



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-1100

MAR 04 2021

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
AND SUSTAINMENT  
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 DEFENSE AGENCIES

SUBJECT: Guidance on the use of Operation and Maintenance Funds under Contingency Construction Authority for Construction Projects inside the United States Central Command Area of Responsibility (AOR) or Certain Countries in the United States Africa Command AOR

The attached guidance is updated to extend the authority until the latter of December 31, 2021, or the date of the enactment of an Act authorizing funds for military construction for Fiscal Year 2022. In addition, the Department of Defense (DoD) is limited to \$50 million for contingency construction authority during the period beginning October 1, 2020, and ending on the earlier of December 31, 2021, or the date of enactment of the National Defense Authorization Act for fiscal year 2022. There are no other changes.

The William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2021 (Public Law 116-283) further amends the contingency construction authority provided in section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), thereby necessitating an update to the existing guidance. Accordingly, the Under Secretary of Defense (Comptroller) Memorandum titled "Guidance on the use of Operation and Maintenance Funds under Contingency Construction Authority for Construction Projects inside the United States Central Command Area of Responsibility (AOR) or Certain Countries in the United States Africa Command AOR," dated December 28, 2018, is rescinded and replaced by the guidance attached to this memorandum.

If you have any questions, you may contact Ms. Kathleen P. Neumann at (703) 693-0471 or by email at [kathleen.p.neumann.civ@mail.mil](mailto:kathleen.p.neumann.civ@mail.mil).

Douglas A. Glenn  
Performing the Duties of the Under Secretary of  
Defense (Comptroller)/Chief Financial Officer

Attachment:  
As stated

## **Financial Management Guidance and Reporting Requirements**

Use of Operation and Maintenance (O&M) Funds under Contingency Construction Authority for Construction Projects inside the United States Central Command (USCENTCOM) Area of Responsibility (AOR) or Certain Countries in the United States Africa Command (USAFRICOM) AOR

### I. References.

- A. Section 2808 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004 (Public Law 108-136), as most recently amended by section 2806 of the William M. (Mac) Thornberry National Defense Authorization Act for FY 2021 (Public Law 116-283)
- B. Section 9003 of the Department of Defense Appropriations Act, 2021 (division C of Public Law 116-260)

### II. Purpose and Applicability.

- A. Section 2808 of the FY 2004 NDAA, as amended, authorizes use of 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 in the annual NDAA. It is important for the Military Departments and Defense Agencies to ensure they fully understand and comply with the most current CCA authority and procedures.
- B. The Secretary of Defense has delegated approval authority for use of CCA to the Under Secretary of Defense (Comptroller) (USD(C)). In order for projects to be considered for approval, all requests for use of CCA must meet the following 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 military 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 USCENTCOM AOR or in certain countries in the USAFRICOM AOR, specifically Kenya, Somalia, Ethiopia, Djibouti, Seychelles, Burundi, and Uganda.

- C. Except as provided in II.D, the total cost of the construction projects using O&M funds under CCA shall not exceed \$50,000,000 during the period beginning October 1, 2020, and ending on the earlier of December 31, 2021, or the date of enactment of an Act authorizing funds for military activities of the DoD for FY 2022.
- D. The USD(C) may authorize the obligation under CCA of not more than an additional \$10,000,000 of O&M funds available for a fiscal year if the USD(C) determines that the additional funds are needed for costs associated with contract closeouts.
- E. This authority to obligate O&M funds for construction projects expires on the later of December 31, 2021, or the date of enactment of an Act authorizing funds for military construction for FY 2022.
- F. Funds from other appropriations (non-O&M) may be required to outfit the provided infrastructure and are not limited by the CCA authority.

### III. Procedures.

- A. Military Departments and Defense Agencies submit requests to use CCA authority for proposed projects to the Director for Military Personnel and Construction, Office of the Under Secretary of Defense (Comptroller) (OUSD(C)/MPC). For each proposed project, the request must include:
  - 1. Location
  - 2. Project description
  - 3. Current working estimate associated with construction and outfitting related activities
  - 4. Planned award date
  - 5. Justification
    - a. 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 (includes items #1-5 above)
  - 7. Certification by the Secretary of the Military Department or Director of the Defense Agency (or their designee) concerned that the project meets all of the conditions set forth in section 2808(a), as amended.
  - 8. An explanation of the overall strategic objectives that the construction project is supporting. This explanation should clearly articulate how the requested project and the military construction strategy meet the overall objectives of the combatant commander and the Department.

9. Certification that all funds necessary to provide the intended capability are currently available within the Military Department or Defense Agency to cover project costs. It must also:
    - a. Identify the O&M source(s) for construction related activities (i.e., budget line item and name of program/project);
    - b. Identify other appropriation sources if required to outfit the provided infrastructure;
    - c. Provide a description of why the funding source(s) is available; and
    - d. Describe the effect on the program(s) 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 the 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.
  - D. To the extent applicable, pursuant to Reference B (or similar subsequent provision of law), the supervision and administration costs will be obligated to the same fiscal year O&M appropriation as the CCA project.
  - E. Projects are not authorized to proceed until the USD(C) provides written approval to the requesting Military Department or Defense Agency. Such approval will not be provided until after the required notice has been provided to the specified congressional committees and the 10-day waiting period (7 days if provided electronically) has expired.
  - F. The funding of all contract changes must comply with applicable financial management and fiscal law requirements, including requirements with respect to the use of expired funds and contract type (DoD 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 (DoD Financial Management Regulation, Volume 3, Chapter 10, Section 100306-100307).

#### IV. Required Notifications and Reports on Approved Projects

- A. Not later than 14 days after 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 notification will include the reason for cancellation, the amount obligated for the project (including any termination costs), and the amount deobligated from the project. Upon cancellation of the project, amounts deobligated cannot be used for any other CCA project.

- B. Not later than April 15<sup>th</sup> and October 15<sup>th</sup>, the Military Departments and Defense Agencies will provide a semi-annual 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, USD(C) approved project amount, funding obligated and expended during the reported period, cumulative obligations and expenditures for the project, and an explanation of any obligation adjustment during the reported period.
  - 2. The Military Departments and Defense Agencies will continue to follow the existing format as developed by the OUSD(C)/MPC staff by updating the previous report.
  
- C. If the scope of an approved CCA project requires modification, the Military Department or Defense Agency must comply with the following procedures:
  - 1. Project-scope changes that are needed to support the approved operational/mission requirement and 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. Project scope changes that are needed to support an expanded operational/mission requirement (regardless of cost impacts), and project scope changes that increase project cost above approved CCA limits or required funds from a different fiscal year, require submission of an amended CCA project request to the Director for Military Personnel and Construction, OUSD(C) in the same manner as an initial project request. This request should include a legal review 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, at least 7 days prior to termination.

V. Effective Date and Exceptions.

- A. This guidance is effective immediately.
- B. Requests for exceptions to this guidance must be submitted to the USD(C) for approval.