



DEPARTMENT OF THE NAVY
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CNICINST 7000.1A
N8
4 Mar 2013

CNIC INSTRUCTION 7000.1A

From: Commander, Navy Installations Command

Subj: FIDUCIARY RESPONSIBILITIES FOR EXPIRED AND CANCELED
ACCOUNTS

Ref: (a) 31 U.S.C §1553-1557
(b) DoD 7000.14-R, Financial Management Regulations
(FMR), June 2012
(c) NAVSO P-1000
(d) CNO memo, Delegation of Authority for Approval of
Upward Obligations, of 16 May 2006 (NOTAL)
(e) ASN(FM&C) memo, Guidance for Administration of
Appropriations After the Period of Availability, of
10 Mar 2010 (NOTAL)

Encl: (1) Definitions
(2) Approval Requirements for Upward Obligation
Adjustments
(3) Program, Project, and Activity (PPA) Definitions and
PPA Managers for DON Appropriations and Prior
Clearance Offices

1. Purpose. To provide guidance on using current year funds to pay for canceled account liabilities, and to supplement references (a) through (e) by providing procedures to obtain approval for using expired funds within Commander, Navy Installations Command (CNIC). This instruction applies to CNIC headquarters (HQ), regions, and installations.

2. Cancellation. CNICINST 7000.1 dated 8 Jan 2007.

3. Background

a. Most appropriated funds have a statutory life or fixed period of availability during which they are available to incur new obligations. At the end of this statutory life the appropriation expires. While not available for new obligations, expired funds are available for the next 5 fiscal years for making adjustments properly chargeable to that appropriation.

Within-scope changes are chargeable to the appropriation cited when the original contract was executed. Out-of-scope changes are chargeable to the appropriation current when the increase is granted. At the end of the fifth fiscal year after expiration, the appropriation cancels and funds are not available for any purpose.

b. Reference (a) provides legislative requirements applicable to accounts after their period of availability. Volume 3, Chapter 10 of reference (b), Chapter 1, Part D, paragraph 073302 of reference (c), and references (d) and (e), provide Department of Defense (DoD) and Department of Navy (DON) guidance for these accounts. Reference (b), volume 3, chapter 8, September 2009 provides DoD guidance applicable to tri-annual reviews. Definitions of fiduciary and accounting terms are provided in enclosure (1).

4. Policy

a. Expired Funds

(1) For increases to expired appropriations it is important to consider all aspects of scope, including project, fiscal, and contract scope. While within-scope adjustments may be funded from expired appropriations, new scope adjustments must be funded with current year funds.

(2) Enclosure (2) provides approval requirements for upward obligation adjustments and whether the upward obligation adjustments is a within-scope (expired funds) or a new scope (current year funds). Enclosure (3) provides Program, Project, and Activity (PPA) definitions and PPA managers who pre-approve upward adjustments.

(3) Reference (d) delegated approval authority for Operation and Maintenance, Navy (OMN) and Navy Reserve (OMNR) Base Operations Support (BOS), and Sustainment, Restoration, and Modernization (SRM), to CNIC. CNIC further delegated low threshold approval authority, up to \$50 thousand, for OMN/OMNR to region financial managers under separate correspondence. American Recovery and Reinvestment Act (ARRA) requests must be approved by CNIC HQ. All Family Housing, Navy (FHN) requests must be approved by the Assistant Secretary of the Navy (ASN) Financial Management and Comptroller (FM&C) via CNIC HQ N8.

(4) In accordance with reference (e), there are other thresholds that must be observed:

(a) Any individual upward obligation adjustment citing expired funds of more than \$4 million must be pre-approved by ASN(FM&C), Office of Budget, Program/Budget Coordination Division (FMB3). Reference (e) changed the threshold of what ASN (FM&C) approves from \$1 million to \$4 million and thereby increases the original approval authority in reference (d) up to \$4 million cumulative obligation increases in a fiscal year for each PPA, refer to enclosure (3). CNIC is still required to submit all upward obligation adjustment packages greater than \$1 million to FMB3 for historical purposes.

(b) For contract changes where the contractor must do additional work in order to complete the initially contracted effort, when cumulative adjustments in a PPA in a fiscal year exceeds \$4 million, prior approval must be obtained from the Under Secretary of Defense (Comptroller) via CNIC HQ's Comptroller (N8). Cumulative contract changes which exceed \$25 million in an expired appropriation in a fiscal year require congressional notification via CNIC HQ N8.

(c) For project orders, only those amendments and modifications that are within the general scope of the initial project order can be funded using expired funds. All modifications that increase or change the general scope of work of the original order shall be charged to a current appropriation.

b. Canceled Funds. For those obligations and adjustments that would have been properly chargeable to a closed appropriation, charges may be made to the current appropriations available for the same purpose following the guidance in references (b), volume 3, chapter 10, (c), and (e). Every effort should be made to ensure that all valid invoices are paid before the account closes, and that work/services/material undelivered at the time of the appropriation's expiration period are minimized.

5. Responsibilities

a. Region Program Managers (PMs) are responsible for working with the contracting officer and contracting agency's counsel to determine if the effort is in project and contract

scope and then submit supporting documentation to CNIC region N8.

b. CNIC Region N8s are responsible for reviewing for fiscal scope/bona fide need, and approving, if within their approval authority, or reviewing and forwarding to CNIC HQ for processing if over their authority.

(1) In conjunction with reference (b), volume 3, chapter 8 of September 2009, region N8s are required to certify tri-annually that dormant commitments and obligations have been reviewed.

(2) Commitments and obligations are defined as dormant if no obligations, adjustments, contract modifications, disbursements, or withdrawals occur within a 120 day period. Additionally, commitments and obligations are defined as dormant in the case of contracts that are physically complete and for which the period of performance has expired (hereinafter, "dormant contracts").

c. CNIC HQ Accounting (N82) is responsible for reviewing the request, confirming availability of funds, obtaining concurrences and processing requests.

6. Action

a. CNIC HQ N82 shall forward requests in the amount of \$4 million or more or those that would result in a cumulative fiscal year amount of \$4 million or more, as well as all FHN requests, to ASN(FM&C) Budget Office Investment and Development Division (FMB2) for processing

b. Program Managers (PMs) shall work with contracting officer, contracting agency's counsel and CNIC region N8 when there is a cost increase in an expired appropriation to determine if the request is:

(1) a within-scope pricing adjustment, such as an increase in cost of labor or supplies, but with no change in the amounts of laborers/labor hours, equipment, or supplies;

(2) a contract change upward obligation, which will result in additional laborers/labor hours or equipment or supplies required to complete the initially contracted effort;

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(3) or a new scope effort, where the work or bona fide need was not in the scope of the awarded contract and must be funded with current year funds.

7. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed in accordance with reference SECNAV M-5210.1.


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DEFINITIONS

Antecedent Liability. An adjustment is considered an antecedent liability if the government's liability arises and is enforceable under a provision in the original contract.

Anti-Deficiency Act (ADA). ADA provisions are applicable to all appropriations both during and after the expired period. Violations can occur when any official makes or authorizes an obligation or payment against an expired or cancelled account that is either improper or exceeds a statutory limitation. Examples include but are not limited to:

- a. Exceeding the statutory \$4 million or \$25 million contract change limitation without obtaining the legally required approvals;
- b. Spending current funds for a canceled account liability in excess of the 1 percent limitation or other legal limitation;
- c. Spending current funds for a canceled account liability in excess of the unobligated balance of the original fiscal year account. *Note: An ADA violation may result in a hefty fine and jail time.*

Appropriation. Congress makes funds available for obligation and expenditure by means of an appropriation act. For the purpose of this instruction, the term "appropriation" is synonymous with "account."

<u>Appropriation</u>	<u>Statutory</u> <u>Life</u>	+	<u>Period of</u> <u>Expiration</u>	=	<u>Appropriation</u> <u>Life</u>
Operations & Maintenance, Navy (OMN - 1804)	1		5		6
Operations & Maintenance, Navy Reserve (OMNR - 1806)	1		5		6
Operations & Maintenance, Navy, American Recovery Reinvestment Act (ARRA - 1805 & 1807)	2		5		7
Family Housing Navy (FHN - 0735)	1		5		6
Other Procurement, Navy (OPN - 1810)	3		5		8

<u>Appropriation</u>	<u>Statutory</u> <u>Life</u>	+	<u>Period of</u> <u>Expiration</u>	=	<u>Appropriation</u> <u>Life</u>
Research, Development, Test & Evaluation, Navy (RD TEN - 1319)	2		5		7
Defense Base Realignment & Closure (BRAC - 0512)	X		X		X
Disposal of Dept. of Defense Real Property (5188)	X		X		X
Lease of Dept. of Defense Real Property (5189)	X		X		X

Bona Fide Need Rule. Appropriations made for a definite period of time may be used to fund only those expenses properly incurred or to complete contracts properly made during that time.

Canceled Account Liability. In some instances, it may become necessary to adjust an obligation that would have been properly chargeable both to purpose and amount to a canceled account. If such an adjustment becomes necessary, the obligation is to be charged to an appropriation currently available for the same purpose. The current appropriation available for the same purpose will normally be the same appropriation but may be a different appropriation if laws or regulations governing the funding of the object covered by the adjustment have changed. An example of this would be if Congress raised the expense/investment threshold and an item that was paid for out of a procurement account is now chargeable to Operations & Maintenance. If a different appropriation is now being used to fund the object in question, current funds from that appropriation will be used to pay for the adjustment. There is no requirement to use current funds from the same program or line item to pay canceled account liabilities; any legally available unobligated balances of the appropriation may be cited. Funds used to pay canceled account liabilities must be shifted to subheads that have been established for canceled account adjustments. Under this liability there are certain restrictions, as explained in reference (b), governing the total of such payments allowable from the current appropriation.

Contract Actions. These are changes consisting solely of obligation-only adjustments, such as incentive/award fees and price inflation (escalation or economic price) adjustments. They are not considered contract changes but shall be supported

with documentation in the statement of work that indicates the changes neither require nor result in additional work or a change of scope.

Contract Changes. A contract change is a change under which the contractor is required to perform additional work in order to complete the initially contracted effort.

Funds

Available (current) funds may be used to enter into new obligations, such as contracts, in-house orders, travel orders, and purchase cards orders, as well as adjustments to existing obligations. Available funds are available for 1 or more years based on the statutory life of the appropriation.

Expired funds are appropriations in which the balances are no longer available for new obligations because the time available for incurring such obligations has expired. They maintain their fiscal year identity and are available for 5 years to record, adjust, and liquidate obligations properly chargeable to that appropriation. Only within-scope changes may be funded with expired funds.

Canceled funds are not available for any use. On 30 September of the fifth fiscal year after expiration, the appropriation cancels and funds are no longer available for any purpose. Individual increases to canceled appropriations (canceled account liability) are charged to current year funds within the limitations of DoD 7000.14-R Financial Management Regulations (FMR), volume 3, chapter 10, June 2012.

Prior Clearing Office. This is the office that must grant approval before spending the prior year funds.

Scope

Contract scope is work within the contract's specification, and may include part or all of a project or span several projects. The baseline scope of a contract is all work contracted for prior to the expiration of funds, including changes incorporated by modification.

Fiscal scope is determined by bona fide need and antecedent liability or by what was identified as the requirement at the time the funds were obligated.

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New scope efforts can be funded only with current funds. Changes in the quantity of major items on hardware contracts (e.g., an increase of five computers on a contract for computers) or the service level on service contracts are considered new scope.

Project scope identifies a requirement that, when completed, is a complete and useable product.

Within-scope efforts are chargeable to the original expired fiscal year if the adjustment is attributable to an antecedent liability. Changes in the quantity of subsidiary items under a contract, such as spare parts, generally are considered to be within the scope of the contract unless they are so significant that they alter the basic contractual undertaking.

Thresholds (Expired/Closed Accounts)

\$4 million DoN Policy Threshold - All Upward Adjustments. Any individual upward obligation adjustment citing an expired appropriation in excess of \$4 million must have prior approval of the ASN (FM&C). This policy applies to all upward obligation adjustments using an expired appropriation, contract change or amendment, for any reason, involving use of expired funds requires Assistant Secretary of the Navy (Financial Management and Comptroller) (ASN (FM&C)) signature. For any individual adjustment involving expired funds, or current year funds to pay a canceled account liability, of \$1.0 million or more, a copy of the proposed contract modification is required, in addition to the information requested in an upward obligation request.

\$4 million threshold - For contract changes only, cumulative program, project, or activity (PPA) requires Under Secretary of Defense (Comptroller) (USD(C)) signature. PPA for base operations support (BOS) is at the sub-activity group (SAG) level. PPA is defined for sustainment, restoration, and modernization (SRM) as any major repair or minor construction (minor construction threshold is generally \$750 thousand for OMN-funded projects). Over \$750 thousand pushes a minor construction into military construction (MILCON), and MILCON funds are not available unless specifically authorized by Congress, resulting in an ADA violation.

\$25 million threshold - For contract changes only, cumulative PPA requires prior congressional notification.

APPROVAL REQUIREMENTS FOR UPWARD OBLIGATION ADJUSTMENTS

Type of Adjustment (After Funds Have Expired for New Obligations)	Funding Source	Submit to ASN(FM&C) If Cumulative Adjustments Would Exceed \$4M
Incentive, award fees, and target-to-ceiling cost growth on incentive fee contracts	Expired Funds	No *
Price inflation (escalation, economic price adjustments, or foreign exchange rate adjustments)	Expired Funds	No *
Within-Scope Contract Changes		
a. Within-scope contract amendment	Expired Funds	Yes **
b. Within-scope increase in reimbursable project orders	Expired Funds	Yes **
c. Within-scope error corrections or formalization of an informal agreement that does not result in a new procurement	Expired Funds	Yes **
d. Within-scope claims and settlements	Expired Funds	Yes **
e. Contract changes in cost reimbursement commercial contracts that exceed ceiling, and change is not based on antecedent liability enforceable by the contractor	Current Funds	No
Changes-in-Scope Contract Changes		
a. Increases in quantities	Current Funds	No
b. Increases in required levels of service performance	Current Funds	No
c. Change-in-scope claims and settlements	Current Funds	No
Contract defaults resulting in re-procurement actions	Expired Funds	No ***
Billings for work performed before fund expiration (if an obligation is incurred but not documented before funds expire)	Expired Funds	No *
Amounts that would otherwise be chargeable to a cancelled account were it not cancelled	Current Funds	No

*Any individual upward obligation adjustment in excess of \$4 million (\$4M) must have prior approval of the Assistant Secretary of the Navy (Financial Management and Comptroller (ASN(FM&C)))

**Where applicable, all increases must be coordinated/approved by the lead coordination office for the program, project, and activity (PPA)

***Any re-procurement action that results in an obligation exceeding \$4M must be submitted to ASN(FM&C) for prior approval processing

PROGRAM, PROJECT, AND ACTIVITY (PPA) DEFINITIONS AND PPA MANAGERS FOR DON APPROPRIATIONS AND PRIOR CLEARANCE OFFICES*

Appropriation	Prior Clearance Office (PPA Manager)	Program, Project, and Activity (PPA)
Operations and Maintenance, Navy (OMN)	CNO (N82) delegated to CNIC prior approval authority for base support and sustainment, restoration, and modernization (SRM), citing OMN and OMNR funds; 16 May 2006	Sub-Activity Group, except for ship overhauls and facility SRM (FSRM) program
Operations and Maintenance, Navy Reserve (OMNR)		Facility major repair and minor construction project is PPA FSRM
Research, Development, Test, and Evaluation, Navy	Chief of Naval Research (CNR)	R1, Program Element
Other Procurement, Navy	Chief of Naval Operations (CNO) (N82)	P1 line item
Family Housing, Navy, Operations (definition in military construction appropriation bill)	Office of the Assistant Secretary of the Navy (Financial Management and Comptroller (ASN(FM&C)) Budget Office Investment and Development Division (FMB2)	Budget Activity: furnishings, management, services, utilities, leasing, maintenance, insurance premium, privatization support
Base Realignment and Closure	Assistant for Administration to the Under Secretary of the Navy (AAUSN)	Budget Activity, except for construction, which is by project

Note: Enclosure (3) is the result of reference (e) changing the threshold thereby increasing the original approval authority in reference (d).