



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

SECNAVINST 11013.28A
OP-44

20 JUL 1983

SECNAV INSTRUCTION 11013.28A

From: Secretary of the Navy

Subj: Secretary of Defense Military Construction Contingency Authorities

Encl: (1) DoD Directive 4270.32 of March 29, 1983

1. Purpose. To promulgate Department of Defense policy for contingency construction and implement enclosure (1). (R)
2. Cancellation. SECNAVINST 11013.28.
3. Action. The Chief of Naval Operations and the Commandant of the Marine Corps shall issue the necessary directives within their assigned areas to implement this instruction. (R)

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NUMBER 4270.32



Department of Defense Directive ASD(MRA&L)

SUBJECT: Secretary of Defense Military Construction Contingency Authorities

- References:
- (a) DoD Directive 4270.32, "Secretary of Defense Military Construction Contingency Authority," February 18, 1972 (hereby canceled)
 - (b) Title 10, United States Code
 - (c) Public Law 94-412, National Emergencies Act, September 14, 1976 (50 U.S.C. 1601 ff.)
 - (d) DoD Instruction 7040.4, "Military Construction Authorization and Appropriation," March 5, 1979
 - (e) DoD Directive 4270.5, "Military Construction Responsibilities," March 2, 1982

A. REISSUANCE AND PURPOSE

This Directive:

1. Reissues reference (a) and implements sections 2804 and 2808 of reference (b) to establish the procedures for exercising the Secretary of Defense's military construction (MILCON) contingency authorities.

2. Cancels Report Control Symbol DD-I&L(SA)1151.

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

2. Its provisions encompass the authority and restraints applicable to establishing or developing installations and facilities in the event of a declaration of war or national emergency or when the Secretary of Defense determines that deferral of a project for inclusion in the next Military Construction Authorization Act would be inconsistent with the national security or interest.

C. DEFINITIONS

1. MILCON Contingency, Hostile Situation. A situation that follows a declaration of war by the Congress or a declaration of a national emergency by the President in accordance with reference (c) or that is

Enclosure (1)

the result of the beginning or actual conflict in which construction of DoD facilities is urgently needed to support the security of the United States.

2. MILCON Contingency, Nonhostile Situation. A situation in which the need for construction is of such urgency that it cannot be deferred for inclusion in the next Military Construction Authorization Act.

3. Military Construction Project. Includes all acquisition, construction, or contributions necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility.

D. POLICY

It is DoD policy that a construction project will not be considered for contingency funding if the project can be provided in a timely manner through the normal budget process. A project also first shall be considered for accomplishment under the authority provided to the Secretary of the Military Department concerned (10 U.S.C. 2803, reference (b)) before it is recommended for funding under the contingency authority provided to the Secretary of Defense.

E. PROCEDURES

1. MILCON Contingency, Nonhostile Situation

a. Processing of Requests

(1) Continental United States Areas. Heads of DoD Components shall forward all requests for use of the Secretary of Defense MILCON contingency authority by memorandum to the Secretary of Defense through the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)) indicating the situation under which the request is being made.

(2) Overseas Areas. Before submitting a request for contingency construction in an overseas area, heads of DoD Components shall coordinate the proposed construction with the Commanders of Unified or Specified Commands concerned for validation and establishment of a priority of need.

(a) When contingency situations result in simultaneous construction requirements by more than one DoD Component, the Commander of the Unified Command concerned shall incorporate the construction requirements into a single request and shall submit it to the ASD(MRA&L) through the Chairman, JCS, with a copy to the Military Department or Defense Agency concerned.

(b) A project begun by a Unified or Specified Command may be submitted directly to the ASD(MRA&L) through the Chairman, JCS, with a copy to the Military Department or Defense Agency concerned.

(c) The ASD(MRA&L) shall provide the request for any proposed project in a foreign country to the Under Secretary of Defense for Policy, who then shall coordinate the request with the Department of State or other Executive Branch agencies, as appropriate.

b. Project Justification. All requests shall contain the following project information:

(1) A completed DD Form 1391, "FY 19__ Military Construction Project Data," prepared in accordance with DoD Instruction 7040.4 (reference (d)).

(2) An explanation of the reasons why the project cannot be programed in accordance with established planning, programing, and budgeting system procedures.

(3) A statement of anticipated construction contract award and design completion dates.

(4) For Military Departments, a statement explaining why the emergency construction authority provided to the Secretaries of the Military Departments by 10 U.S.C. 2803 (reference (b)) cannot be used instead of the requested authority.

(5) Identification of any additional funds required to design the requested project.

2. MILCON Contingency, Hostile Situation. When time permits, requests shall be processed in the same manner as that described for the nonhostile situation. When the Commander of the Unified or Specified Command concerned determines that tactical exigencies will not permit more deliberate procedures, the Commander may submit a request directly to the ASD(MRA&L) through the Chairman, JCS, with a copy to the Military Department or Defense Agency concerned. The request shall describe the purpose and estimated cost of the proposed construction. The Chairman, JCS, may request immediate notification of the appropriate congressional committees of the intent to proceed with the construction to the extent appropriations are available.

3. Congressional Liaison. Financing of Secretary of Defense contingency requirements normally shall be from funds appropriated in the annual Military Construction Appropriation Acts for purposes of financing the Secretary of Defense MILCON contingency authority (section 2804 of reference (b)). In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act (reference (c)), the Secretary may fund the project using any funds that have been appropriated for MILCON, including funds appropriated for family housing. Congressional notifications shall be processed as follows, depending upon which authority is used.

a. Secretary of Defense Contingency (section 2804 of reference (b)). The ASD(MRA&L) shall prepare notification of approval for Secretary of Defense signature for submission to the Committees on Armed Services and Appropriations of both the House of Representatives and the Senate. No funds will be obligated on the project until 21 days after the Committees have received the Secretary's notification.

b. Authority under a Declaration of War or National Emergency (10 U.S.C. 2808, reference (b)). The ASD(MRA&L) shall prepare the notification of approval for Secretary of Defense signature for submission to the Committees on Armed Services and Appropriations of both the House of Representatives and the Senate. Funds identified may be obligated immediately upon approval by the Secretary of Defense.

4. Management

a. Appropriations made available to the Military Departments for projects approved for accomplishment under the Secretary of Defense MILCON contingency authority shall be obligated expeditiously. Failure to place the required projects under construction within a reasonably short time derogates a determination that the facilities could not have been deferred for inclusion in the next Military Construction Authorization Act.

b. If the requested facilities are not under construction within 6 months from the date of project approval, the DoD Component concerned shall submit a revalidation of the requirement to the Secretary of Defense indicating the reasons for the delay and explaining why approval should not be withdrawn and the project incorporated into the regular MILCON Program. A Secretary of Defense decision to include the project in the regular MILCON Program shall result in an automatic withdrawal of the contingency authorization.

c. Upon completion or termination of the approved construction, final MILCON costs shall be determined, and excess MILCON funds shall be identified to the Assistant Secretary of Defense (Comptroller) for use by the DoD Component to cover cost increases on other contingency-funded projects or to finance subsequent new contingency projects.

d. If funds are required to design the construction being requested under the Secretary of Defense MILCON contingency authorization, the cost of design shall be included in the memorandum requesting approval of the project. Services will not be reimbursed for design accomplished before project approval.

e. Unless otherwise authorized, all construction provided for under a nonhostile situation shall be performed under the cognizance of the designated DoD construction agent authorized under DoD Directive 4270.5 (reference (e)) for the area in which the facilities are to be erected.

F. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) shall monitor compliance with this Directive.

2. Heads of DoD Components shall comply with this Directive.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) within 120 days.



PAUL THAYER
Deputy Secretary of Defense