UNDER SECRETARY OF DEFENSE
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JAN 14 2010

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: Guidance on the use of Operation and Maintenance (O&M) Funds under Contingency Construction Authority (CCA) for Construction Projects inside the United States Central Command Area of Responsibility

The FY 2010 National Defense Authorization Act provided changes to the contingency construction authorities, thereby generating a need to update existing guidance. Pursuant to section 2808 of the National Defense Authorization Act for Fiscal Year 2004, as amended, the Under Secretary of Defense (Comptroller) Memorandum titled "Guidance on the use of Operation and Maintenance (O&M) Funds under Contingency Construction Authority (CCA) for Construction Projects inside the United States Central Command and the United States Africa Command Areas of Responsibility," dated December 4, 2008, is rescinded and replaced by the subject guidance.

The Department of Defense Financial Management Regulation, Volume 3, Chapter 17, Accounting for Military Construction Projects, and Volume 12, Chapter 23, Contingency Operations, will be updated to include this guidance.

If you have any questions, you may contact Mr. Steven Birk at (703) 693-7336 or by email at steven.birk@osd.mil.

Robert F. Hale

Attachment:
As stated

Financial Management Guidance and Reporting Requirements

Use of Operation and Maintenance (O&M) Funds under Contingency Construction Authority (CCA) for Construction Projects inside the United States Central Command (USCENTCOM)

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. National Defense Authorization Act (NDAA) for Fiscal Year 2009, Public Law No.110-417, section 2806, as amended
D. National Defense Authorization Act (NDAA) for Fiscal Year 2010, Public Law No. 111-84, section 2806

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 can undergo significant authority or procedural changes when it is reauthorized in the annual NDAA. It is important for the Military Departments or Defense Agencies to ensure they fully understand and comply with the most current CCA authorities and procedures.

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, unless the installation is located in Afghanistan.
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.

5. **The project is in the United States Central Command area of responsibility.**

C. **This authority to obligate funds expires on the later of September 30, 2010 or the date of enactment of an Act authorizing funds to military construction for fiscal year 2011.** The total cost of construction projects carried out under this authority shall not exceed $200 million in a fiscal year. The Secretary of Defense may, through certification to the defense committees that additional construction in Afghanistan is required to meet urgent military requirements, authorize an additional $300 million for use in Afghanistan for contingency construction requirements that satisfy the criteria in paragraph II.B, above. Under no circumstances shall the total available from operation and maintenance for FY 2010 exceed $500,000,000.

D. The Secretary of Defense may authorize the obligation of not more than an additional $10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts. The contract closeout funds are not subject to the limitation mentioned in paragraph II.C, above.

III. Procedures.

A. The Military Department or Defense Agency must submit candidate projects, which meet the criteria identified in paragraph II.B, to the Director for Military Personnel and Construction, Office of the Under Secretary of Defense (Comptroller) (OUSD(C)/MPC). The request must include:

1. Location
2. Project description
3. Current working estimate
4. Planned award date
5. Justification
    a. When requesting a project under the CCA, a detailed description and justification of how the project meets the urgent military operational need criterion must be provided.
    b. Further, the justification must also include a detailed explanation of the operational/mission impact if the project is not approved.
6. DD Form 1391

7. 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.

8. An explanation of the overall strategic objectives the construction projects are supporting. This explanation should clearly articulate how the requested projects and the military construction strategy meet the overall objectives of the combatant commander and the Department.

9. Certification that appropriate fiscal year O&M funds are available within the Military Department or Defense Agency to cover project costs. It must also:
   a. Identify the O&M source(s) (i.e., budget line item and name of program/project),
   b. Provide a description of why the funding source(s) is available, and
   c. Impact to the program from which funds are being diverted.

10. In addition, the request must identify if the project has been previously requested or programmed via the normal Military Construction or Supplemental appropriations process.

B. 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.

C. 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).

D. Under Reference B, the supervision and administration costs will be obligated to the same fiscal year appropriation as the overall project.

E. Projects are not authorized to proceed until USD(C) provides written approval to the requesting Military Department or Defense Agency after the appropriate notifications are made to Congress, and the 10 day waiting period (7 days if provided electronically) has expired.

IV. Required Notifications and Reports on Approved Projects

A. Within 14 days of canceling a CCA project, the Military Department or Defense Agency must provide written notification of the cancellation to the Director for Military Personnel and Construction, OUSD(C). The memorandum will include the reason for cancellation, the amount obligated for the project (to include any termination costs), and the amount deobligated from the project. Upon cancellation

of the project, the authority to obligate additional funds under section 2808 is terminated and the authority cannot be used for any other CCA project.

B. Within 15 calendar days of the end of a fiscal year's quarter, the Military Departments and Defense Agencies will provide a quarterly report on the obligation and expenditure status of their approved CCA projects to the OUSD(C)/(MPC) Directorate.

1. The report will include Service or Agency, project, location, funding obligated and expended during the reported quarter, cumulative obligations and expenditures for the project, the current working estimate, and an explanation of any difference between the USD(C) approved amount and the current working estimate.
2. The Military Departments and Defense Agencies will continue to follow the existing format as developed by the OUSD(C)/MPC staff.
3. If the report for a fiscal-year quarter is not received by the Congress within 45 days of the end of the quarter, appropriated funds available for O&M may not be obligated or expended after that date until the report is submitted.

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

1. Within-scope changes that do not increase the cost of the project beyond the approved amount do not require notification or approval by the Director for Military Personnel and Construction, OUSD(C).
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). In the case of an appropriation where the availability for obligation has ended, obligational adjustments to the expired appropriation are subject to requirements of Title 31, United States Code, section 1553 (Financial Management Regulation, Volume 3, Chapter 10, Section 100204-100205).
3. In the event that project scope changes or contract changes exceed approved CCA limits or funds from a different fiscal year, a request for additional CCA/new CCA must be submitted in the same manner as an initial project request. This request should include a legal review and certification by the submitting 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 the Director for Military Personnel and Construction, OUSD(C), in writing 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.

Tab B