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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE MATERIEL COMMAND
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

20 May 94

MEMORANDUM FOR SEE DISTRIBUTION

FROM: HQ AFMC/JA
4225 Logistics Avenue, Suite 23
Wright-Patterson AFB OH 45433-5762

SUBJECT: Funding of Change Orders

1. There has been considerable debate and apparent confusion over the correct rules for determining the appropriate fiscal year funding for contract modifications citing the Changes Clause. In an effort to settle this matter in a manner which will permit uniform and correct application by all AFMC acquisition personnel, Mr. Perfilio undertook to prepare a memorandum of law on the subject. ESC/JA, SMC/JA, AFMCLC/JAN and HQ AFMC/JAS, as well as HQ AFMC/FM and PK, were consulted in this effort. There was considerable negotiation of the final language of the memorandum with SAF/GCA and GCQ to insure that the final product would produce consistently, legally accurate results and would have the full and unqualified support of SAF/GCA and GCQ. Indeed, this has been achieved, and both Mr. Willson and Mr. Janecek have personally coordinated on the final product.

2. We do not expect this memo to be widely distributed at the client working level, since the issues of law are very complex and fact intensive. I would prefer that our clients not attempt to rely on their own interpretation of the memo, but rather work closely with your offices in resolving these funding issues.

3. At long last, this memorandum should provide all of our acquisition attorneys a consistent set of groundrules for funding of modifications citing the Changes Clause, which has been agreed to at the highest levels within the Air Force legal community and which, therefore, provides a needed degree of confidence in today's environment of second-guessers. I fully expect you to actively participate with your clients, on a case-by-case basis, in the analysis which leads up to these funding decisions.

JAMES C. ROAN, JR.
Brigadier General, USAF
Staff Judge Advocate

Attachments:
AFMCLC/JA Memorandum of
Law, 19 May 94

cc:
HQ AFMC/FM
HQ AFMC/PK

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DEPARTMENT OF THE AIR FORCE
AIR FORCE MATERIEL COMMAND LAW CENTER (AFMC)
WRIGHT-PATTERSON AIR FORCE BASE, OHIO

19 May 1994

MEMORANDUM OF LAW
CONCERNING THE FUNDING OF CONTRACT MODIFICATIONS

Introduction.

Due to the great amount of controversy associated with the funding of contract modifications and amendments, in particular those citing the "Changes" clause, it has been deemed advisable to reduce to writing the "scope of contract" rules (and associated rationale) regarding choice of proper fiscal year funding for these contract actions. It is the purpose of this memorandum to produce consistently correct action.

Fundamental Principles.

A fundamental principle of appropriations law is the "bona fide need rule" that a fiscal year's (or period's) appropriation may only be obligated to meet a legitimate need arising in (or in some cases arising prior to but continuing to exist in), the fiscal year (or period) for which the appropriation was made. Principles of Federal Appropriations Law, 2d. ed., GAO/OGC-91-5, Appropriation Law (Principles) Vol. I., at 5-9. This rule has a statutory basis in 31 U.S.C. Sec. 1502(a). Also see the Antideficiency Act, 31 U.S.C. Sec. 1341(a), and the Adequacy of Appropriations Act, 41 U.S.C. Sec 11. Principles, Volume I, at 5-10; AFR 170-8 (15 Jan 90), Para. 4c and 8; and, AFR 177-16 (30 Nov 88), Para. 40c. While the bona fide needs rule itself has universal applicability, there is no cookbook approach to its use. Determination of what constitutes a bona fide need of a fiscal year (or period) depends largely on the facts and circumstances of the specific case. Principles, Vol I, at 5-10. The funding of contract modifications illustrates this complexity.

"Contract performance may extend over several years. During this time, the contract may be modified or amended for a variety of reasons at the instigation of either party. An amendment within the general scope of the contract, which does not increase the contract price, remains an obligation of the year in which the contract was executed." Principles, Vol I, at 5-31, citing B-68707 (Aug. 19, 1947). Where a modification results in an increase in contract price and the appropriation which funded the original contract has expired, the question, from the bona fide needs perspective, is which fiscal year appropriation should fund the costs of the modification. Principles, Volume I, at 5-31. If a modification exceeds the general scope of the original contract, for example, by increasing the quantity of items to be delivered, the modification represents new procurement and thus constitutes a new obligation which must be funded with

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

appropriations current at the time the modification is made. Principles, Vol I, at 5-31, citing 37 Comp. Gen. 861 (1958) and B-207433 (Sept. 16, 1983).

For modifications within the general scope of the contract which result in increased costs, the situation is more complex. Most Government contracts contain standard provisions which render the Government liable to make equitable adjustments in the contract price under specified conditions. When an upward price adjustment is necessitated in a subsequent year, the general approach is to ask whether the adjustment is attributable to "antecedent liability" - that is, whether it arises and is enforceable under a provision in the original contract. If so, then a price adjustment, even though requested and approved in a subsequent fiscal year, will generally be charged against the appropriation current at the time the contract was originally executed. Principles, Vol I, at 5-32, citing 59 Comp. Gen. 518 (1980); 23 Comp. Gen. 943 (1944); 21 Comp. Gen. 574 (1941); 18 Comp. Gen 363 (1938); B-15225 (Sep. 24, 1926); B-146285-O.M. (Sept. 28, 1976); B-203074 (Aug. 6, 1981); and B-197344 (Aug., 1980). This principle is occasionally referred to as the "relation back" doctrine. E.g., 37 Comp. Gen. 861, 863 (1958). Principles, Vol I, at 5-32. "The reasoning behind this general approach is that a 'relation back' change order does not give rise to a new liability, but instead, only renders fixed and certain the amount of the Government's pre-existing liability to adjust the contract price. Since that liability arises at the time the original contract is executed, the subsequent price adjustment is viewed as reflecting a bona fide need of the same year in which funds were obligated for payment of the original contract price." Principles, Vol I, at 5-32, citing 23 Comp. Gen. 943, 945 (1944).

However, not all price adjustments arising from contract modifications or amendments represent a bona fide need of the year in which the original agreement was made. If the change or amendment exceeds the general scope of the contract, or is not made pursuant to a provision in the original contract, then it is not and cannot be based on any antecedent liability. In such event, the agency may obligate only appropriations current at the time the modification is issued. Principles, Vol I, at 5-33, citing 56 Comp. Gen. 414 (1977) and 25 Comp. Gen. 332 (1945); accord, DOD 7220.9-M, Chapter 25, para D.11. One important qualification of the antecedent liability rule is in cost reimbursement contracts where discretionary cost increases (i.e., increases which are not enforceable by the contractor), that exceed funding ceilings established by the contract may be charged to funds currently available when the discretionary increase is granted by the Contracting Officer. Principles, Vol I, at 5-33, citing 61 Comp. Gen 609 (1982). The rationale for this view is that it would be unreasonable to require the Contracting Officer to reserve funds in anticipation of increases beyond the contract's ceiling.

All of this discussion of funding of contract modifications must, of course, be superimposed with the most fundamental point, that is, that fiscal law does not exist in a vacuum. Thus, the most important qualification to the rules discussed above is that whatever exists as a generalized appropriation rule may be changed by the specific appropriation language of the Congress.

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Public Law 101-510

Public Law 101-510: (1) eliminated the use of merged surplus authority to fund adjustments to "M" account obligations incurred after 5 Dec 90; (2) canceled over a 3-year period budget authority associated with obligations recorded in existing "M" accounts; and, (3) made expired appropriations available to agencies for 5 years to fund upward adjustments and pay recorded obligations, after which any unobligated or obligated balances were canceled. Once canceled, funds may not be used for any purpose. GAO/AFMD-93-7 (Apr., 1993), Appendix I at 13.

On 13 Jun 1991, DOD directed activities to use current year appropriations instead of the applicable expired years' appropriations to fund all contract changes, even where the changes did not expand the scope of the work of the contract. Following GAO inquiry, DOD rescinded its policy on 20 April 1992, and thus returned to the pre-June 1991 status quo. The GAO report addressing the above mentioned DOD direction provides valuable insight into the Comptroller General's views about use of current versus expired year appropriations in funding contract modifications. In "Agencies' Actions to Eliminate 'M' Accounts and Merged Surplus Authority," GAO/AFMD-93-7 (Apr., 1993), Appendix II at 30 and 31, the GAO sets forth its view in some detail as follows:

> "We believe that the use of current year funds, without specific congressional approval, for within scope contract changes related to expired appropriations is improper. DOD required that, with limited exceptions, all additional costs incurred as a result of contract changes be funded out of current year funds regardless of which fiscal year's appropriation was obligated by the contract. This policy was a marked departure from the rules for obligating contract changes."
>
> "DOD generally agreed with our findings and recommendation. However, DOD did not agree that it was improper to use current year appropriations to fund additional contract costs normally chargeable to expired years' accounts. As we stated in our report, numerous Comptroller General decisions discussing the rules for funding additional costs related to within scope contract changes have held that such costs are chargeable to the appropriation initially obligated by the contract. Although we asked DOD's General Counsel to provide us with its legal justification for deviating from the Comptroller General's decisions, none was provided. Therefore, in our opinion, DOD's use of current year funds, without specific congressional approval, for within scope contract changes related to expired appropriations was improper."
>
> (emphasis added).

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

The problem with the DOD direction was that it called for all contract changes increasing costs to be charged to fiscal year appropriations current when the change was made, even those changes for which there was clear relation back to the need which the underlying contract sought to fulfill.

Within the Scope of the Contract

Determining what constitutes a modification beyond the general scope of the original contract (the GAO states) can be difficult. GAO/NSIAD-89-209, B-235114 (Sept., 1989) at 5. The Comptroller General and the Courts in determining whether contract modifications are within the scope of the original contract, have adopted the "cardinal change" rule. The Claims Court stated in Air-A-Plane Corp. v. U.S., 408 F.2d 1030 (1969):

> "The basic standard...is whether the modified job 'was essentially the same work as the parties bargained for when the contract was awarded. Plaintiff has no right to complain if the project it ultimately constructed was essentially the same as the one it contracted to construct.' Conversely, there is a cardinal change if the ordered deviations 'altered the nature of the thing to be constructed.' Each case must be analyzed on its own facts and in light of its own circumstances, giving just consideration to the magnitude and quality of the changes ordered and their cumulative effect upon the project as a whole."
>
> (emphasis added)

In the same context, the Comptroller General has concluded that a change would be deemed to be within the scope of the original contract if it was "...essential to fulfillment of [original] contract requirements." GAO/NSIAD-89-209, B-235114, at 5.

A threshold reference point in this discussion has to be a general understanding of the function of the "Changes" clause. Professor Ralph Nash, a noted authority in the field, states that primary purpose of the "Changes" clause is to ensure that the Government has a wide degree of flexibility during performance of a Government contract and that the contractor is adequately compensated when the Government exercises this flexibility. One of the purposes served by the clause is to facilitate the suggestion of changes by the contractor. As the contractor knows that it will receive an equitable adjustment in the contract price or schedule if the change is ordered, the contractor is encouraged to suggest such changes. The availability of the changes procedure gives some assurance that the suggestion will be considered and acted on if it benefits the Government. Nash, Government Contract Changes (2d. ed., 1989 and Supp, 1991) at 3-2.

According to Professor Nash, the "Changes" clause serves another purpose, which is to provide to the Government procurement authority a vehicle to order additional work

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

"within the general scope of the contract" without following the statutory rules governing new procurement. The clause in this respect greatly simplifies the procurement mission by allowing additional work to be undertaken with much greater speed and efficiency. Nash, at 3-2. This expansive view of the "Changes" clause's latitude has been the take off point for analyzing work to be added to existing contracts for a substantial period of time (See, for example, SAF/GC Memorandum for Air Force ASPR Committee, Policy Member entitled, "Changes Clause," dated 10 Jun 1974). However, competitors have filed protests claiming that they were deprived of the right to compete for work that was ordered under the "Changes" clause. In this context, the issue is whether the change is "within the scope of the original competition."

Not all contract modifications which cite the "Changes" clause are born alike. We must segregate those where the bona fide need truly relates back to the underlying contractual obligations from those which cite the "Changes" clause as procurement authority, but where the bona fide need for the modification of the effort relates to the appropriation of a current fiscal year. This is not a new, strange, or novel concept. The term "scope of the contract" has for many years been viewed differently depending upon the nature of the inquiry. The most illustrative recent example of this is the U. S. Court of Appeals for the Federal Circuit decision in AT&T Communications, Inc. v. Wiltel, Inc. 12 FPD Para. 66 (Fed. Cir., 1993), reversing the decision of the GSBCA finding the change to be outside the scope of the contract. In the process, it provided guidance on the reasoning to be followed in determining if a change is "within the general scope of the contract" for purposes of the "Changes" clause. The conclusion of the Federal Circuit on this question was that in deciding whether a change must be justified as a new sole-source procurement, the proper test is whether a change was "within the scope of the original competition," and that this test was "slightly different" from the test used in litigation over whether a change was a breach of contract. The "scope of the competition" test and the "scope of the contract" test, used in breach cases, have a different focus. In breach litigation, the focus is on what the contractor should have anticipated to be within the scope of the contract. In protest litigation, the focus is on what the competitors should have anticipated to be within the scope of the competition, i.e., the scope of the entire original procurement in comparison to the scope of the contract as modified. Thus, a broad original competition may validate a broader range of later modifications without further competitive procedures. AT&T Communications, Supra.

The Range of Contract Modifications

Contract modifications fall on a continuum or spectrum reflecting whether the original appropriation that funded the end item on contract should be used to fund a contract modification or whether a new (current) appropriation should be used.

At one end of the spectrum are increases in original obligations due to escalation, overrun, or other cost growth; incentive or award fees; and, claims arising out of the original undertaking. Adjustments in obligations for these reasons are chargeable to the original appropriation funding the end item on the contract (with limited exceptions such as

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

incremental funding of RDT&E efforts [3600 funds] or circumstances involving canceled appropriations).

At the other end of the spectrum are modifications that are clearly "outside of the general scope of the contract," such as increases in quantities of end items or other "new work." Included in this category of "outside the scope of the contract" for fiscal law purposes would also be priced options for additional production, even though the prices of such options were evaluated as part of the original contract award decision and such options are "within the scope" for procurement law purposes pursuant to FAR 6.001(c). Contract modifications adding such efforts are chargeable to new (current) appropriations. Thus, the rules seem clear for changes at the extremes of the spectrum.

Between these respective ends of the spectrum, however, are a variety of contract modifications that, for various legal and contractual purposes, are "within the general scope of the original competition" and arguably "within the general scope of the contract." However, given the individual special circumstances of such cases, some of these types of contract modifications should be funded with the original appropriation that funded the end item, while others should be funded with current year funds.

Virtually all programs encounter engineering change proposals (ECPs). Many, if not most, ECPs are needed to correct defects in specifications, make design changes to produce an acceptable product which satisfies the original requirement, or incorporate technology advances which facilitate achievement of the original requirement. Government contracts provide for this in the "Changes" clause which allows the contracting officer to make changes "within the general scope of the contract" in drawings, designs, or specifications without breaching the contract. These changes are funded with the appropriation originally used for the end item. (Not applicable to incrementally funded R,D,T&E.)

However, in major or complex programs there can be ECPs that are not of this "garden variety." These include ECPs that add capability to a weapon or system. The need for the ECP often arises from new threat assessments or new or revised statements of need or from sources outside of the program, i.e., changes needed to interface, or be compatible, with other weapons or systems. These ECPs are often of the type that can be justified as being "within the general scope of the original competition" and, in many cases, can also be justified as being "within the general scope of the contract." Thus such ECPs can be ordered under a contract modification citing the authority of the "Changes" clause. The capabilities that such modifications add to the system, however, often represent needs of current origin beyond the originally expressed bona-fide need. Moreover, the large dollar value of such ECPs makes it impractical for a program director to have been prescient and have budgeted for enough funds for this type of change when the original budget was submitted for the end item that is now in production. More importantly, even if a request for such funds was submitted in the original budget request, it would almost assuredly not have survived the budget approval process, since it would not have represented any then currently documented need.

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Additionally, changes of this type could [in some instances - but not all] be broken out for placement on separate contracts. Consider the case of a threat-driven change to incorporate a self-defense electronics suite (e.g., a radar warning receiver or a chaff dispenser) on a transport aircraft. When such a change occurs during production, separate, and independently justifiable, cases can be made for directing the prime contractor (i.e., the one building the airplane) to do the work or obtaining an electronics contractor do the work and furnish the kit as Government property to the aircraft manufacturer. In the former case, if an inflexible policy were imposed, demanding use of old year funds whenever the "Changes" clause is cited as procurement authority, the use of the fiscal year's funds obligated for the original aircraft production would be required, even though the self-defense electronics suite requirement grew out of the need to meet a threat which was not even known to exist in the year the original contract was written. In the latter case, breakout for a separate contract, application of the same policy would result in funds currently available for obligation being used. This kind of inconsistent result is illogical. Contract strategies and contracting vehicle choices should not drive bona-fide needs determinations as a matter of fiscal law. See B-235678 (30 July 1990). Further, just as the amount of money remaining in an appropriation should not influence the decision as to which appropriation is the proper one to cite, neither should program directors be driven to make suboptimum contracting choices based solely on the application of inflexible funding policies.

Proper Funding for Contract Modifications

The question to be resolved here is the proper funds to be used to make changes or modifications for Air Force weapons systems. While, the line of cases cited in Principles, Chapter 5, Section 7 does suggest the general rule that prior year funds are to be used for any change made pursuant to the "Changes" clause, these decisions should not be read to require rote application of a seemingly inflexible or simplistic rule (i.e., if you merely cite the "Changes" clause you must in every case use the original contract funding). Simply stated, the cases have distinguishing features both in their facts and in the wording of their holdings. None of the cited decisions deal with the proper application of funds to contract modifications to long term major weapon system research, development and production contracts using funds appropriated under annual Department of Defense Appropriations Acts in the form that they have consistently followed for more than 40 years. Rather, they all deal with either agencies outside DOD, with pre-1949 Navy cases, or with matters which are not related to major weapon system research, development and production. These DOD major system efforts are supported by bona fide needs derived from Statements of Operational Need and described in the annual budget justification and approval documentation for each fiscal year appropriation. The importance of this distinction is that since the creation of the Department of Defense, and continuously for more than forty years, DOD appropriation language has been consistently used which differs significantly from the appropriation language provided for non-DOD agencies and the pre-1949 military services.

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

As noted above, in discussing funding rules and GAO cases, we must remember the most fundamental principle. Fiscal law does not exist in a vacuum. It comes from Congress. The rules may be modified by Congress either in general, or in specific cases. In looking at the DOD Appropriations Act for 1951-1994, we find the following language concerning aircraft procurement for the Air Force: "For construction, procurement and modification of aircraft and equipment...." In the Missile Procurement Appropriation, there is similar language: "For construction, procurement and modification of missiles...." Other Procurement contains the same language as well, "for procurement and modification of equipment...." (emphasis added). Since modification of aircraft, missiles, etc., is specifically permitted, and there is no related restriction, there is no reason grounded in fiscal law to limit the modification authority by requiring that the modification effort be executed by separate procurement rather than pursuant to the "Changes" clause of an existing contract, if feasible.

None of the GAO cases setting forth the general rule on the funding of Changes have considered the Congressional "modification" authority contained in the annual DOD Appropriations Acts, or the program and budget process associated with DOD weapon system programs which often include, in current year program budget justification and approval documentation, changes to previously contracted work, where the change is a modification to incorporate needs of a current fiscal year. ["Budget justification and approval documentation" refers to the P-series documents accompanying the budget submissions through Air Force, DOD, and OMB to the Congress in support of the appropriations process.]

Simply stated, there are some "changes" within the broad "scope of the competition" which may be made citing the "Changes" clause, but which are, nonetheless, outside the scope of the original contractual undertaking for fiscal law purposes, and must be funded with current year appropriations rather than by [relation back to] the appropriation charged by the basic contract award. "Within the scope" for procurement law purposes is not identical to "within the scope" for fiscal law purposes.

Court and GAO decision language is supportive of this conclusion. In 1978, the Federal Circuit, in the case of General Dynamics v. U.S., 585 F.2d. 457 (1978), analyzing "within the scope" for "Changes" clause purposes, held massive changes adding significant extra work and nearly tripling the dollar amount of the contract to be within scope because they represented "superior solutions...to continuing problems." 585 F.2d at 460. This clearly illustrates the breadth of "scope" when viewed in the procurement sense. On the other hand, the GAO's report analyzing whether certain B-1B defensive avionics system changes were "within the scope" for fiscal purposes and thus eligible for use of expired funds, cited a prior Comptroller General conclusion that "a change would be deemed to be within the scope of the original contract if it was essential to fulfillment of [original] contract requirements," and further concluded that "the modifications appear to be designed to ensure delivery of a defensive avionics system that conforms as closely as possible to the system for which the Air Force originally contracted," (emphasis added) GAO/NSIAO-89-

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

209, B-235114, at p.5. This illustrates the more constrained view of "scope" in the fiscal sense, when justifying the use of prior year funding.

There is no attempt here to expand or abuse the government's authority to make changes under the procurement authority of the "Changes" clause. Nor is there any attempt here to justify the use of the "Changes" clause to conduct "new procurement" which clearly requires either the use of competitive procedures or the processing of a J&A under the provisions of CICA. (For example, a change to form, fit, or function of such great magnitude as to change the essential purpose of the contract and thus place the proposed modification outside the contemplation of the parties to the original competition would be new procurement.) Rather, the intent here is to recognize that within the wide latitude currently available to the government in exercising its discretion to order modifications under the "Changes" clause, without obtaining competition, there are different funding requirements. Thus, in exercising its discretion under the "Changes" clause, the contracting activity must distinguish between *(i)* those changes which are in furtherance of the fulfillment of the bona fide need being satisfied by the underlying contractual requirement where relation back to the fiscal year appropriation funding the underlying contract is required, and *(ii)* those which are properly within the procurement authority of the "Changes" clause, but which, nonetheless, in response to new or amended requirements, modify an item's originally specified form, fit, or function to add capability or increase end item utility or performance to satisfy a current fiscal year need. These latter changes represent a bona fide need of the current fiscal year.

Current guidance is consistent with this funding rationale. For example, the 10 July 1992, SAF/FMB Guidance (Memorandum from Dep Assist Secretary (Budget) for all MAJCOM/FOA/DRU Comptrollers/Contracting, 10 July 1992), at page 3-5, para. 3h, ("Condition Two") states: "Within scope contract changes must use the same fiscal year funds as the related obligation unless the bona-fide need rule for the same year cannot be met." (emphasis added) Thus, a modification which adds capability or changes performance beyond the originally stated need, would be captured by the words beginning "unless" and would be funded with current funds. Further, para 3i, page 3-6, ("Condition Three") lists those transactions which for funding purposes constitute changes in scope and must use current year funds. Included is "(5) changes to form, fit, or function of end items beyond the scope of the original specification." (emphasis added) These descriptions of conditions two and three (paras. 3.h and 3.i.) are reinforced by the statement at para 3.d, page 3-1, "Also, use the bona-fide need rule to properly evaluate all within-scope and change in contract scope transactions. We will evaluate all contract change/upward obligation adjustment requests in light of the bona-fide need rule regardless of the condition identified by the requester." Likewise, in response to a recent funding issue on DSP, SAF/FMB advised (Memorandum from SAF/FMB for HQ AFMC/FM, 7 Mar 1994), "Other examples of likely current year costs are...changes to original specifications that increase end item utility or performance as a requirement."

(emphasis added).

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Approved For Release 2011/10/19 : CIA-RDP09K00541R001000090019-4

Conclusion

(a) A contract modification which increases quantities of deliverable end items or so alters the nature of the work as to be outside of the scope of the contract originally awarded must be funded with appropriations which are currently available for obligation on the date the contract modification is issued. For multiple year appropriations, use the funds of the particular fiscal year(s) in which the specific requirement to be satisfied was programmed, approved, and appropriated (includes incrementally funded R&D). (See AFR 170-8, paragraph 8.)

(b) Except as noted in (c) below, changes which are within the scope of an existing contract funded with procurement appropriations (3010, 3020, 3080), must be funded from the same fiscal year procurement appropriation as was used to fund the basic requirement to be modified. This rule applies even if the fiscal year account to be charged has expired (but not closed/canceled).

(c) If a contract change chargeable to procurement accounts (3010, 3020, 3080) *(i)* modifies an item's originally specified form, fit or function or adds capability or increases end item utility or performance; and *(ii)* such modification, represents the fulfillment of a need or requirement of a current fiscal year (but not of the original contract period), then those current fiscal year appropriations must be used. [One clear indication that a modification represents fulfillment of a need or requirement of a current fiscal year would be if the modification is reasonably described in the budget justification and approval documentation (or a properly approved reprogramming) for a fiscal year appropriation which is still current.] This rule applies whether the requirement is satisfied by issuance of a bilateral or unilateral contractual instrument and whether the instrument modifies an existing contract by means of an in-scope change under the "Changes" clause, an out-of-scope change, or pursuant to some other contract provision or authority.

ANTHONY J. PERFILIO, SES
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