



DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND MATERIEL MANAGEMENT
WASHINGTON DC 20420

IL 049-05-4
December 28, 2004

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Chief Facilities Management Officer, Office of Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Domiciliaries, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Distribution Center, Austin Automation Center, Records Management Center, VBA Benefits Delivery Centers, and VA Health Administration Center; and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Heads of the Contracting Activity and VA Contracting Officers

SUBJ: Revenue Generation Contracting Authority

1. The purpose of this Information Letter (IL) is to provide guidance on the authority that Department of Veterans Affairs (VA) facilities may have to generate revenue from other Government agencies (OGA). Over the past several years, some VA facilities have aggressively pursued agreements with OGAs to provide services, including contracting support services. However, to the extent that revenue may have been generated through such agreements, with the exception of franchise fund operations, VA field facilities do not have the legal authority necessary to generate or retain revenue in excess of actual costs under agreements with OGAs issued under the authority of the Economy Act. This IL does not address, nor does it apply to, other authorities such as those governing the Federal Supply Schedule (FSS) program, agreements with the Department of Defense (DoD) under the authority of 38 United States Code (U.S.C.) 8111, or the VA Supply Fund.

2. Statutory Authority.

a. This IL discusses three statutes that relate to VA's authority to provide services to OGAs, including contracting support services furnished by VA to OGAs, or that relate to VA's authority to provide services to non-Federal entities. For information on the VA-DoD Health Resources and Emergency Operations Act, 38 U.S.C. 8111, that provides authority to share health-care resources with DoD entities, see Veterans Health Administration (VHA) Handbook 1660.4.

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(1) The *Economy Act*, 31 U.S.C. 1535, authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency or intra-agency acquisition.

(2) The *Government Management Reform Act (GMRA)*, section 403 of Public Law 103-356, authorizes agencies to establish franchise fund operations and authorizes VA Franchise Fund organizations to provide services to OGAs.

(3) The *Veterans' Health Care Eligibility Reform Act of 1996*, 38 U.S.C. 8153, provides authority exclusively to VHA to share (buy and sell) health-care resources.

b. Of these three statutes, only the GMRA authorizes a VA Franchise Fund organization to retain a 4 percent fee from the sale of services to OGAs and only 38 U.S.C. 8153 authorizes VHA to generate revenue from the sale of services to non-Federal entities. The Economy Act does not authorize agencies to recover more than actual costs.

3. **The Economy Act.** Under the authority of the Economy Act, VA may buy supplies and services from, or sell supplies and services, including contract support services, to other Federal Government agencies subject to certain limitations and conditions, such as:

a. When selling contract support services under this authority, VA may not charge another Federal agency more than the actual cost of entering into and administering the contract. To the extent that VA cooperative administrative support units (CASU) use the authority of the Economy Act for their agreements with OGAs, this limitation also applies to those agreements.

b. The cost of marketing VA's programs to OGAs may not be expensed as part of actual costs or included in the charges to OGAs.

c. Actual costs may not be applied as a standard fee or percentage markup applied to all acquisitions but must be individually calculated for each procurement, based on the complexity of the procurement and the projected services required to administer the contract. Actual costs must include all direct costs attributable to the performance of the service or the furnishing of materials. In addition, indirect costs which are funded out of VA's currently available annual

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appropriations and which bear a significant relationship to the performance of the service or work or the furnishing of materials must also be included in the cost calculations. However, indirect costs that are not significantly related to costs incurred by the performing agency in executing the requisitioning agency's work and which are not funded from currently available appropriations (e.g., depreciation) may not be included in the cost calculations. The actual costs may be expressed as a percentage fee, but the percentage must be calculated for each contract or blanket purchase agreement (BPA). The interagency agreement file or contract/BPA file must contain documentation on how the costs were calculated for that particular interagency agreement.

d. Any time VA performs a service for an OGA and expects to collect a fee, or is using another agency's funds to award a contract, there must be a written interagency agreement in place between the two agencies. The written agreement can be in any format that is acceptable to both agencies, including simply a written order from the OGA requesting the procurement action. The written agreement must address, as a minimum, the following information:

- (1) A description of the supplies or services required;
- (2) Delivery requirements;
- (3) A funds citation from the requesting agency;
- (4) A payment provision (see FAR 17.505);
- (5) The acquisition authority as may be appropriate (see FAR 17.504(d)), including a statement that the agreement is subject to the Economy Act;
- (6) Procedures for the resolution of disagreements that may arise under the interagency agreement, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing. An example of a disagreement resolution procedure is included in Attachment 1;
- (7) Any information needed for the servicing agency (VA) to make a justification and approval for sole source acquisition, should such documentation be required by FAR Part 6.303, or to make any required Determination and Findings (see FAR 1.7); and

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(8) Information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency (e.g., Defense Federal Acquisition Regulation Supplement (DFARS) 208.404-70, which requires the use of competitive procedures when purchasing from multiple award contracts. See <http://www.acq.osd.mil/dpap/dfars/html/current/tochtml.htm>).

e. In addition to the requirements above, at least one of the following conditions must be met prior to entering into any agreement with an OGA under the authority of the Economy Act:

(1) The acquisition will be made under an existing contract entered into before the placement of the order; or

(2) The servicing agency (VA) has capabilities or expertise to enter into a contract for such supplies or services that is not available within the requesting agency; or

(3) The servicing agency (VA) is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies (we are not aware of any laws or regulations that would give VA such authority).

4. The Government Management Reform Act (GMRA). The GMRA authorized the establishment of franchise fund operations. Currently, there are six self-supporting organizations under VA's Franchise Fund, the Austin Automation Center, the Debt Management Center, the Financial Services Center, the Law Enforcement Training Center, the Records Center and Vault, and the Enterprise Fund Office. These organizations are authorized to retain up to a 4 percent fee for the services that they sell to OGAs. Other VA organizations are not authorized to retain fees in excess of actual costs for services provided to OGAs.

5. The Veterans' Health Care Eligibility Reform Act of 1996.

a. Of all the authorities discussed herein, the Veterans' Health Care Eligibility Reform Act of 1996, 38 U.S.C. 8153, is the only authority that clearly allows VHA to generate revenue. This authority only applies to VHA organizations. Although this authority generally does not apply to, and generally may not be used for, agreements between VHA and OGAs, 38 U.S.C. 8153 may be used as the authority for VHA to sell the use of medical equipment or space to OGAs, as the Economy Act does not apply to such activities. However, except for agreements

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with OGAs for the use of medical equipment or space, all VHA organizations must use either the Economy Act or, for the Department of Defense, 38 U.S.C. 8111, as their authority to enter into agreements to furnish services to OGAs and may not use the authority of 38 U.S.C. 8153 for such agreements. The Economy Act does not allow for the recovery of more than actual costs.

b. 38 U.S.C. 8153 is the only authority that may be used by VHA to sell health-care resources to non-Federal entities. Health-care resources under 38 U.S.C. 8153 are defined broadly as any healthcare-related service, healthcare support service, or administrative resource, as well as the use of medical equipment or space or research.

c. Under the authority of 38 U.S.C. 8153, VHA may sell health-care resources to the private sector, subject to certain limitations and conditions, such as:

(1) VHA may sell services to the private sector in excess of costs, i.e., VHA is allowed to make a profit.

(2) VHA should only contract for the acquisition or sale of services that are obtained or provided in the normal course of operating a medical facility.

(3) VHA may not sell or provide access to any VA or OGA contract to a private sector entity. In addition, as a matter of policy, the services of a VA contracting officer may not be sold to a non-Federal entity under this authority.

(4) VHA may not sell supplies or equipment under this authority. VA may sell the use of equipment, but must retain title to that equipment.

6. IL 049-03-6, Parameters of Contracting Authority, dated March 17, 2003, limits the sale of acquisition services conducted on behalf of OGAs to procurements that are within VA's mission. When acquiring supplies or services on behalf of an OGA, VA should only contract for supplies and services that are normally obtained in the course of fulfilling VA's mission, e.g., health-care resources and supplies necessary to operate a medical center (see paragraph 3.e.(3) above). This restriction also applies to any acquisitions conducted on behalf of OGAs by VA CASUs and VA Franchise Fund organizations. IL 049-03-6 expressly prohibits the following types of OGA procurements: ship construction, overhaul, and repair; weapons and weapons systems; combat aircraft or combat vehicles; component parts for the above.

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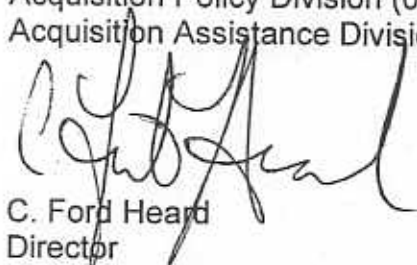
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7. VHA Directive 2003-046 provides guidelines for calculating costs for agreements under the authority of 38 U.S.C. 8153. Attachment 2 provides guidance on how funds are to be accounted for and provides some questions that should be addressed when considering a contracting support program.

8. References:

- a. Defense Federal Acquisition Regulation Supplement (DFARS) 208.404-70
- b. Federal Acquisition Regulation (FAR) 17.5
- c. Information Letter (IL) 049-03-6
- d. Veterans Health Administration Directive 1660.4
- e. Veterans Health Administration Directive 2003-046

9. Please direct any questions regarding this information letter to Don Kaliher, Acquisition Policy Division (049A5A), at (202) 273-8819, or to Thomas J. Cooper, Acquisition Assistance Division (049A5D), at (414) 902-5405.



C. Ford Heard
Director
Acquisition Resources Service

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Attachment 1

DISAGREEMENT RESOLUTION PROVISION

Agreements with other Government agencies (OGA) must include a provision defining how the two agencies will resolve any disagreements that may arise between them. Below is one example of a disagreement resolution provision that contracting officers may use in Economy Act agreements. The contracting officer must ensure that agreements with OGAs include procedures for the resolution of disagreements.

Disagreements

The Department of Veterans Affairs (VA) and [the requesting agency] will cooperate with each other in any way necessary to ensure that the provisions of this agreement are carried out in an expeditious and timely manner.

Any dispute between [the requesting agency] and a VA contractor whose services were obtained in support of this agreement shall be resolved by the VA contracting officer. The decisions of the VA contracting officer shall be final and binding upon [the requesting agency] and the VA contractor. [The requesting agency] agrees to reimburse VA for any additional costs incurred by VA resulting from the actions or inactions of [the requesting agency].

The parties agree that, in the event of a dispute between [the requesting agency] and VA, the parties shall use their best efforts to resolve that dispute in an informal fashion and through consultation and negotiation, or other forms of mutually acceptable non-binding alternative means of dispute resolution. In the event that the parties cannot reach a mutually acceptable resolution, the disagreement shall be submitted to _____ [VA and the requesting agency should agree upon an independent party to resolve disagreements, provided the independent party agrees to serve in that capacity] for a final decision. The decision of the _____ shall be final and binding upon [the requesting agency] and VA.

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Attachment 2

ACCOUNTING FOR FUNDS

Economy Act

Budgetary Requirement: Revenue is credited to the appropriation or fund against which charges were made to fill the order. Revenue may only be expended in providing goods or services and may only be used for a purpose specified for the appropriation or fund credited.

Since transactions are with another Federal entity, budgetary authority is derived at the time of revenue recognition, not cash collection.

Source: 31 U.S.C. 1536 (a) and (b).

Proprietary: Revenue equals expense as mark-up is disallowed. No gain or loss recognized.

Public Law 104-262, Veterans Healthcare Eligibility Reform Act

Budgetary Requirement: This gives specific authority that any amount received by the Secretary from a non-Federal entity as payment for services provided by the Secretary during a prior fiscal year under an agreement entered into under this section may be obligated by the Secretary during the fiscal year in which the Secretary receives the payment.

Source: 38 U.S.C. 8153 (f).

Proprietary: Gain or loss is recognized. VA is allowed to add mark up in excess of cost recovery.

Federal Accounting Standards Advisory Board (FASAB) Requirements

Source: Statement of Federal Financial Accounting Standard (SFFAS) #7, Accounting for Revenue and Other Financing Sources and Concept for Reconciling Budgetary and Financial Accounting (see www.gao.gov/policy/volume.pdf, starting on page 415).

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Attachment 2

Miscellaneous

Following are questions/issues that should be addressed before establishing a contracting support program:

1. What is the legal authority covering the program?
2. Does VA have authority to retain the revenue or must it be recorded as miscellaneous receipts in Treasury's General Fund?
3. Are there any restrictions on the use of the funds collected?
4. Will there be different revenue streams used to support this program, and if so, will they need to be treated differently?
5. Will collections be reimbursements¹ and/or refunds²?
6. Will collections be incorporated into an existing fund or will a new fund be required? (The Office of Financial Policy (047G) will contact the U.S. Treasury if necessary.)
7. Can collections be deposited into annual, no-year, and/or multi-year funds?
8. Will new revenue source codes be needed?
9. Is funding for initial operations/set-up authorized under VA appropriations (example of issue – A-76 studies which the Veterans Health Administration (VHA) could not perform)?
10. Is the collection of funds and transfer to a medical center in a law (U.S. Treasury requirement)?
11. VA organizations must comply with Federal appropriations law obligating criteria, regardless of whether the transaction is with the private sector, another Federal agency, or within VA.

¹ Reimbursable Agreements

Reimbursable agreements can be used to transfer funding between appropriations (not within the same appropriation) when the appropriation receiving the funding transfer has both reimbursable authority and specific approval from OMB for that function to be considered reimbursable.

² Refunds: (only pertain to activity with other Federal Government agencies or the private sector)

Refunds are repayments for excess payments and are to be credited to the appropriation from which the excess payments were made. Refunds must be directly related to previously recorded expenditures and are reductions of such expenditures.