field stations need to submit specific requests for the use of expired funds to headquarters for approval.

Despite the above requirements, VHA finance officials told us that they monitored contract changes using expired funds through requests submitted by field stations rather than monitoring accounting records. Requests to central office provided an incomplete record of contract changes because such reporting was not required until the \$4 million national threshold is reached. Also, finance officials acknowledged no procedures were in place to inform VISN fiscal officers when centralized approvals became necessary. In addition, VHA policy was unclear as to whether station-level projects required VISN-level review. The 1997 OIG audit had noted that station-level projects should be subject to the standard NRM approval process, but this requirement was not included in any VHA directives.

For FY 2007, the VHA finance office determined that the NRM program had met the \$4 million threshold using expired FY 2006 funds in June 2007 and notified the Assistant Secretary for Management that the program would need an estimated \$1.8 million for the remainder of the fiscal year. On August 1, 2007, the Assistant Secretary told the VHA finance office he "approved" the use of an additional \$1.8 million in expired FY 2006 funds for contract changes for June through September 2007. The Assistant Secretary's approval of this funding estimate did not satisfy the legal requirement for his authorization of specific obligations. Further, VHA's request for additional funding did not contain sufficient information to approve an obligation, such as specific amounts or purposes.

VHA did not accurately estimate the date when higher-level approval became necessary or the amount of expired funds to be used. Based on a combination of our sample data and VHA finance records, we determined that the NRM program had spent \$4 million in expired FY 2006 funds by April 27, 2007. After approval by the Secretary or Assistant Secretary for Management became necessary, we projected that VHA obligated an additional \$6.5 million in expired funds without legally sufficient approvals for 410 (43.5 percent) of 942 contract modifications during the remainder of FY 2007.

In April 2008, VHA issued Directive 2008-019, “Use of Prior-Year Funds for Non-Recurring Maintenance Projects,” which revised policy on the use of expired funds for NRM projects. As an improvement to national monitoring, the directive mandated that all requests to use expired funds for NRM projects be submitted through the VISN to the VHA finance office for approval. However, the new directive does not include any mention of station-level projects. Officials from the VHA finance office told us they had intended the directive to apply to station-level as well as NRM projects and they were open to further revisions. They also told us they planned to begin monitoring the use of expired funds using financial statements during FY 2008.

The absence of oversight for station-level projects is important because the misuse of expired funds at the Boston Healthcare System occurred outside of VHA’s control and monitoring process. The funds were used for station-level projects rather than formal NRM projects. In addition, our sample results demonstrated that facilities continued to obligate expired funds for station-level projects without documented approval by the VISN chief financial officers.

The VA Office of Management limited its efforts to implement the Expired Funds Control Act only to the NRM program rather than adopting controls over expired funds in other budget object classes or other term appropriations. VHA has continued this practice after monitoring responsibilities were transferred to VHA in the late 1990s. However, since the Expired Funds Control Act applies to cumulative contract changes within all programs, projects, and activities with fixed appropriations, VHA needs to expand its processes to monitor and obtain approval for expired funds obligations to other applicable areas. The need for more comprehensive control was evident based on a recent internal review conducted by VA’s Management Quality Assurance Service, which identified significant use of expired funds in other categories, such as fee-based medical care.⁶

VHA Used Expired Funds for Additional Work Not Required in Original Contracts. VHA used expired funds to perform additional, out-of-scope work, including paying for new requirements identified subsequent to the expiration of the appropriation. As a result, we estimated that in FY 2007 285 obligations in 2007 using expired funds valued at \$3.6 million were unlawfully funded because they contained changes that were out-of-scope of the original contracts or did not arise based on an antecedent liability in the original contract.

Requests to use expired funds for contract changes are subject to both procurement and appropriation law and regulations. Concerning procurement requirements, the Competition in Contracting Act (41 U.S.C. §253), with limited exceptions, requires full and open competition in soliciting offers and awarding contracts. However, as an

⁶Office of Business Oversight, Management Quality Assurance Service, *Review of Expired Funds Obligations*, VA New England Healthcare System, Bedford, Massachusetts, October 19, 2007.

authorized exception, contract modifications within the scope of the contract may be processed noncompetitively in accordance with Federal Acquisition Regulation (FAR) §6.01(c). Some Government contracts, including construction and architectural-engineering contracts, generally incorporate clauses authorizing modifications appropriate to the type of contract, as provided in FAR Part 43. Other Government contracts, such as purchase orders using simplified acquisition procedures or delivery orders for goods or services from indefinite-delivery/indefinite-quantity contracts may not contain provisions authorizing their modification. Factors such as the following are used when determining whether a modification is within the scope of a contract: (1) whether the offerors should have reasonably anticipated the modification under the contract terms, (2) the nature of the procured goods or services and the extent of any changes introduced by the modification, and (3) the impact of the modification on competition requirements (Comptroller General Decision B-274990, B-274990.2, January 14, 1997).

In addition to procurement requirements, the use of appropriated funds must be consistent with the *bona fide* needs rule, which provides that the balance of an appropriation limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made and obligated within the period of availability (31 U.S.C. § 1502(a)). In accordance with this provision of law, an appropriation may not be used for the needs of a time period subsequent to the expiration of its period of availability. Although some contracts may be lawfully modified to increase the price or expand the work, expired funds may only be used for contract changes that involve an antecedent liability enforceable by the contractor (65 Comp. Gen. 741, B-219829, July 22, 1986).

We determined that 285 transactions valued at \$3.6 million were for additional work outside the scope of the original contract and/or did not meet a *bona fide* need of the relevant appropriation year. Some examples of these transactions follow:

- In September 2007, officials at the New York Harbor Healthcare System used \$52,870 in expired funds for a modification to an equipment replacement contract. The scope of the original contract, which had been completed the previous year, was to replace two air conditioning chillers. The modification required the contractor to perform additional, out-of-scope work such as adding a ladder and platform to access the elevated chiller control panels and to install fencing and lighting in the area. The original contract had been completed and the additional work was severable and not reasonably foreseeable based on the terms of the original contract. The additional work should have been incorporated into a new procurement.
- In March 2007, officials at the James E. Van Zandt Medical Center, Altoona, PA, used \$11,284 in expired FY 2006 funds to modify an architectural-engineering contract. The original April 2006 contract had required the contractor to provide drawings, specifications, estimates, and related construction period services for a

computer room renovation. The contract had a provision permitting the contracting officer to issue change orders within the general scope of the contract in the services to be performed. The contract modification required the architectural-engineering contractor to modify the previously provided plans into two separate projects under \$400,000 each so that one could be built immediately and one deferred until later. Although the additional work appeared to be within the general scope of the contract, it did not satisfy the *bona fide* needs rule for using expired FY 2006 funds. The additional work was severable and based on budgetary constraints in 2007 rather than a *bona fide* need for which the Government had been properly obligated in FY 2006 when appropriations were available for obligation.

Besides violations of appropriations law, VHA violated procurement requirements when modifying contracts. We found 78 percent of the out-of-scope modifications in the sampling universe procured additional, out-of-scope work without documentation of an exemption for a non-competitive action permissible under the Competition in Contracting Act (41 U.S.C. §253(a)). In addition, 21 percent of the contract actions in the universe lacked evidence that the contracting officer had properly assessed the reasonableness of the contract prices prior to award as required (FAR §13.106-3, 15.406-3).

VHA Guidance on Using Expired Funds Needed Clarification. VHA policy on the use of expired funds needed to be revised to ensure compliance with Federal appropriations law. VHA field personnel made erroneous decisions to use expired funds, in part, because VHA policy did not clearly explain appropriation law requirements. The 1997 OIG audit noted that VA needed to provide improved guidance on when expired funds could be used, such as defining terms like “contract scope.” The subsequent VHA directives, including the 2008 version, incorrectly stated that the same “tests that contracting officers apply to determine whether a modification is within scope of the contract should be applied when determining whether expired funds may be charged.” The directives further added:

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 the liability arises at the time the original contract is executed.⁷

The paragraph is misleading in that it suggests that the determining factor in whether expired funds can be used is whether the contract permits changes. This is incorrect as the determining factor is whether there is an antecedent liability enforceable by the

⁷VHA Directive 99-048, 2b, October 22, 1999; VHA Directive 2007-011, 2b (1), March 7, 2007; and VHA Directive 2008-019, 2c (1), April 7, 2008.

contractor. The question that should be asked is whether the additional work is severable from the original contract. If not, there is an antecedent liability. A contract may allow for change orders but the need must have existed at the time of the award; otherwise current year funds must be used. Also, the first sentence in the paragraph quoted above incorrectly implies that the price adjustment could be enforceable by either party; however, only the contractor's right to enforce the contract allows the use of an expired appropriation.

The VHA directives provided that the contracting officer has the sole responsibility for making a determination whether a change that requires additional obligation authority may be charged to an expired appropriation. As a reflection of this provision, many of the justifications we reviewed relied on the contracting officer's determination that a change was within scope, rather than also presenting the additional information necessary for the approving officials to agree that the request is consistent with appropriations law.

VHA Funded New Contracts with Expired Funds. Another type of misuse of expired funds involved contracting officers improperly awarding new contracts with expired funds or modifying contracts with funding that had expired prior to the original award. Appropriations law (31 U.S.C. § 1501) provides, in part, that an amount shall be recorded as an obligation of the Government only when supported by documentary evidence of a binding written agreement between an agency and another person executed before the end of availability of the appropriation to be used for specific goods, services, or real estate. As a result, we estimated that in 2007 a total of 52 obligations valued at \$3.1 million were made with appropriations that had expired before the original contracts were awarded. In addition, six procurements were funded with expired funds totaling \$5.8 million prior to FY 2007. Examples of contracts funded with expired funds follow:

- In November 2006, a contracting officer at the VA Medical Center in Coatesville, PA, awarded a \$123,900 painting contract even though the appropriation expired on September 30, 2006. To secure funding for this transaction, the contracting officer made an inaccurate entry into the procurement accounting system to indicate that the award had been made on September 29, 2006.
- On September 29, 2006—the last business day in the fiscal year—a contracting officer at the VA Medical Center in Denver signed an electronic funding document obligating \$1.1 million from FY 2006 funds for a heating and air conditioning contract. However, the contracting officer did not award the contract necessary to establish this obligation until December 14, 2006—10 weeks after the appropriation had expired. In September 2007, a contracting officer modified the contract using funds from FY 2006. The contracting officer should not have used FY 2006 funds for either the original award or the modification because the appropriation had expired prior to the award.

Appropriations sometimes expired prior to the award of NRM contracts because the procurements were delayed until the end of the fiscal year when contracting officers did not always have sufficient time to negotiate and award requested contracts. For example, 73 percent of the original obligations associated with the contract actions in our sample, some of which were from as far back as FY 2004, were awarded during or after the last month in the fiscal year. In June 2006, the OIG reported that NRM spending was deferred during the first half of FY 2006 due to medical care funding concerns.⁸ VHA finance officials told us that VHA used to have a pattern of scheduling the award of NRM contracts at the end of the fiscal year. However, according to VHA finance officials, many NRM contracts were expected to be awarded earlier in FY 2008 due to new efforts undertaken by the VISNs. VHA finance officials told us they had no way of detecting contracts awarded with expired funds, other than auditing obligations, because the actual award dates were not included in the accounting records.

VHA employees were able to use expired funds improperly by making inaccurate entries in the procurement accounting system.⁹ In the aforementioned cases, the contracting officer made inaccurate entries in the system making it appear as if contracts were awarded prior to the expiration of the funds when the contracts had not been signed and an obligation did not exist. Fiscal officers relied on these inaccurate entries when recording obligations that had not actually been created. Contracting officers apparently made inaccurate entries into the system to commit funds for future awards and to “extend” the availability of an appropriation. While contracting officers may have believed that the contracts were necessary, they are also responsible for ensuring they are lawfully executed.

Conclusion

VHA management needs to improve oversight and strengthen controls over the use of expired funds. The audit identified unapproved and improper use of expired funds in at least 80 percent of VISN contracting activities nationwide amounting to a total of \$16.4 million during FY 2007. Frequent unauthorized or improper use of expired funds occurred because VHA has not established effective internal controls to ensure compliance with the provisions of the Expired Funds Control Act. Reliably tracking the use of expired funds and submitting all requests exceeding the \$4 million cumulative threshold to the Assistant Secretary would ensure contract changes using expired funds receive the approval required by law. Revising policy to provide that expired funds may only be used to fulfill a *bona fide* need incorporated into the contract when the appropriation was available for obligation would better ensure expired funds are used appropriately. Furthermore, requiring requests to use expired funds to specifically address the legal elements necessary to approve such requests would improve controls on

⁸VA OIG, *Report of Audit: Congressional Concerns over Veterans Health Administration's Budget Execution*, Report No. 06-01414-160, June 30, 2006.

⁹The Integrated Funds Distribution, Control Point Activity, Accounting, and Procurement system.

the approval process. Example elements include the contract provision that authorizes the change, the tasks or specifications affected by the change, when the need for the change was first identified, and why there is an antecedent liability to the Government. In addition to policy revisions, ensuring officials with responsibilities involving expired funds receive appropriate training on the revised policies would reduce misunderstandings created by prior policies.

Requiring fiscal employees to review obligation documents to ensure that entries made by contracting officers are properly supported would prevent erroneous recordings of obligations during year-end spending. Initiating appropriate administrative action against contracting officers awarding new contracts with expired funds would help deter repetition of these improper actions. Adjustments to correct the funding of contract actions with expired funds, including obtaining approvals from the Assistant Secretary for Management when required, would ensure these actions comply with Federal law. Finally, developing plans to control the obligation of funds in other programs, projects, and activities would ensure expired funds are used appropriately.

Recommendations

1. We recommended the Under Secretary for Health establish effective controls and processes to centrally track, review, and obtain approval for requests to fund all NRM contract actions using expired appropriations.
2. We recommended the Under Secretary for Health revise VHA policy to require requests to use expired funds include justifications that specifically address legal elements necessary for approval, such as whether the additional work is based on an antecedent liability in the original contract and meets a *bona fide* need of the appropriation year.
3. We recommended the Under Secretary for Health ensure that VHA officials with responsibilities concerning use of expired funds receive appropriate training on the revised VHA policy and relevant appropriations law.
4. We recommended the Under Secretary for Health revise VHA policy to require fiscal employees to verify that obligations recorded during year-end spending are supported by adequate documentation prepared while the funds were legally available for obligation.
5. We recommended the Under Secretary for Health initiate appropriate administrative action against contracting officers who entered inaccurate contract award dates in the electronic procurement accounting system and later signed the contracts after they should have known the funds had expired.

6. We recommended the Under Secretary for Health ensure that necessary accounting adjustments are made to correct the funding of contract actions with expired funds, including obtaining any additional approvals necessary from the Assistant Secretary for Management.
7. We recommended the Under Secretary for Health consult with the Assistant Secretary for Management to develop plans to implement controls over obligation of expired funds in other VHA programs, projects, or activities.

Under Secretary for Health Comments

The Under Secretary for Health agreed with our findings, recommendations, and estimated monetary benefits. The Under Secretary said that revisions to VHA policies during the audit improved controls concerning the use of prior-year funds for NRM maintenance and that the recent reorganization of VHA's procurement oversight responsibilities would further enhance relevant controls. He also agreed to initiate additional policy revisions needed to address issues presented in the report. He stated that, under new procedures, requests to use prior-year funds and related obligation records would be reconciled quarterly and requests to use expired funds will be required to address the legal justification issues we identified.

The Under Secretary said that financial and acquisitions staff would receive appropriate training on revised VHA policies and appropriation law and VHA would consult with the Assistant Secretary for Management to develop plans to implement controls over the use of prior-year funds in other VHA activities. The Under Secretary's action plan provided that VHA would implement appropriate procedures to verify obligations recorded during year-end spending, take action regarding contracting officers who misused prior-year funds, and make appropriate accounting adjustments to correct funding issues identified in the report. (See Appendix C for the full text of the Under Secretary's comments and action plan.)

Office of Inspector General Comments

We consider the planned actions acceptable and will follow up on their implementation.

Sampling Methodology and Estimates

Sampling Universe

Our universe consisted of 1,511 transactions that increased obligations in FY 2007 using Medical Facilities Appropriations from FY 2004–2006. We also included the few transactions for these years from the Medical Care appropriations, which used to be the primary funding source of maintenance funding prior to a change in the appropriations in 2004. The total value of the universe was approximately \$51 million. The value of the universe was greater than the cumulative increase in obligations in this area because the universe did not include transactions to reduce obligations, which were not subject to our tests.

Evaluation Design and Sampling

We designed our evaluation to test attributes, such as whether transactions had been properly approved, as well as variables, such as the estimated value of misused funds. In order to improve the efficiency of our dollar estimates, we divided the sampling universe into four strata based on transaction amounts. We tested all transactions in the highest-value stratum and random samples from the three other strata, for a total sample size of 166 transactions. Unless otherwise noted, the results of our evaluation for all sampled strata were projected to the universe and combined to calculate weighted point estimates and associated margins of error at the 90 percent confidence interval. The proportions between the sample and projected results may differ depending on the relative weights in the statistical projections given to sample units based on their strata. Additional universe and sample information is presented in Table 1.

Table 1. Stratified Universe and Sample Information					
Strata Defined by Dollar Values	Universe Units	Sample Units	Stratum Weight	Total Universe Dollars	Total Sample Dollars
\$1,000 to \$9,999	845	16	845/16=52.8	\$ 3,292,094	\$ 58,967
\$10,000 to \$49,999	466	38	466/38=12.3	\$10,467,367	\$ 835,717
\$50,000 to \$99,999	100	12	100/12=8.3	\$ 7,193,659	\$ 880,884
\$100,000 and above	100	100	100/100=1	\$30,412,048	\$30,412,048
Total	1511	166		\$51,365,168	\$32,187,616

In some instances, our review of transactions resulted in identification of misused funds from contracts that were awarded prior to FY 2007, as presented in Table 8. The results of these earlier transactions are reported separately and were not included in the projections from the statistical evaluation.

Methodology and Limitations

Our sampling plan provided cost-effective national results of tests concerning the use of expired funds for contract changes. Since VA lacked a national database of contract changes, we obtained the audit universe based on adjustments to obligations in the VA Financial Management System. This approach successfully produced a national universe, but the obligation records also contained accounting transactions that affected the precision of our sample.

We selected transactions for maintenance of VA healthcare facilities by targeting relevant budget object codes related to maintenance and repair as well as capitalized projects.¹⁰ Although NRM projects are capitalized, we did not limit our universe to this area because officials at the VA Boston Healthcare System had used maintenance codes for their projects. Transactions were reviewed using procurement, accounting, and approval records; the results of facility responses to OIG questionnaires; and telephone or electronic mail contacts with knowledgeable facility or VISN officials.

Results

Our audit identified the types and values of transactions in our sampling universe, as presented in Tables 2 and 3. The prevalence of transactions lacking required approvals is presented in Table 4. Summary and detailed exception information on transactions that were out-of-scope or not a *bona fide* need is provided in Tables 5 and 6. Summary and detailed information on transactions awarded with funds that expired prior to the original awards appear in Tables 7 and 8.

Table 2. Transactions Types in Universe			
	Projected Results		
	Sample	Universe	Margin of Error
Transactions Funding Additional Contract Actions	68	942	+/- 187
Transactions with Obligation Valuation Issues	26	367	+/- 176
Transactions with Other Accounting Adjustments	72	202	+/- 101
Total	166	1511	

¹⁰Selected budget object codes were maintenance and repair services (2543) and codes for capitalized alteration or renovations to land, buildings, or facilities (3215, 3220, 3223 & 3240).

Table 3. Value of Transactions in Universe

	Sample	Universe	Projected Results Margin of Error
Transactions Funding Additional Contract Actions	\$ 7,147,581	\$18,151,860	+/- \$2,556,110
Transactions with Obligation Valuation Issues	\$ 6,232,259	\$10,710,521	+/- \$2,336,139
Transactions with Other Accounting Adjustments	\$18,807,777	\$22,253,090	+/- \$2,128,885
Total	\$32,187,617	\$51,115,471	

Note for Table 3: The total dollars in the universe is slightly less than the actual figures because it is based on the sum of three statistical projections.

**Table 4. Transactions Lacking Required
Assistant Secretary for Management Approval**

	Sample	Universe	Projected Results Margin of Error
Transactions using FY 2006.	24	410	+/- 178
Value of transactions using FY 2006.	\$1,609,440	\$6,523,564*	+/- \$2,142,092

**Table 5. Total Transactions Out-of-Scope or Not a *Bona Fide* Need
for the Appropriation Year**

	Sample	Universe	Projected Results Margin of Error
Transactions containing work that was out-of-scope or not meeting a <i>bona fide</i> need.	21	285*	+/- 152
Value of transactions containing work that was out-of-scope or not meeting a <i>bona fide</i> need.	\$987,962	\$3,581,114	+/- \$1,459,947
Transaction details supporting Table 5 are found in Table 6.			

*Each sample record is multiplied by the weight of the strata shown in Table 2 and then summed to provide the projected total value of the transactions.

Table 6. Sample Transactions Identified as Out-of-Scope or Not a *Bona Fide* Need for the Appropriation Year

VISN & Facility Locations	Exceptions	Amount
VISN 3 Manhattan, NY	An October 2006 contract modification using FY 2005 funds was out-of-scope because it significantly expanded the scope of work for a contract on the facility sprinkler system. The original FY 2005 contract required replacement of sprinkler heads and piping. The contractor proceeded to perform the original work, but it informed VA in August 2006 that repairs were also necessary to the shut-off valves and the main riser lines.	\$167,020
VISN 3 Manhattan, NY	A September 2007 contract modification using FY 2006 funds was out-of-scope because it added additional work to an air conditioning chiller project after the original work was completed. The additional work required the contractor to install additional items to improve access and safety to the rooftop chiller.	52,870
VISN 3 Northport, NY	A March 2007 modification for sewer maintenance services using FY 2006 funds was out-of-scope because the contract contained no provision allowing contract changes and the contracting officer had determined the requirement was a <i>bona fide</i> need for FY 2007.	7,125
VISN 4 Altoona, PA	A June 2007 modification for architectural and engineering services using FY 2006 funds was not a <i>bona fide</i> need in 2006, because VA asked the architect to redo drawings in FY 2007 based on new requirements.	11,284
VISN 4 Pittsburgh, PA	A November 2006 modification using FY 2006 funds included out-of-scope requirements, such as design changes to add spectroscopy equipment and a common control room for future equipment.	110,100
VISN 4 Wilkes-Barre, PA	A September 2007 modification requiring a significant design change was improperly funded with FY 06 funds. The original contract had been funded with FY 05 funds and there was no basis to establish that the change was a <i>bona fide</i> need of FY 06.	170,000
VISN 5 Washington, DC	A March 2007 modification of a 2005 contract was partially out-of-scope because it required the contractor installing electrical upgrades to extend a grounding study that was previously performed by a different architect-engineering contractor for the electrical improvement contract.	81,961
VISN 5 Washington, DC	A March 2007 modification of a 2005 contract was out-of-scope because it contained additional tasks that expanded a contract to install specific electrical upgrades to also revise and extend design work previously performed by the architect-engineering contractor and to replace an additional component not included in the contract.	180,791

VISN & Facility Locations	Exceptions	Amount
VISN 10 Cincinnati, OH	A November 2006 modification for architectural and engineering services using FY 2005 funds was out-of-scope because in FY 07, VA asked the architect to redo drawings that had already been completed based on new requirements.	10,250
VISN 15 Leavenworth, KS	A December 2006 modification using FY 2005 funds was out-of-scope because the requirement was to repair damage by a recent lightning strike, rather than to perform the 2005 project.	13,064
VISN 16 Alexandria, LA	A January 2007 modification using FY 2005 funds was out-of-scope because it was based on a change in requirements for the fire alarm system created by adding another building to the project that had been renovated during a separate project completed in 2006.	65,069
VISN 16 Houston, TX	An August 2007 modification using FY 2006 funds was out-of-scope because the requirement was for an increase in quantity for a fixed-quantity delivery order for computer software for kiosks installed as part of a maintenance project.	16,820
VISN 16 Houston, TX	A March 2007 modification using FY 2006 funds was out-of-scope because the requirement was to replace a broken transformer discovered in FY 2007, which was not included in the original statement of work.	10,729
VISN 17 San Antonio, TX	A May 2007 modification for architectural and engineering services using FY 2006 funds was out-of-scope because VA asked the architect to redo drawings in FY 2007 based on different requirements.	3,680
VISN 18 Tucson, AZ	A July 2007 modification should not have used FY 2005 funds to pay the contractor to repaint an area based on a color change in 2007, because it was not a <i>bona fide</i> need of FY 2005.	2,671
VISN 20 Roseburg, OR	An August 2007 modification for architectural-engineering services using FY 2005 funds was out-of-scope, because it included requirements for additional areas and purposes.	20,084
VISN 20 Seattle, WA	A June 2007 modification using FY 2006 funds was out-of-scope because it included work in an additional area not contained in the original contract.	52,206
VISN 21 San Francisco, CA	An October 2006 modification to trace and label wiring was out of scope of the original 2004 procurement to replace electrical equipment.	10,000
VISN 22 Loma Linda, CA	A September 2007 modification to remodel the Canteen Service area was out-of-scope because it expanded work into the canteen dining room. The dollars for this modification are claimed in Table 8 because the funding for the entire contract expired prior to award.	0

VISN & Facility Locations	Exceptions	Amount
VISN 22 Long Beach, CA	An October 2006 modification using FY 2006 was out-of-scope because it was a change in quantity to a June 2006 sole-source door and lock repair service order for another location.	1,238
VISN 23 Minneapolis, MN	An October 2006 modification using FY 2006 funds to perform work in the laundry was out-of-scope because the original scope of work concerned another location—the canteen.	1,000
21 Transactions	Totals	\$987,962

Table 7. Transactions in FY 2007 Made with Expired Funds

	Projected Results		
	Sample	Universe	Margin of Error
Transactions in FY 2007 made with funds that expired prior to original awards	11	52	+/- 37
Value of transactions in 2007 made with funds that expired prior to original awards	\$1,690,662	\$3,131,122*	+/- \$1,375,852

Transaction details supporting Table 7 are in Table 8.

Note for Table 7: We excluded the stratum containing transactions less than \$10,000 (#1 in Table 1) when calculating the results for Table 7 because the results in that stratum had insufficient precision to project results.

Table 8. Listing and Values of Modifications to Contracts Awarded After Appropriations Were No Longer Available for the Obligation of New Contracts

VISN/Location	Funds Expired	Contract Signed	Sample Transaction in FY 2007	Expired Funds Obligated Before FY 2007
VISN 1 White River Junction, VT	9/30/2004	10/06/2004	\$150,000	\$1,640,682
VISN 3 Castle Point, NY	9/30/2006	12/14/2006	370,814	0
VISN 4 Coatesville, PA	9/30/2006	11/27/2006	123,900	0
VISN 6 Fayetteville, NC	9/30/2006	10/04/2006	462,500	0
VISN 19 Denver, CO	9/30/2006	12/14/2006	36,039	1,115,520
VISN 20 Portland, OR	9/30/2006	10/23/2006	Excluded	482,977
VISN 21 San Francisco, CA	9/30/2006	3/13/2007	140,000	0
VISN 21 San Francisco, CA	9/30/2006	7/05/2007	148,000	0
VISN 21 San Francisco, CA	9/30/2004	3/11/2005	145,000	1,999,960
VISN 21 Honolulu, HI	9/30/2006	2/23/2007	34,190	0
VISN 22 Loma Linda, CA	9/30/2006	1/12/2007	64,649	265,549
VISN 23 Fargo, ND	9/30/2005	10/13/2005	15,570	302,451
12 Transactions		Totals	\$1,690,662	\$5,807,139

Note for Table 8: The exceptions occurring in the sample transactions for 2007 are included in our statistical projections, but the exceptions occurring in expired funds obligateded before 2007 are reported on an actual basis. The results for the transaction marked “excluded” fell within the stratum we eliminated from our projection in Table 7 due to a lack of precision.

Remaining Transactions: Valuation Issues or Other Accounting Adjustments

An estimated 24 percent of the transactions in the audit universe were accounting transactions to address obligation errors. Proper recording practices are essential to sound fund control. Under-recorded or undervalued obligations increase the risk of violating the Antideficiency Act. The most frequent type of error that resulted in the obligation corrections was that the obligations were recorded below their actual amount. The undervaluation of obligations occurred because of a variety of causes, such as system settings that caused obligations to automatically accrue, errors in establishing the original obligation amount, and errors in de-obligating orders believed to have been completed.

Contracting activities in VISNs 1, 4, and 10 added contingency funds valued at \$320,116 to their project obligations in order to reserve funds for future contract changes that might be needed. Contingency funds should not be recorded as obligations because there is no binding agreement that makes VA liable to use them. VHA finance officials told us that

VA did not currently have a method to formally commit additional funds to NRM projects, which would eliminate the motivation to record obligation amounts in excess of the contract value.

An estimated 13 percent of the transactions in the universe were prior-period adjustments that were made to correct previous accounting coding errors, such as wrong budget object code, type of order, or vendor name. The most common correction involved changing the budget object code for a NRM project from maintenance and repair services to a capitalized project. Incorrect coding of NRM projects like maintenance and repair was noted in the incidents reported in the May 2007 OIG audit at the VA Boston Healthcare System. We used budget object codes to identify our universe; uncorrected errors in this area could result in our underestimating the actual size of maintenance-related transactions and the magnitude of the audit results. However, we believe our results are adequate to substantiate that VHA had national problems in the control and use of expired funds.

Monetary Benefits in Accordance with IG Act Amendments

<u>Recommendation</u>	<u>Explanation of Benefits</u>	<u>Questioned Costs¹¹</u>
1	Implementation of the recommendation would reduce obligations of expired funds without the approvals required by law.	\$ 6,523,564
2	Implementation of the recommendation would reduce misuse of expired funds obligations for work that was out-of-scope or other than a <i>bona fide</i> need of the appropriation year.	3,581,114
4	Implementation of the recommendation would reduce expired funds obligations for new contracts and their modifications. ¹²	8,938,261
Subtotal		\$ 19,042,939
Adjustment to eliminate duplication in combined projections for transactions having more than one exception.		-2,565,320
Total		\$ 16,477,619

¹¹Our estimates of questioned costs are conservative because they do not include calculations of recurring misuse in previous years.

¹²This benefit is based on the projection in Table 7 for transactions during FY 2007 and funds improperly used prior to FY 2007 listed in the last column of Table 8.

Under Secretary for Health Comments

Department of
Veterans Affairs

Memorandum

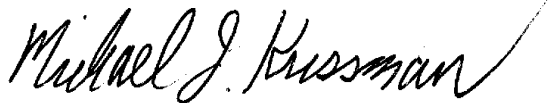
Date: **SEP 25 2008**

From: Under Secretary for Health (10)

Subj: *OIG Draft Report, Audit of Procurements Using Prior-Year Funds for VA Healthcare Facilities*, Project No.: 2008-00244-D2-0018 (WebCIMS 411747)

To: Assistant Inspector General for Audit (52)

1. I have reviewed the draft report, and I concur with the report findings and the monetary benefits estimate. At the time of this audit, VHA policy required revision to provide guidance and clarification of the requirements for the use and approval of prior-year funds. VHA Directive 2008-019, *Use of Prior-Year Funds for Non-recurring Maintenance (NRM) Projects*, was revised and reissued in April of this year and addresses these elements. VHA will make further policy revisions to ensure that requests to use expired funds include justifications that address the issues identified in this report. The results of your audit will be used to reinforce compliance with the Directive.
2. To ensure compliance with VHA policy concerning use of prior-year funds, the Office of Finance and the Procurement and Logistics Office will collaboratively develop required training and certification on the revised VHA policy and relevant appropriation law. VHA's recent reorganization of the Office of Procurement and Logistics under the Deputy Under Secretary for Health for Operations and Management (DUSHOM) will further enhance oversight and controls over VHA procurement activities. Also, the Office of Finance will consult with VA's Assistant Secretary for Management to develop plans to implement controls for oversight of the use of prior year funds.
3. Thank you for the opportunity to review the draft report. An action plan to implement the report recommendations is attached. If you have any questions, please contact Margaret M. Seleski, Director, Management Review Service (10B5) at (202) 461-8470.



Michael J. Kussman, MD, MS, MACP

Attachment

Under Secretary for Health Action Plan

The Under Secretary for Health submitted the following action plan in response to the recommendations in the OIG report:

Recommendation 1. We recommend the Under Secretary for Health establish effective controls and processes to centrally track, review, and obtain approval for requests to fund all NRM contract actions using expired appropriations.

Concur. VHA's Office of Finance issued VHA Directive 2008-019, *Use of Prior-Year Funds for Non-recurring Maintenance (NRM) Projects*, on April 7, 2008. This Directive provides guidance and clarification of requirements pertaining to the use of prior-year funds for NRM projects. Approved requests for use of prior-year funds are compared to prior-year increases in NRM obligations and are reconciled quarterly. Reconciliation results will be assessed and discrepancies will be resolved appropriately.

Target Completion Date: In process: April 2008 and on-going.

Recommendation 2. We recommend the Under Secretary for Health revise VHA policy to require requests to use expired funds include justifications that specifically address legal elements necessary for approval, such as whether the additional work is based on an antecedent liability in the original contract and meets a *bona fide* need of the appropriation year.

Concur. VHA revised VHA Directive 2008-019 in response to the May 2007 OIG audit report. VHA will make further policy revisions to ensure that requests to use expired funds include justifications that address the issues identified in the current OIG audit report.

Target Completion Date: In process. April 30, 2009.

Recommendation 3. We recommend the Under Secretary for Health ensure that VHA officials with responsibilities concerning use of expired funds receive appropriate training on the revised VHA policy and relevant appropriations law.

Concur. VHA's Office of Finance (17) and Office of Procurement and Logistics (10F) will collaborate and develop educational training materials and certification on revised VHA policy and relevant appropriations law for all financial and acquisition staff at all levels.

Target Completion Date: In process. December 30, 2008.

Recommendation 4. We recommend the Under Secretary for Health revise VHA policy to require fiscal employees to verify that obligations recorded during year-end spending are supported by adequate documentation prepared while the funds were legally available for obligation.

Concur. VHA will implement procedures to comply with requirements contained under 38 USC Sec 1501, FAR 32.702 Contract Funding, and MP-4, Part 5, 1A.10 Internal Controls.

Target Completion Date: In process. October 30, 2008.

Recommendation 5. We recommend the Under Secretary for Health initiate appropriate administrative action against contracting officers who entered inaccurate contract award dates in the electronic procurement accounting system and later signed the contracts after they should have known the funds had expired.

Concur. The Office of Procurement and Logistics (10F) will request appropriate administrative action be taken against the contracting officers who inappropriately used expired funds. A memo will be issued to the respective Heads of Contracting Activity (HCAs) for appropriate action.

Target Completion Date: In process. October 30, 2008

Recommendation 6. We recommend the Under Secretary for Health ensure that necessary accounting adjustments are made to correct the funding of contract actions with expired funds, including obtaining any additional approvals necessary from the Assistant Secretary for Management.

Concur. VHA's Office of Finance will coordinate with the respective Veterans Integrated Service Networks and facilities to process accounting adjustments to correct the sample transactions identified as being charged to the correct fiscal year.

Target Completion Date: In process. September 30, 2008.

Recommendation 7. We recommend the Under Secretary for Health consult with the Assistant Secretary for Management to develop plans to implement controls over obligation of expired funds in other VHA programs, projects, or activities.

Concur. VHA's Office of Finance will consult with the Assistant Secretary for Management to develop plans to implement controls and requirements for oversight of use of prior-year funds.

Target Completion Date: In process. November 30, 2008.

OIG Contact and Staff Acknowledgments

OIG Contact	Steven Wise 202-461-4551
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Acknowledgments	Steven Cucina Malissa Green Henry Hoffman Frederick Livingstone Melvin Reid Sharee Smalls Felita Traynham William Woods
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