UNDER SECRETARY OF DEFENSE
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JUL 7 2008

COMPTROLLER

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS
UNDER SECRETARY OF DEFENSE FOR POLICY
UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Clarifying Guidance on the Use of Operation and Maintenance (O&M) Funds Under Contingency Construction Authority for Construction Projects Outside the United States

Attached is clarifying guidance on the use of operation and maintenance funds under contingency construction authority, pursuant to section 2808 of the National Defense Authorization act for Fiscal Year 2004 as amended. In order to be consistent with Military Construction practices, Section IV of the attached has been updated since the original March 13, 2008 memorandum on this subject.

The Department of Defense Financial Management Regulation, Volume 3, Chapter 17, Accounting for Military Construction Projects and Volume 12, Chapter 23, Contingency Operations, will incorporate the attachment in the next revision.

If you have any questions, you may contact Ms. Jaimie Peterson at (703) 697-9198 or by email at jaimie.peterson@osd.mil.

Tina W. Jonas

Attachment:
As stated

Financial Management Guidance and Reporting Requirements

Use of Operation and Maintenance Funds Under Contingency Construction Authority for Construction Projects Outside the United States

I. References.

A. National Defense Authorization Act (NDAA) for Fiscal Year 2004, Public Law No.108-136, section 2808, as amended

B. Department of Defense Appropriations Act for Fiscal Year 2008, Public Law No. 110-116, section 8107

C. Under Secretary of Defense (Comptroller) (USD (C)) Memorandum, subject: "Availability of Operation and Maintenance Appropriations for Construction," dated February 27, 2003 (hereby rescinded)

D. USD(C) Memorandum, subject: "Use of Operation and Maintenance (O&M) Appropriations for Construction During Fiscal Year (FY) 2005," dated June 1, 2005 (hereby rescinded)

II. Purpose and Applicability.

A. The FY 2004 NDAA, section 2808, as amended, currently authorizes use of Operation and Maintenance (O&M) funds for construction projects that meet a very specific set of criteria. Contingency Construction Authority (CCA) can undergo significant authority or procedural changes when it is reauthorized in the annual NDAA. It is important for submitting Military Departments or Defense Agencies to ensure they fully understand and comply with the most current authorities and procedures of CCA.

B. In order for CCA to be considered for approval by the Secretary of Defense (approval authority delegated to the Under Secretary of Defense (Comptroller) USD(C)), submitted requests must meet the following section 2808 criteria:

1. The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

2. The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence.

3. The United States has no intention of using the construction after the operational requirements have been satisfied.

4. The level of construction is the minimum necessary to meet the temporary operational requirements.

III. Procedures.

A. The Military Department or Defense Agency must submit candidate projects, which meet the criteria identified in paragraph II B, to the Office of the Under Secretary of Defense (Comptroller)/Military Personnel and Construction (OUSD(C)/MPC)) Directorate. The request must include: location, project description, current working estimate, planned award date, justification, DD Form 1391, Military Construction Data, and a certification that appropriate fiscal year O&M funds are available within the Military Department or Defense Agency to cover project costs. In addition, the request must identify if the project has already been previously requested or programmed via the normal Military Construction or Supplemental appropriations.

B. The request must also include a certification by the Secretary of the Military Department or Director of the Defense Agency (or their designee) that the project meets all of the conditions of the FY 2004 NDAA, section 2808(a), as amended. When requesting CCA, a detailed description and justification of how the project meets the urgent military operational need criterion must be provided. Further, the justification must also include a detailed explanation of the operational/mission impact if the project is not approved.

C. Project costs above the originally approved amount may not be obligated without written approval from USD(C). Project cost increase requests must be submitted in the same manner as an initial project request.

D. When project costs are determined to be less than the originally approved amount, the savings may not be applied to other CCA projects without prior written approval from the USD(C).

E. Under Reference B, the supervision and administration costs will be obligated to the same FY appropriation as the overall project.

F. Written approval will be provided to the requesting Military Department or Defense Agency after the appropriate notifications are delivered to Congress and the 10 day waiting period (7 days if electronically) has expired. Projects are not authorized to proceed until written approval is provided by USD(C).

IV. Required Notifications and Reports on Approved Projects

A. Within 7 days of canceling a CCA project, the Military Department or Defense Agency must provide written notification of the cancellation to the OUSD(C)/MPC directorate. The memorandum will include reason for cancellation, amount obligated for the project, and the amount deobligated from the project. Upon cancellation of the project, the authority for the obligation of those funds under section 2808 authority is terminated and cannot be used for any other CCA projects.

B. Within 15 calendar days of the end of an FY's quarter, the Military Departments and Defense Agencies will provide a quarterly report on the obligation and expenditure status of their approved CCA projects. The report will include Service or Agency, project, location, funding obligated and expended during reported quarter, cumulative funding for project (obligated and expended) current working estimate, and an explanation of any difference between the USD(C) approved amount and the current working estimate. The Military Departments and Defense Agencies will continue to follow the existing format as developed by OUSD(C)/MPC staff.

C. If the scope of an approved CCA project requires modification, the Military Department of Defense Agency must follow the following procedure.

1. Within scope changes that do not increase the cost of the project beyond the approved amount do not require OUSD(C)/MPC notification or approval.
2. The funding of all contract changes must comply with applicable financial management and fiscal law requirements with respect to the use of expired funds and contract type (Financial Management Regulation, Volume 3, Chapter 8).
3. In the event that project scope changes or contract changes require funds in excess of the approved amount of funds or a different fiscal year, a request for additional funds/new funds must be submitted in the same manner as an initial project request. This request should include a legal review and certification by the Military Department or Defense Agency.

D. If an approved project is required to be "terminated for default", the Military Department or Defense Agency must notify OUSD(C)/MPC staff prior to termination.

V. Effective Period and Waivers.

A. This guidance shall become effective immediately.

B. Requests for waivers or exceptions to this guidance must be submitted to the USD(C) for approval.