

CHAPTER 5

CONSTRUCTION FUNDING

I. INTRODUCTION.....	1
II. REFERENCES.....	1
III. BACKGROUND	3
A. Congressional Oversight of the Military Construction Program.....	3
B. The Military Construction Codification Act (MCCA).....	4
IV. DEFINITIONS.....	4
V. SOURCES OF MILITARY CONSTRUCTION FUNDING	4
A. Military Construction Appropriations Act.....	4
B. Department of Defense Appropriations Act.....	5
VI. SOURCES OF MILITARY CONSTRUCTION FUNDING AUTHORITY.....	5
A. “Specified” Military Construction Projects	5
B. “Unspecified” Minor Military Construction (UMMC) Projects	6
C. UMMC Projects Financed by Operation & Maintenance (O&M) Funds	7
D. Exercise-Related UMMC Projects.....	9
E. Emergency Construction Projects.....	11
F. Contingency Construction Projects	14
G. Reserve Component Construction Authorities	17
H. Projects Resulting from a Declaration of War or National Emergency	18
I. Environmental Response Actions.....	19
J. The Restoration or Replacement of Damaged or Destroyed Facilities	20
VII. METHODOLOGY FOR REVIEWING CONSTRUCTION ACQUISITIONS	24

VIII. DEFINING THE SCOPE OF THE PROJECT.....	24
A. Project splitting.....	24
B. Guidance and Restrictions	25
IX. CLASSIFYING THE WORK.....	33
A. Construction.....	33
B. Maintenance and Repair	34
X. DETERMINING THE FUNDED/UNFUNDED COSTS OF THE PROJECT.....	45
A. Applicability of Project Limits	45
B. Funded Costs.....	45
C. Unfunded Costs.....	46
XI. SELECTING THE PROPER APPROPRIATION	48
A. Statutory Thresholds.....	48
B. Exceeding a Statutory Threshold.....	48
C. Authorized Variations.....	49
XII. VERIFYING THE IDENTITY OF THE PROPER APPROVAL AUTHORITY	51
A. Approval of Construction Projects	51
B. Approval of Maintenance and Repair Projects.....	52
XIII. CONCLUSION.....	53
APPENDIX A: Construction of Contingency Facility Requirements, 22 February 2000	
APPENDIX B: FORSCOM Memorandum: Funding and Approval Authority, 6 March 2000	
APPENDIX C: Engineering Construction Diagram - OCONUS Exercise Construction	

CHAPTER 5

CONSTRUCTION FUNDING

I. INTRODUCTION.

- A. Objectives. Following this block of instruction, students will:
 - 1. Understand the statutes and regulations governing the fiscal aspects of military construction.
 - 2. Understand how to apply construction funding rules to routine problems.
- B. Practitioners must stay current since new developments frequently occur in this area of the law.

II. REFERENCES.

- A. Military Construction Codification Act, Pub. L. No. 97-214, 96 Stat. 153 (1982) (codified as amended at 10 U.S.C. §§ 2801-2885).
- B. 41 U.S.C. § 12.
- C. Annual Military Construction Authorization and Appropriation Acts and their accompanying Conference Reports.
- D. DOD Dir. 4270.36, DOD Emergency, Contingency, and Other Unprogrammed Construction Projects (17 May 1997) [hereinafter DOD Dir. 4270.36].
- E. DOD Reg. 7000.14-R, DOD Financial Management Regulation, vol. 2B, Budget Formulation and Presentation, ch. 6, Military Construction/Family Housing Appropriations (June 2000) [hereinafter DOD Reg. 7000.14-R, vol. 2B, ch. 6].

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- F. DOD Reg. 7000.14-R, DOD Financial Management Regulation, vol. 2B, Budget Formulation and Presentation, ch. 8, Real Property Maintenance/Minor Construction (June 2000) [hereinafter DOD Reg. 7000.14-R, vol. 2B, ch. 8].
- G. DOD Reg. 7000.14-R, DOD Financial Management Regulation, vol. 3, Budget Execution – Availability and Use of Budgetary Resources, ch. 17, Accounting Requirements for Military Construction projects (Dec. 1996) [hereinafter DOD Reg. 7000.14-R, vol. 3, ch. 17].
- H. DFAS-IN Reg. 37-1, Finance and Accounting Policy Implementation (Jan. 2000) [hereinafter DFAS-IN 37-1].
- I. AR 415-15, Army Military Construction Program Development and Execution (4 Sep. 1998) [hereinafter AR 415-15].
- J. AR 415-32, Engineer Troop Unit Construction in Connection with Training Activities (15 Apr. 1998) [hereinafter AR 415-32].
- K. AR 420-10, Management of Installation Directorates of Public Works (15 Apr. 1997) [hereinafter AR 420-10].
- L. AR 420-18, Facilities Engineering, Materials, Equipment, and Relocatable Building Management (3 Jan. 1992).
- M. DA Pam 415-15, Army Military Construction Program Development and Execution (25 Oct. 1999) [hereinafter DA Pam 415-15].
- N. DA Pam 420-11, Project Definition and Work Classification (7 October 1994) [hereinafter DA Pam 420-11].
- O. AFI 32-1021, Planning and Programming of Facility Construction Projects (12 May 1994) [hereinafter AFI 32-1021].
- P. AFI 32-1031, Operations Management (1 July 1997) [hereinafter AFI 32-1031].

- Q. AFI 32-1032, Planning and Programming Appropriated Funded Maintenance, Repair, and Construction Projects (1 Sep. 1999) [hereinafter AFI 32-1032].
- R. AFI 65-601, vol. 1, Budget Guidance and Procedures, ch. 9, Military Construction Appropriations (21 Oct. 1994) [hereinafter AFI 65-601, vol. 1, ch. 9].
- S. AFI 65-601, vol. 1, Budget Guidance and Procedures, ch 21, Military Family Housing (MFH) Appropriations (21 Oct. 1994) [hereinafter AFI 65-601, vol. 1, ch. 21].
- T. OPNAVINST 11010.20F, Facilities Projects Manual (7 June 1996) [hereinafter OPNAVINST 11010.20F].
- U. Major Earle D. Munns, *An Analysis of the Military Construction Codification Act*, ARMY LAW., Nov. 1987, at 19.
- V. M. Warner Meadows, *Has DOD “Repaired” a Component of the Construction Funding Analysis?* ARMY LAW., Mar. 1998, at 15.
- W. M. Warner Meadows, *Military Construction Funding, Variation in Cost Rules*, ARMY LAW., Aug. 1998, at 20.

III. BACKGROUND.

- A. Congressional Oversight of the Military Construction Program.
 - 1. Congressional oversight is pervasive and extensive.
 - 2. Military departments may only accomplish minor military construction projects (i.e., projects with an approved cost of \$1.5 million or less) without prior Congressional approval, and military departments must still notify Congress of minor military construction projects with an approved cost of \$750,000 or more.

- B. The Military Construction Codification Act (MCCA). The purpose of the MCCA was to revise and codify recurring provisions of annual legislation relating to military construction and family housing. H.R. REP. NO. 97-612 (1982).

IV. DEFINITIONS.

- A. Military Construction. 10 U.S.C. § 2801(a). The term “military construction” includes “any construction development, conversion, or extension of any kind carried out with respect to a military installation.”
- B. Military Construction Project. 10 U.S.C. § 2801(b). The term “military construction project” includes “all military construction work . . . necessary to produce a complete and usable facility or a complete and usable improvement to an existing facility”
- C. Facility. 10 U.S.C. § 2801(c)(1). The term “facility” means “a building, structure, or other improvement to real property.”
- D. Military Installation. 10 U.S.C. § 2801(c)(2). The term “military installation” means “a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense.”
- E. Appropriate Committees of Congress. 10 U.S.C. § 2801(c)(4). The term “appropriate committees of Congress” means “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.”

V. SOURCES OF MILITARY CONSTRUCTION FUNDING.

- A. Military Construction Appropriations Act. See, e.g., Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, 115 Stat. 474 (2001).
 - 1. Provides funds for the DOD’s specified and unspecified military construction programs.

2. Funds are generally available for 5 years.
- B. Department of Defense Appropriations Act. See, e.g., Department of Defense Appropriations Act, 2001, Pub. L. No. 106-259, 114 Stat. 656 (2000).
1. Provides miscellaneous “pots” of money for military construction projects.
 2. Funds are generally available for 1 year. But see Department of Defense Appropriations Act, 2000, Pub. L. No. 106-79, 113 Stat. 1212 (1999) (providing funds for quality of life enhancements “which shall remain available for obligation until September 30, 2001”).

VI. SOURCES OF MILITARY CONSTRUCTION FUNDING AUTHORITY.

- A. “Specified” Military Construction Projects. 10 U.S.C. § 2802. The Secretary of Defense (SECDEF) and the Secretaries of the military departments may carry out military construction projects authorized by law.
1. Source of Funding. See, e.g., Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, 115 Stat. 474 (2001); H.R. CONF. REP. NO. 107-246 (2001). Congress provides annual funding and approval for “specified” military construction projects in the Military Construction Appropriations Act.
 - a. Congress funds the entire military construction program with lump sum appropriations. The Army’s principle appropriations are the “Military Construction, Army” (MCA) appropriation, and the “Family Housing, Army” (FHA) appropriation.¹
 - b. The conference report that accompanies the Military Construction Appropriations Act breaks down the lump sum appropriations by project.

¹ The statutory requirements for the construction and improvement of military family housing are at 10 U.S.C. §§ 2821-2837.

2. Authorized Use.

- a. Congress normally “specifies” military construction projects expected to exceed \$1.5 million.²
- b. A military department may not carry out military construction projects expected to exceed \$1.5 million without specific Congressional authorization and approval.

B. “Unspecified” Minor Military Construction (UMMC) Projects. 10 U.S.C. § 2805(a).

1. Source of Funding. See, e.g., Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, 115 Stat. 474 (2001); H.R. CONF. REP. NO. 107-246 (2001). Congress provides annual funding and approval for UMMC projects in the Military Construction Appropriations Act.
 - a. Congress appropriates “Unspecified Minor Construction” funds to each military department in the conference report that accompanies the Military Construction Appropriations Act; however, the conference report does not break down these appropriations any further (e.g., by project).
 - b. The Army refers to its “unspecified” appropriation as “Unspecified Minor Military Construction, Army” (UMMCA). See AR 415-15, para. 1-1a(1); Glossary, sec. I.
2. Authorized Use. 10 U.S.C. § 2805(a). See AR 415-15, para. 1-6b(1) and app. B; AFI 32-1021, ch. 4; AFI 32-1032, para. 3.3.3; AFI 65-601, vol. 1, para. 9.12.6; OPNAVINST 11010.20F, para. 6.4.4. The Secretary concerned may use these funds to carry out UMMC projects not otherwise authorized by law.
 - a. An UMMC project is defined as a military construction project with an approved cost of \$1.5 million or less.

² Congress may also specify projects under \$1.5 million. See, e.g., Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, 115 Stat. 474 (2001); H.R. CONF. REP. NO. 107-246 (2001).

- b. However, an UMMC project can have an approved cost up to \$3 million if the project is intended solely to correct a deficiency that threatens life, health, or safety.

3. Requirements for Use. 10 U.S.C. § 2805(b).

- a. Before beginning an UMMC project with an approved cost greater than \$750,000, the Secretary concerned must approve the project.

- b. In addition, the Secretary concerned must:

- (1) Notify the appropriate committees of Congress;³ and

- (2) Wait 21 days.⁴

C. UMMC Projects Financed by Operation & Maintenance (O&M) Funds.

1. General Prohibition on the Use of O&M Funds. 41 U.S.C. § 12.

- a. Most installations use O&M funds to finance routine operations; however, 41 U.S.C. § 12 prohibits a federal agency from entering into a public contract to build, repair, or improve a public building that binds the government to pay a sum that exceeds the amount Congress specifically appropriated for that purpose.

³ The Secretary concerned must notify the appropriate committees of Congress of the justification and current cost estimate for the project. 10 U.S.C. § 2805(b)(2). See AFI 32-1021, para. 4.2 (detailing the information MAJCOMS must submit to HQ, USAF/CEC); see also DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.E.2 (detailing the requirements for reprogramming requests).

⁴ The Air Force imposes a 30-day waiting period. AFI 32-1021, para. 4.5.

b. In The Hon. Bill Alexander, B-213137, 63 Comp. Gen. 422, 433 (1984), the General Accounting Office (GAO) interpreted 41 U.S.C § 12 to:

- (1) Require specific Congressional authorization for military construction projects; and
- (2) Prohibit the use of other, more general appropriations for military construction projects.

2. Statutory Exception for UMMC Projects. 10 U.S.C. § 2805(c). See AR 415-15, para. 1-6c(1); AR 420-10, para. 4-1c; AFI 32-1021, para. 4.2; OPNAVINST 11010.20F, para. 6.1.1.f. The Secretary of a military department may use O&M funds to finance UMMC projects costing less than:⁵

- a. \$1.5 million if the project is intended solely to correct a deficiency that threatens life, health, or safety.⁶
- b. \$750,000 if the project is intended for any other purpose.⁷

⁵ The thresholds for O&M funded projects were raised from \$500,000 to \$750,00, and from \$1 Million to \$1.5 Million under the expanded life health and safety authority by the DOD Authorization Act for FY 2002. See National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, 115 Stat. 1012, Section 2801. The Statutory change was effective on 28 December 2001. Projects approved prior to that date continue to carry the \$500,000 or \$1 Million limitation. The service regulations will require revision to comport with the statutory change. To the extent that regulatory cites in this outline specify a \$500,000 threshold, those cites pre-date the increase in the statutory threshold and may or may not be controlling at the time you review your project.

⁶ There is no specific guidance as to what constitutes a “deficiency that threatens life, health, or safety.” The legislative history contains no guidance. Neither the DoD Regulations, nor the Service regulations are of assistance. At least one Army MACOM has issued limited guidance. See, Appendix B: Memorandum, Deputy Chief of Staff for Personnel and Installation Management, AFEN-ENO, subject: Funding and Approval Authority, 6 March 2000. The Air Force requires prior approval of SAF/MII and Congressional notification for projects solely to correct a life, health, or safety deficiency that exceed \$500,000. AFI 32-1032, para 5.1.2.1.

⁷ AR 420-10, para. 4-1c, requires Army activities to use O&M funds for construction projects that cost less than the statutory thresholds. In fact, AR 420-10, para. 4-1c, requires Army activities to obtain prior approval from HQDA if they want to use UMMC funds for construction projects costing \$500,000 or less.

D. Exercise-Related UMMC Projects.

1. All Exercise-Related Projects. See Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, § 113, 115 Stat. 246 (2001); see also AR 415-32, para. 3-11d. For procedural guidance for executing ERC, see JOINT CHIEFS OF STAFF, INSTR. 4600.01, EXERCISE-RELATED CONSTRUCTION STANDARD OPERATING PROCEDURES (20 Jun. 2001).
 - a. If a military department expects to spend more than \$100,000 for temporary or permanent construction during a proposed exercise involving U.S. personnel, the SECDEF must notify the appropriate committees of Congress of the plans and scope of the exercise.
 - b. The SECDEF must provide this notice 30 days before the start of the exercise.
2. Exercise-Related UMMC Projects Coordinated⁸ or Directed⁹ by the Joint Chiefs of Staff (JCS) Outside the U.S.¹⁰
 - a. O&M Funds. 10 U.S.C. § 2805(c)(2). See AR 415-32, para. 3-5.
 - (1) General Rule. The Secretary of a military department may not use O&M funds to finance exercise-related UMMC projects coordinated or directed by the JCS outside the U.S. [NOTE: Congress passed 10 U.S.C. § 2805(c)(2) in response to The Honorable Bill Alexander, B-213137, 63 Comp. Gen. 422 (1984)].

⁸ JCS-coordinated exercises are minor exercises that require JCS coordination because they involve the units or forces of more than one military department. AR 415-32, para. 3-3, and Glossary, sec. II.

⁹ JCS-directed exercises are exercises that are of interest to the Joint Chiefs of Staff, but directed by a strategic mobility or major commander-in-chief. AR 415-32, para. 3-3.

¹⁰ JCS coordinated or directed exercises include: (1) joint training exercises such as Atlantic Resolve, AHUAS TARA, and BRIGHT/STAR; and (2) combined training exercises such as FUERTES CAMINOS. AR 415-32, para. 3-3, and Glossary, Sec. II.

- (2) Exception.
- (a) The Secretary of a military department may arguably use O&M funds to finance minor and/or temporary structures (e.g., tent platforms, field latrines, shelters, range targets, installed relocatable structures)¹¹ or any structures which are completely removed at the end of an exercise. See The Hon. Bill Alexander, supra (noting that the “temporary structure” exception is extremely limited in scope). But cf. AR 415-32, para. 3-5c. (stating that “the Army may use [O&M] funds, except when the exercise-related construction is JCS directed or coordinated outside the United States”).
- (b) Compare combat and contingency operations. See Memorandum, Deputy General Counsel (Ethics & Fiscal), Office of the General Counsel, Department of the Army, Subject: Construction of Contingency Facility Requirements (22 Feb. 2000) (stating that the Army should use O&M funds to build structures during combat and contingency operations if the structures “are clearly intended to meet a temporary operational requirement to facilitate combat or contingency operations”); see also Office of the General Counsel, Fiscal Law Outline, Section P: Current Issues, <<http://www.hqda.army.mil/ogc/eandfoutline-secp.htm>>.

¹¹ To determine whether a facility is “temporary,” you need to focus on the duration and purpose of the facility’s use rather than the materials used. AR 415-32, para. 3-5c.

- b. UMMC Funds. 10 U.S.C. § 2805(a)(2). See AR 415-32, para. 3-5d. The statute states that the Secretary of a military department may not use more than \$5 million of its UMMC funds to finance exercise-related UMMC projects coordinated or directed by the JCS outside the U.S. during any fiscal year. In practice, exercise related construction is funded with funds specifically identified by Congress for this purpose. These funds are administered by the Joint Staff.¹²

- E. Emergency Construction Projects. 10 U.S.C. § 2803. See DOD Dir. 4270.36; AR 415-15, paras. 1-6b(2) and 5-19, app. C; AFI 32-1021, para. 5.2.1; AFI 65-601, vol. 1, para. 9.12.3; OPNAVINST 11010.20F, para. 6.4.2; see also DOD Reg. 7000.14-R, vol. 3, chs. 7 and 17.
 - 1. Authorized Use. The Secretary of a military department may use this authority to carry out emergency construction projects not otherwise authorized by law.

 - 2. Requirements for Use.
 - a. Before using this authority, the Secretary concerned must determine that:
 - (1) The project is vital to:
 - (a) National security; or
 - (b) The protection of health, safety, or the quality of the environment; and

 - (2) The project is so urgent that deferral until the next Military Construction Appropriations Act would be inconsistent with:
 - (a) National security; or

¹² For FY 02, there is \$6,305,000 available for these projects. In FY01, this amount was \$6,196,000.

- (b) The protection of health, safety, or the quality of the environment.

b. In addition, the Secretary concerned must:

- (1) Notify the appropriate committees of Congress;¹³ and
- (2) Wait 21 days.

3. Source of Funding.

a. The Secretary concerned must use unobligated military construction funds to finance these projects.¹⁴

- (1) Congress must normally approve a reprogramming request for the project.¹⁵
- (2) If Congress fails to approve the reprogramming request, the Secretary concerned may not carry out the project.

b. The Secretary concerned may not obligate more than \$30 million per fiscal year for emergency construction.

¹³ The Secretary concerned must notify the appropriate committees of Congress of: (1) the justification and current cost estimate for the project; (2) the justification for carrying out the project under this section; and (3) the source of funds for the project. 10 U.S.C. § 2803(b).

¹⁴ According to the legislative history of the MCCA: “[t]he use of this authority is dependent upon the availability of savings of appropriations from other military construction projects or through funding obtained by deferring or canceling other military construction projects.” H.R. REP. NO. 97-612 (1982). See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.E.2 (detailing the requirements for reprogramming requests).

¹⁵ The Secretary concerned must submit a reprogramming request to the Under Secretary of Defense (Comptroller). DOD Dir. 4270.36, para. 3.2. See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.E.2 (detailing the requirements for reprogramming requests); see also DOD Reg. 7000.14-R, vol. 3, ch. 7, para. 070302.B.5 (requiring prior congressional notification and approval for reprogramming action); AR 415-15, app. C., para. C-4 (noting that Congress will probably not approve a reprogramming request unless there is truly a dire need for the project).

4. Limitations.

a. Legislative History. H.R. Rep. No. 97-612 (1982).

- (1) The legislative history of the MCCA indicates that the Secretaries of the military departments should rarely use this authority.¹⁶
- (2) In addition, the legislative history of the MCCA indicates that the Secretaries of the military departments may not use this authority for projects denied authorization in previous Military Construction Appropriations Acts. See DOD Reg. 7000.14-R, vol. 3, ch. 7, para. 070303.B.; AR 415-15, app. C, para. C-2a.

b. DOD Limitations. DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170302.E.4, states that: “Actual construction shall not commence prior to the receipt of appropriate DOD and congressional approval [of the reprogramming request].” See AR 415-15, para. 5-19.

c. Army Limitations. AR 415-15, app. C, para. C-3.

- (1) Although 10 U.S.C. § 2803, technically covers both military construction and family housing projects, the Army only uses this authority for military construction projects.
- (2) AR 415-15, app. C, para. C-3, indicates that the Army should execute emergency construction projects under its UMMC program, if possible.

¹⁶ In 1985, the House Appropriations Committee stated that: “This authority was provided to give the Department and Congress flexibility in dire situations. A true emergency project should be confined to facilities without which a critical weapon system or mission could not function.” H.R. REP. NO. 99-275, at 23 (1985).

- F. Contingency Construction Projects. 10 U.S.C. § 2804. See DOD Dir. 4270.36; AR 415-15, para. 1-6b(6); AFI 32-1021, para. 5.2.3; AFI 65-601, vol. 1, para. 9.12.4; OPNAVINST 11010.20F, para. 6.4.5; see also DOD Reg. 7000.14-R, vol. 3, chs. 7 and 17.
1. Authorized Use. The SECDEF may use this authority—or permit the Secretary of a military department to use this authority—to carry out contingency construction projects not otherwise authorized by law.¹⁷
 2. Requirements for Use.
 - a. Before using this authority, the SECDEF must determine that deferral of the project until the next Military Construction Appropriations Act would be inconsistent with:
 - (1) National security; or
 - (2) National interest.
 - b. In addition, the SECDEF must:
 - (1) Notify the appropriate committees of Congress;¹⁸ and
 - (2) Wait 21 days.¹⁹
 3. Source of Funding. The SECDEF must use funds specifically appropriated for contingency construction to finance these projects.²⁰

¹⁷ The Secretary of a military department must forward contingency construction requests to the SECDEF through the Under Secretary of Defense for Acquisition and Technology (USD(A&T)). DOD Dir. 4270.36, para. 4.2.2.

¹⁸ The SECDEF must notify the appropriate committees of Congress of: (1) the justification and current cost estimate for the project; and (2) the justification for carrying out the project under this section. 10 U.S.C. § 2804(b). See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.F.2 (detailing the requirements for reprogramming requests). But see DOD Dir. 4270.36, para. 3.2 (stating that reprogramming is not necessary for these projects).

¹⁹ DOD Reg. 7000.14-R, para. 170102.F.1, indicates that the Secretary concerned may not obligate any funds for the project until the end of the 21-day waiting period.

²⁰ Congress provides an annual appropriation for contingency construction projects. See, e.g., H.R. CONF. REP. NO. 107-246 (2001) (authorizing \$10,000,000 for contingency construction for FY 02) and H.R. CONF. REP. NO. 106-710 (2000) (authorizing \$6,000,000 for contingency construction for FY 01). Congress has been dramatically increasing the amount of funding dedicated to contingency operations. By contrast, in FY 00, the amount was \$938,000.

4. Limitations.

a. Legislative History. H.R. Rep. No. 97-612 (1982).

- (1) The legislative history of the MCCA indicates that the Secretaries of the military departments should use this authority only for extraordinary projects that develop unexpectedly.
- (2) In addition, the legislative history of the MCCA indicates that the Secretaries of the military departments may not use this authority for projects denied authorization in previous Military Construction Appropriations Acts. See DOD Reg. 7000.14-R, vol. 3, ch. 7, para. 070303.B.

b. DOD Limitations.

- (1) DOD Dir. 4270.36, para. 3.4, requires the Heads of DOD Components to consider using other available authorities to fund military construction projects before they consider using SECDEF authorities.
- (2) DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170302.F.4, states that: “Actual construction shall not commence prior to the receipt of appropriate DOD and congressional approval [of the reprogramming request].”

c. Army Limitations. AR 415-15, para. 1-6b(6).

- (1) The Army generally reserves this authority for projects that support multi-service requirements.
- (2) Commanders should normally process urgent projects that support only one service under 10 U.S.C. § 2803.

- d. Air Force Limitations. AFI 32-1021, para. 5.2.3.1.
 - (1) The use of this authority is rare.
 - (2) The Air Force must consider using its 10 U.S.C. § 2803 authority first.

G. Reserve Component Construction Authorities.

- 1. Specified Military Construction Projects. 10 U.S.C. § 18233. The Secretary of Defense may carry out military construction projects authorized by law.
 - a. Includes authority to acquire, lease, or transfer, and construct, expand, rehabilitate, or convert and equip such facilities as necessary to meet the missions of the reserve components.
 - b. Allows the SECDEF to contribute amounts to any state (including the District of Columbia, Puerto Rico, and the territories and possessions of the United States, (10 U.S.C. § 18232(1)) for the acquisition, conversion, expansion, rehabilitation of facilities for specified purposes. 10 U.S.C. § 18233(a) (2) through (6).
 - c. Authorizes the transfer of title to property acquired under the statute to any state, so long as the transfer does not create a state enclave within a federal installation. 10 U.S.C. § 18233(b).
- 2. Military Construction Funded with Operation & Maintenance accounts. 10 U.S.C. § 18233a. AR 140-483, Ch. 7.
 - a. Unspecified Minor Military Construction. 10 U.S.C. § 18233a(a)(1). Unlike Active Duty, RC UMMC projects are funded with O&M appropriations. Similar funding limits apply.

- (1) Expenditure or contributions in excess of \$1.5 million may not be made until the SECDEF has notified the appropriate committees of Congress of the location, nature, and estimated cost of the project, and waited 21 days after notification.
- (2) This limitation does not apply to facilities acquired by lease, or to projects specifically approved by Congress. 10 U.S.C. § 18233a(a)(2)(A) & (B).
- (3) Projects intended solely to correct a deficiency that threatens life, health or safety may have an approved cost of up to \$3 million. 10 U.S.C. § 18233a(a)(2)(C).

b. Minor construction projects. 10 U.S.C. § 18233a(b).

- (1) Projects intended solely to correct a deficiency that threatens life, health or safety may have an approved cost of up to \$1 million. 10 U.S.C. § 18233a(b)(1).
- (2) For any other project, the limit is \$500,000. 10 U.S.C. § 18233a(b)(2).

H. Projects Resulting from a Declaration of War or National Emergency. 10 U.S.C. § 2808. See DOD Dir. 4270.36; AR 415-15, para. 1-6b(7) and app. D, para. D-2; AFI 32-1021, para. 5.2.4; AFI 65-601, vol. 1, para. 9.12.5; OPNAVINST 11010.20F; see also DOD Reg. 7000.14-R, vol. 3, chs. 7 and 17.

1. Authorized Use. The SECDEF may use this authority—or permit the Secretary of a military department to use this authority—to carry out military construction projects that are necessary to support the use of the armed forces in the event of:

a. A declaration of war; or

- b. A Presidential declaration of a national emergency.²¹
2. Requirements for Use. The SECDEF must notify the appropriate committees of Congress;²² however, there is no waiting period associated with the use of this authority.
 3. Source of Funding. The SECDEF must use unobligated military construction funds, including funds appropriated for family housing, to finance these projects.
 4. On November 14, 1990, President Bush invoked this authority to support Operation Desert Shield. See Executive Order No. 12734, 55 Fed. Reg. 48,099 (1990), reprinted in 10 U.S.C. § 2808. President George W. Bush invoked this authority on 16 November 2001. See Executive Order No. 13235, 66 Fed. Reg. 58,343 (2001).
- I. Environmental Response Actions. 10 U.S.C. § 2810. See DOD Reg. 7000.14-R, vol. 3, chs. 7 and 17.
1. Authorized Use. The SECDEF may use this authority—or permit the Secretary of a military department to use this authority—to carry out military construction projects for environmental response actions.
 2. Requirements for Use.
 - a. Before using this authority, the SECDEF must determine that the project is necessary to carry out an environmental response action under:
 - (1) The Defense Environmental Restoration Program, 10 U.S.C. §§ 2701-2708; or

²¹ The Secretary of a military department must forward construction requests to the SECDEF through the Under Secretary of Defense for Acquisition and Technology (USD(A&T)). DOD Dir. 4270.36, para. 4.2.3. See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.H.

²² The SECDEF must notify the appropriate committees of Congress of: (1) the decision to use this authority; and (2) the estimated cost of the construction projects. 10 U.S.C. § 2808(b).

- (2) The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675.

b. In addition, the SECDEF must:

- (1) Notify the appropriate committees of Congress;²³ and
- (2) Wait 21 days.²⁴

3. Source of Funding. The SECDEF must use funds specifically appropriated for environmental restoration to finance these projects.²⁵

J. The Restoration or Replacement of Damaged or Destroyed Facilities. 10 U.S.C. § 2854. See DOD Dir. 4270.36; AR 415-15, para. 1-6b(3) and app. D, para. D-1; AFI 32-1021, para. 5.2.2; AFI 65-601, vol. 1, para. 9.12.7; OPNAVINST 11010.20F, para. 6.4.3; see also DOD Reg. 7000.14-R, vol. 3, chs. 7 and 17.

1. Authorized Use. The Secretary of a military department may use this authority to repair, restore, or replace a facility that has been damaged or destroyed.²⁶

²³ The SECDEF must notify the appropriate committees of Congress of: (1) the justification and current cost estimate for the project; and (2) the justification for carrying out the project under this section. 10 U.S.C. § 2810(b).

²⁴ DOD Reg. 7000.14-R, para. 170102.G.1, indicates that Secretary concerned may not obligate any funds for the project until the end of the 21-day waiting period.

²⁵ Congress provides annual appropriations for environmental restoration projects. See, e.g., Department of Defense Appropriations Act, 2000, Pub. L. No. 106-79, 113 Stat. 1212 (1999). See DOD Dir. 4270.36, para. 3.2 (stating that reprogramming is not necessary for these projects). But see DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.G.2 (detailing the requirements for reprogramming requests).

²⁶ The intent of this section is to permit military departments and defense agencies to respond to natural disasters, acts of arson, and acts of terrorism promptly to restore mission effectiveness and preclude further deterioration of the damaged facility. H.R. REP. NO. 97-612.

2. Requirements for Use. If the estimated cost of the project exceeds the UMMC threshold (i.e., \$1.5 million), the Secretary concerned must:
 - a. Notify the appropriate committees of Congress;²⁷ and
 - b. Wait 21 days.
3. Source of Funding.
 - a. O&M Funds. See H.R. REP. NO. 97-612 (1982); see also AR 415-15, app. D, para. D-1c(3) and fig. D-1; AFI 32-1021, para. 5.2.2.2.
 - (1) The Secretary concerned may use O&M funds if the cost of the project is \$500,000 or less.
 - (2) The Secretary concerned may also use O&M funds to repair or restore a facility temporarily to:
 - (a) Prevent additional significant deterioration;
 - (b) Mitigate a serious life or safety hazard; or
 - (c) Avoid severe degradation of a critical mission.

²⁷ The Secretary concerned must notify the appropriate committees of Congress of: (1) the justification and current cost estimate for the project; (2) the justification for carrying out the project under this section; and (3) the source of funds for the project. 10 U.S.C. § 2854(b). See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.J.2 (detailing the requirements for reprogramming requests); AR 420-10, para. 4-8 (providing for expedited project approval and execution procedures).

- b. Military Construction (MILCON) Funds.²⁸ See H.R. REP. NO. 97-612 (1982).
 - (1) The Secretary concerned may use MILCON funds to construct a replacement facility if an economic analysis of life-cycle costs shows that replacement is more cost effective than repair.²⁹
 - (a) Congress must normally approve a reprogramming request for the project.³⁰
 - (b) If Congress fails to approve the reprogramming request, the Secretary concerned may not carry out the project.
 - (2) If the Secretary concerned intends to use UMMC funds to construct a replacement facility, the Secretary concerned must comply with 10 U.S.C. § 2805 and any applicable regulations.

4. Limitations.

- a. DOD Limitations. DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170302.J.5, states that: “Actual construction shall not commence prior to the receipt of appropriate DOD and congressional approval [of the reprogramming request].”
- b. Army Limitations. AR 415-15, app. D, para. D-1c(2) restricts the use of this authority for family housing projects.

²⁸ MILCON funds are the funds Congress appropriates under the Military Construction Appropriations Act. They include both “specified” funds and UMMC funds.

²⁹ The Secretary concerned may use current design and material criteria for the replacement facility. In addition, the Secretary concerned may increase the size of the replacement facility to meet current mission and functional requirements. See H.R. REP. NO. 97-612 (1982); see also AR 415-15, app. D, para. D-1c(4).

³⁰ The Secretary concerned must submit reprogramming requests to the Under Secretary of Defense (Comptroller). DOD Dir. 4270.36, para. 3.2; AR 415-15, app. D, para. D-1d. See DOD Reg. 7000.14-R, vol. 3, ch. 7, para. 070302.B.6 (requiring prior congressional notification and approval for reprogramming action).

- c. Air Force Limitations. AFI 32-1021, para. 5.2.2.1, provides additional criteria for repairing damaged Air Force facilities.
- (1) The damaged or destroyed facility must have been in use (or planned for use) at the time it was damaged or destroyed.
 - (2) The new or repaired facility must normally be the same size as the damaged or destroyed facility; however, the MAJCOM may approve limited increases to achieve economy of design or compliance with new criteria. But see H.R. Rep. No. 97-612 (1982) (stating that “any replacement facility [may] use current design and material criteria and may be increased in size to meet current mission and functional requirements”).
 - (3) A MAJCOM may not use this authority to correct space deficiencies.
- d. Navy Limitations. Unless a shore activity must restore or replace a facility immediately to prevent an undue impact on mission accomplishment, the shore activity should include the restoration or replacement project in its annual budget program. OPNAVINST 11010.20F, para. 6.4.3 (noting that “[t]he Secretary of Defense has restricted the use of this authority to complete replacement or ‘major restoration’ of a facility which is urgently required”).³¹

³¹ OPNAVINST 11010.20F, para. 6.4.3, defines “major restoration” as “a restoration costing in excess of 50 percent of the cost of completely replacing the facility.”

VII. METHODOLOGY FOR REVIEWING CONSTRUCTION ACQUISITIONS.

- A. Define the Scope of the Project.
- B. Classify the Work.
- C. Determine the Funded and Unfunded Costs of the Project.
- D. Select the Proper Appropriation.
- E. Verify the Identity of the Proper Approval Authority for the Project.

VIII. DEFINING THE SCOPE OF THE PROJECT.

- A. Project splitting (a.k.a. incrementation)³² is prohibited!! See AR 415-32, Glossary, sec. II; AR 420-10, para. 4-1b; DA Pam 420-11, Glossary, sec. II; AFI 32-1021, para 4.2; OPNAVINST 11010.20F, para. 6.2.1.

³² AR 415-32, Glossary, sec. II, defines “incrementation” as: “The splitting of a project into separate parts where:

- a. It is done solely to reduce costs below an approved threshold or minor construction ceiling.
- b. Each part is in itself complete and usable.
- c. The total project is not complete until all parts are complete.
- d. In order to determine what constitutes a stand alone project, i.e., a complete and usable facility, a comparison of interdependence as opposed to facility interrelations should be made”

See DA Pam 420-11, Glossary, sec. II; see also AR 415-15, Glossary, sec. II (distinguishing between the phasing of construction and incremental construction).

1. A “military construction project” includes all work necessary to produce a complete and usable facility, or a complete and usable improvement to an existing facility. 10 U.S.C. § 2801(b). See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170102.L; AR 415-15, para. 2-3a; AR 415-32, Glossary, sec. II; AR 420-10, para. 4-1c; AFI 32-1021, para. 3.2.1; OPNAVINST 11010.20F, para. 6.1.1.f; see also The Hon. Michael B. Donley, B-234326, 1991 U.S. Comp. Gen. LEXIS 1564 (Dec. 24, 1991) (concluding that the Air Force improperly split a project involving 12 related trailers into 12 separate projects).
2. An agency may not treat “clearly interrelated”³³ construction activities as separate projects. The Hon. Michael B. Donley, B-234326, 1991 U.S. Comp. Gen. LEXIS 1564 (Dec. 24, 1991); The Hon. Bill Alexander, House of Representatives, B-213137, Jan. 30, 1986 (unpub).

B. Guidance and Restrictions.

1. Legislative History. H.R. REP. NO. 97-612 (1982).
 - a. The conference report that accompanied the MCCA specifically prohibited:
 - (1) Splitting a project into increments to avoid:
 - (a) An approval threshold; or
 - (b) The UMMC cost ceiling;

³³ AR 415-32, Glossary, sec. II, defines “interrelated facilities” differently (i.e., as “facilities which have a common support purpose but are not mutually dependent and are therefore funded as separate projects, for example, billets are constructed to house soldiers with the subsequent construction of recreation facilities”). In contrast, AR 415-32, Glossary, sec. II, defines “interdependent facilities” like the GAO did in the Donley case (i.e., as “facilities which are mutually dependent in supporting the function(s) for which they were constructed and therefore must be costed as a single project, for example, a new airfield on which the runways, taxiways, ramp space and lighting are mutually dependent to accomplish the intent of the construction project”). See also; *Illegal Actions in the Reconstruction of the Airfield at Fort Lee, Virginia: Hearings Before the Subcomm. on Executive and Legislative Reorganization of the House Comm. on Gov’t Operations*, 87th Cong. (1962); Hon. Sam Rayburn, Comp. Gen., B-133316 (Jan. 24, 1961); and Hon. Sam Rayburn, Comp. Gen., B-133316 (Mar. 12, 1962).

- (2) Incrementing a project if the resulting sacrifice of economy of scale increases the cost of the construction; and
 - (3) Engaging in concurrent work to reduce the cost of a construction project below a cost variation notification level.
 - b. However, the conference report indicated that a military department could carry out an UMMC construction project before or after another military construction project under certain circumstances.³⁴
 - (1) A military department could carry out an UMMC construction project before another military construction project if:
 - (a) The UMMC construction project satisfied a new mission requirement; and
 - (b) The UMMC construction project would provide a complete and usable facility that would meet a specific need during a specific period of time.
 - (2) A military department could carry out an UMMC construction project after another military construction project to satisfy a new mission requirement that arose after the completion of the other project.
2. DOD Guidance and Restrictions. DOD Reg. 7000.14-R, vol. 3, ch. 17, paras. 170102.I and 170102.L.
 - a. As a general rule, DOD Components may not engage in incremental construction (i.e., the planned acquisition or improvement of a facility through a series of minor construction projects).

³⁴ The conference report indicated that a military department should rarely use these exceptions. H.R. REP. NO. 97-612 (1982).

- b. DOD Components must:
 - (1) Identify the required end result of a minor construction project and its correlation with the installation master plan; and
 - (2) Comply with the intent of 10 U.S.C. § 2805.

- c. Multi-use Facilities.
 - (1) DOD Components may divide construction work in a multi-use facility into separate projects if each project is:
 - (a) Clearly defined; and
 - (b) Results in a complete and usable facility.
 - (2) DOD Components must nevertheless treat the following construction work in a multi-use facility as one project:
 - (a) All construction work for the same or related functional purposes;
 - (b) All concurrent construction work in contiguous (e.g., touching) areas; and
 - (c) All construction work in common areas.

3. Army Guidance and Restrictions. AR 420-10, para. 4-4; DA Pam 420-11, para. 1-7n.

a. AR 420-10, para. 4-4a, specifically prohibits the following practices:

(1) The acquisition or improvement of a facility through a series of minor military construction projects;

(2) The subdivision, splitting, or incrementing of a project to avoid:

(a) A statutory cost limitation; or

(b) An approval or contracting threshold; and

(3) The development of a minor military construction project solely to avoid the need to report a cost variation on an active military construction project to Congress.

b. In addition, AR 420-10, para. 4-4b, prohibits the Army from using its UMMC funds to begin or complete a “specified” military construction project.

4. Air Force Guidance and Restrictions.

a. AFI 32-1021, para. 4.2, specifically prohibits:

(1) Undertaking an UMMC project at the same time as a “specified” military construction project.

- (2) Splitting a project into increments to avoid:
 - (a) An approval threshold; or
 - (b) The UMMC cost ceiling; and
 - (3) Incrementing a project if the resulting sacrifice of economy of scale increases the cost of the construction.
- b. However, AFI 32-1021, para. 4.2, permits an installation to undertake an UMMC project before a “specified” military construction project to satisfy a new mission requirement if the UMMC project will provide a complete and usable facility that meets a specific need during a specific period of time.
- c. In addition, AFI 32-1021, para. 4.2, permits an installation to undertake an UMMC project after a “specified” military construction project to satisfy a new mission requirement that arises after the completion of the “specified” project.
- d. AFI 32-1032, para. 3.4.2, generally prohibits:
- (1) Modifying a newly constructed facility within 12 months of the beneficial occupancy date (BOD) unless an unforeseeable mission or equipment change causes the modification(s); and
 - (2) Using O&M funds to correct deficiencies in projects funded by MILCON funds.
- e. AFI 32-1032, para. 5.3.1, requires the Air Force to include all of the known UMMC work required in a facility during the next 24 months in a single project.

- f. AFI 32-1032, para. 5.3.2, only permits multiple minor construction projects in a single building within a 24 month period if:
 - (1) The Air Force could not have reasonably anticipated the requirement for the additional project when it initiated the previous project;
 - (2) The requirement for the additional project is for a distinctly different purpose or function; and
 - (3) Each project results in a complete and usable facility or improvement.

5. Navy Guidance and Restrictions.

- a. OPNAVINST 11010.20F, para. 2.2.5, generally requires shore activities to incorporate all work required to meet a requirement in a single facility in a single project.
- b. OPNAVINST 11010.20F, para. 6.2.1., specifically prohibits:
 - (1) Acquiring a facility—or an improvement to a facility—through a series of minor construction projects;
 - (2) Splitting a project solely to:
 - (a) Avoid an approval requirement; or
 - (b) Circumvent a statutory funding limitation;
 - (3) Splitting a project if the resulting sacrifice of economy of scale increases the cost of the construction (e.g., building several small buildings instead of one large building); and

- (4) Undertaking concurrent work to avoid the MILCON reprogramming approval procedures (e.g., using O&M funds to augment a construction project).
- c. However, OPNAVINST 11010.20F, para. 6.2.1.b, permits a shore activity to undertake an UMMC project before a “specified” military construction project to satisfy an urgent requirement if the UMMC project will provide a complete and usable facility during a specific period of time.
- d. In addition, OPNAVINST 11010.20F, para. 6.2.1.b, permits a shore activity to undertake an UMMC project after a “specified” military construction project to satisfy a new mission requirement that develops after the BOD of the “specified” project.
- e. OPNAVINST 11010.20F, para. 6.2.3, only permits multiple minor construction projects in a single facility if:³⁵
 - (1) They satisfy unrelated/dissimilar purposes;
 - (2) They are not dependent on each other;
 - (3) They are not contiguous; and
 - (4) Each project will result in a complete and usable improvement to the facility.

³⁵ Cf. OPNAVINST 11010.20F, para. 6.2.1.a (imposing similar requirements for construction work involving multiple facilities).

IX. CLASSIFYING THE WORK.

A. Construction.

1. Statutory Definition. 10 U.S.C. § 2801(a). Military construction includes any construction, development, conversion, or extension carried out with respect to a military installation.

2. Regulatory Definition. See AR 415-15, para. 2-3a, and Glossary, sec. II; AR 415-32, Glossary, sec. II; AR 420-10, Glossary, sec. II; DA Pam 420-11, para. 1-6c; AFI 32-1021, paras. 3.2. and 4.2; AFI 32-1032, para. 5.1.1; AFI 65-601, vol. 1, atch 1; OPNAVINST 11010.20F, ch. 6, para. 6.1.1. Construction includes:
 - a. The erection, installation, or assembly of a new facility.

 - b. The addition, expansion, extension, alteration, conversion, or replacement of an existing facility.
 - (1) An addition, expansion, or extension is a change that increases the overall physical dimensions of the facility.

 - (2) An alteration is a change to the interior or exterior arrangements of a facility that improves its use for its current purpose. But see “New” DOD Definition, para. IX.B.2.b.(2), below.

 - (3) A conversion is a change to the interior or exterior arrangements of a facility that permits its use for a new purpose.

 - (4) A replacement is the complete reconstruction of a facility that has been damaged or destroyed beyond economical repair.

- c. The relocation of a facility from one site to another.³⁶
 - (1) A facility may be moved intact, or disassembled and later reassembled.
 - (2) Work includes the connection of new utility lines, but excludes the relocation of roads, pavements, or airstrips.
 - (3) Relocation of two or more facilities into a single facility is a single project.
- d. Installed equipment made part of the facility. Examples include built-in furniture, cabinets, shelving, venetian blinds, screens, elevators, telephones, fire alarms, heating and air conditioning equipment, waste disposals, dishwashers, and theater seats.
- e. Related site preparation, excavation, filling, landscaping, or other land improvements.³⁷

B. Maintenance and Repair.

- 1. Maintenance and repair projects are not construction. AR 420-10, Glossary, sec. II; AFI 32-1032, para. 1.3.2; OPNAVINST 11010.20F, ch. 3, para. 3.1.1, and ch. 4, para 4.1.1. Therefore, maintenance and repair projects are not subject to the \$500,000 O&M limitation on construction.³⁸ See 10 U.S.C. § 2811(a) (specifically permitting the Secretary of a military department to use O&M funds to carry out repair projects for “an entire single-purpose facility or one or more functional areas of a multipurpose facility”).

³⁶ The Secretary of a military department must notify the appropriate committees of Congress before using UMMC funds to transfer or relocate any activity from one base or installation to another. Military Construction Appropriations Act, 2002, Pub. L. No. 107-64, § 107, 115 Stat. 474 (2001).

³⁷ This includes the foundation, site work, and utility work associated with the setup of a relocatable building. DA Pam 420-11, para. 1-6c(6).

³⁸ But see 10 U.S.C. § 2811. If the estimated cost of a repair project exceeds \$5 million, the Secretary concerned must approve the project in advance. 10 U.S.C. § 2811(b). If the estimated cost of a repair project exceeds \$10

2. Definitions.

a. Maintenance.

- (1) AR 420-10, Glossary, sec. II, defines maintenance as the “work required to preserve or maintain a facility in such condition that it may be used effectively for its designated purpose.” It includes work required to prevent damage and sustain components (e.g., replacing disposable filters; painting; caulking; refastening loose siding; and sealing bituminous pavements). See DA Pam 420-11, para. 1-6a.
- (2) AFI 32-1032, para. 4.1.1, defines maintenance as “work required to preserve real property and real property systems or components and prevent premature failure or wearing out of the same.” It includes: (a) work required to prevent and arrest component deterioration; and (b) landscaping or planting work that is not capitalized. See AFI 65-601, vol. 1, attch 1.
- (3) OPNAVINST 11010.20F, para. 4.1.1, defines maintenance as “the day-to-day, periodic, or scheduled work required to preserve or return a real property facility to such a condition that it may be used for its designated purpose.”
 - (a) The term “maintenance” includes work undertaken to prevent damage to a facility that would be more costly to repair (e.g., waterproofing and painting interior and exterior walls; seal-coating asphalt pavement; resealing joints in runway concrete pavement; dredging to previously established depths; and cleaning storage tanks).

million, the Secretary concerned must notify the appropriate committees of Congress of: (1) the justification and current cost estimate for the project; and (2) the justification for carrying out the project under this section. 10 U.S.C. § 2811(d).

- (b) Maintenance differs from repair in that maintenance does not involve the replacement of major component parts of a facility. It is the work done to:
 - (i) Minimize or correct wear; and
 - (ii) Ensure the maximum reliability and useful life of the facility or component.

b. Repair.

- (1) Statutory Definition. 10 U.S.C. § 2811(e). A “repair project” is defined as a project to restore a real property facility, system, or component to such a condition that the military department or agency may use it effectively for its designated functional purpose.
- (2) “New” DOD Definition. DOD Reg. 7000.14-R, vol. 2B, ch. 8, para. 080105. See Memorandum, Deputy Comptroller, Office of the Under Secretary of Defense (Program/Budget), subject: Definition for Maintenance and Repair (2 July 1997) [hereinafter DOD Repair Memorandum]. The term “repair” means to restore a real property facility, system, or component to such a condition that the military department or agency may use it effectively for its designated functional purpose.

- (a) When repairing a facility, the military department or agency may:
 - (i) Repair components of the facility by replacement; and
 - (ii) Use replacements that meet current building standards or code requirements.³⁹
 - (b) The term “repair” includes:
 - (i) Interior rearrangements that do not affect load-bearing walls; and
 - (ii) The restoration of an existing facility to:
 - (a) allow for the effective use of existing space; or
 - (b) meet current building standards or code requirements (e.g., accessibility, health, safety, or environmental).
 - (c) The term “repair” does not include additions, new facilities, and functional conversions. See 10 U.S.C. § 2811(c).
- (3) Army Definition. AR 415-15, para. 2-3b; AR 420-10, Glossary, sec. II; DA Pam 420-11, paras. 1-6 and 1-7. See Memorandum, Assistant Chief of Staff for Installation Management, subject: New Definition of “Repair” (4 Aug. 1997) [hereinafter DA Repair Memorandum]. The term “repair” means to restore a facility or a facility component to such a condition that the Army may use it effectively for its designated functional purpose.

³⁹ DOD Reg. 7000.14-R, vol. 2B, ch. 8, para. 080105, and AR 415-15, para. 2-3b, provide the same example. Both state that “heating, ventilation, and air conditioning (HVAC) equipment can be repaired by replacement, can be state-of-the-art, and can provide for more capacity than the original unit due to increased demands and standards.” See DA Pam 420-11, para. 1-7h (stating that the Army should use energy and water saving materials whenever feasible).

- (a) The DA Repair Memorandum states that: “The new definition is more liberal and expands [the Army’s] ability to provide adequate facilities for [its] soldiers and civilians;” however, the DA Repair Memorandum also states that: “A facility must exist and be in a failed or failing condition in order to be considered for a repair project.” See DA Pam 420-11, para. 1-7e (stating that “[r]epair means that the facility or facility component has failed, or is in the incipient stages of failing, or is no longer performing the functions for which it was designated”).

- (b) The term “repair” includes:
 - (i) Overhauling, reprocessing, or replacing deteriorated components, parts, or materials;

 - (ii) Correcting deficiencies in failed or failing components to meet current building standards or code requirements if the Army can perform the work more economically by performing it concurrently with the restoration of other failed or failing components;⁴⁰

 - (iii) Relocating or reconfiguring components (e.g., partitions, windows, and doors) during a major repair project if they are replacements for existing components;⁴¹

 - (iv) Relocating or reconfiguring utility systems during a major repair project to meet current building standards or code requirements if the total area or population served by the utility system remains the same; and

⁴⁰ The DA Repair Memorandum indicates that the Army can add a sprinkler system or air conditioning to bring a facility up to applicable standards or codes, provided the facility is in a failed or failing condition.

⁴¹ A major repair project would include gutting the interior of a building.

- (v) Incorporating additional components during a major repair project if: (a) the system is in a failed or failing condition;⁴² and (b) incorporating the additional components makes the replacement system safer and more efficient.
- (c) The term “repair” does not include:
- (i) Bringing a facility or facility component up to applicable building standards or code requirements when it is not in need of repair;
 - (ii) Increasing the quantities of components for functional reasons;
 - (iii) Extending utilities or protective systems to areas not previously served;
 - (iv) Increasing exterior building dimensions; or
 - (v) Completely replacing a facility.
- (4) Air Force Definition. AFI 32-1032, paras. 4.1.2 and 5.1.2. See AFI 65-601, vol. 1, atch 1. The term “repair” means to restore real property, real property systems, and real property components to such a condition that the Air Force may use it effectively for its designated functional purpose. However, AFI 32-1032, para. 4.1.2, specifically states that real property, real property systems, and real property components “need not have failed to permit a repair project.” (emphasis added).

- (a) The term “repair” includes:

⁴² Under certain circumstances, the Army may classify a utility system or component as “failing” if it is energy inefficient or technologically obsolete. See AR 420-10, Glossary, sec. II.

- (i) Replacing existing heating, ventilation, and air conditioning equipment with “functionally sized,” state-of-the-art equipment;
 - (ii) Rearranging or restoring the interior of a facility to: (a) allow for the effective use of existing space; or (b) meet current building standards or code requirements (e.g., accessibility, health, safety, seismic, security, or fire);⁴³
 - (iii) Removing or treating hazardous substances for environmental restoration purposes unless the work supports a construction project;
 - (iv) Replacing one type of roofing system with a more reliable or economical type of roofing system;
 - (v) Installing exterior appurtenances (e.g., fire escapes, elevators, ramps, etc.) to meet current building standards, code requirements, and/or access laws; and
 - (vi) Installing force protection measures outside the footprint of the facility.
- (b) The term “repair” does not include:
- (i) Expanding a facility’s foundation beyond its current footprint;
 - (ii) Elevating or expanding the “functional space” of a facility;

⁴³ Moving load-bearing walls is construction. AFI 32-1032, para. 4.1.2.1.2.

- (iii) Increasing the “total volume” of a facility;
- (iv) Installing previously uninstalled equipment unless required to comply with accessibility, health, safety, seismic, security, or fire standards and codes;
- (v) Relocating a facility;
- (vi) Upgrading unpaved surfaces;
- (vii) Increasing the dimensions of paved surfaces unless required to comply with Air Force standards or applicable code requirements;
- (viii) Changing the permanent route of real property transportation systems;
- (ix) Installing walkways, roadway curbs, gutters, underground storm sewers, bicycle paths, jogging paths, etc;
- (x) Completely replacing the vertical section of a facility and a substantial portion of its foundation;
- (xi) Completely replacing a facility;
- (xii) Converting a facility or portion of a facility from one functional purpose to another;⁴⁴ or
- (xiii) Repairing a facility if the repair work exceeds 70% of the facility’s replacement cost.⁴⁵

⁴⁴ Repair work required regardless of a functional conversion may still be repair work. AFI 32-1032, para. 5.1.2.3.2.

c. Navy Definition. OPNAVINST 11010.20F, para. 3.1.1.⁴⁶ The term “repair” refers to “the return of a real property facility to such condition that it may be effectively utilized for its designated purposes, by overhaul, reconstruction, or replacement of constituent parts or materials which are damaged or deteriorated to the point where they may not be economically maintained.”

(1) The term “repair” includes:⁴⁷

- (a) The modification or addition of building or facility components or materials to meet current safety, building, or environmental codes (e.g., correcting seismic or life safety deficiencies; installing fire protection; and removing asbestos containing materials);
- (b) Minor additions to components in existing facilities to return the facilities to their customary state of operating efficiency (e.g., installing additional partitions while repairing deteriorated partitions);
- (c) The replacement of components with higher quality or more durable components if the replacement does not substantially increase the capacity or change the function of the component;
- (d) The replacement of energy consuming equipment with more efficient equipment if:
 - (i) The shore activity can recover the additional cost through cost savings within 10 years;

⁴⁵ This limit does not apply to facilities on a national or state historic register. In addition, the SAF/MII can waive it under appropriate circumstances. AFI 32-1032, para. 5.1.2.3.3.

⁴⁶ This regulatory provision pre-dates the DOD’s new definition of repair. See DOD Repair Memorandum.

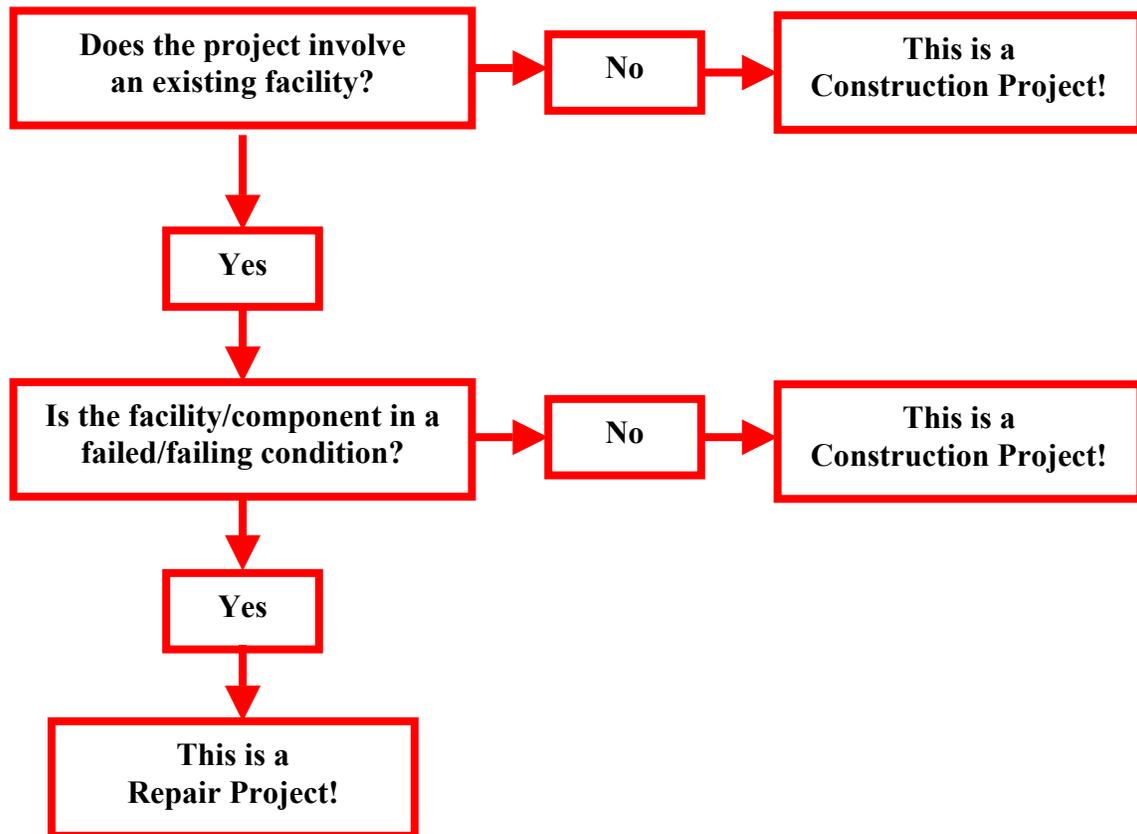
⁴⁷ OPNAVINST 11010.20F, para. 3.1.3, contains several additional examples of repair projects.

- (ii) The replacement does not substantially increase the capacity of the equipment; and
- (iii) The new equipment provides the same end product (e.g., heating, cooling, lighting, etc.).

(2) The term “repair” does not include:

- (a) Additions, expansions, alterations, or modifications required solely to meet new purposes or missions;
- (b) The extension of facility systems or components to areas the shore activity is not repairing and/or areas not previously served;
- (c) Increases to exterior facility dimensions or utility plant capacity; and
- (d) Alterations to quarters to meet current DOD or Navy design standards.

3. Analysis.



4. Concurrent Work. AR 420-10, para. 4-6a; AFI 32-1032, paras. 3.4.3 and 4.1.2.2.5.

- a. A military department or agency can normally do construction, maintenance, and repair projects simultaneously as long as each project is complete and usable.
- b. A military department must treat all the work as a single construction project if:
 - (1) The work is so integrated that the department or agency may not separate the construction work from the maintenance and repair work; or

- (2) The work is so integrated that each project is not complete and useable by itself.

X. DETERMINING THE FUNDED/UNFUNDED COSTS OF THE PROJECT.

- A. Applicability of Project Limits. AR 420-10, Glossary, sec. II; AFI 65-601, vol. 1, para. 9.13.3; OPNAVINST 11010.20F, ch. 2, para. 2.1.1. Project limits only apply to funded costs.
- B. Funded Costs. DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170203; AR 415-32, para. 2-5a; AR 420-10, para. 4-6c, and Glossary, sec. II; DA Pam 420-11, Glossary, sec. II; AFI 32-1021, attach 1; AFI 65-601, vol. 1, para. 9.13.3; OPNAVINST 11010.20F, para. 2.1.1.e.
 1. Funded costs are costs chargeable to the appropriation designated to pay for the project.
 2. Funded costs include, but are not necessarily limited to:
 - a. Materials, supplies, and services applicable to the project;⁴⁸
 - b. Installed capital equipment;⁴⁹
 - c. Transportation costs for materials, supplies, and unit equipment;⁵⁰

⁴⁸ AR 420-10, para. 4-6c, specifically includes government-owned materials, supplies, and services as funded costs. See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 070102.I.6 (prohibiting DOD components from using materials, supplies, or items of installed equipment on their own minor construction projects on a non-reimbursable basis); AR 415-32, para. 2-5a(1) (including materials, supplies, and services furnished on a non-reimbursable basis by other military departments and defense agencies); DA Pam 420-11, Glossary, sec. II (stating that “Army owned materials, supplies, or items of installed capital-type equipment must be charged to construction projects as funded project costs”).

⁴⁹ Items of equipment that are “movable in nature and not affixed as an integral part of a facility” or “detachable without damage to the building or equipment” are unfunded costs because they are funded from O&M, RDT&E, or procurement appropriations. DOD Reg. 7000.14-R, vol. 3, ch. 17, paras. 170304 and 170305.

- d. Civilian labor costs;
 - e. Overhead and support costs (e.g., leasing and storing equipment);
 - f. Supervision, inspection, and overhead costs charged when the Corps of Engineers, the Naval Facilities Engineering Command, or the Air Force serves as the design or construction agent;
 - g. Travel and per diem costs for military and civilian personnel;⁵¹
 - h. Operation and maintenance costs for government-owned equipment (e.g., fuel and repair parts); and
 - i. Demolition and site preparation costs.
- C. Unfunded Costs. DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 170301; AR 415-32, para. 2-5b; AR 420-10, para. 4-6f, and Glossary, sec. II; AFI 32-1021, atch 1; AFI 65-601, vol. 1, para. 9.14; OPNAVINST 11010.20F, para. 2.1.1.f.
- 1. Unfunded costs are costs that:
 - a. Contribute to the military construction project;
 - b. Are chargeable to appropriations other than those available to fund the project; and
 - c. Are not reimbursed by appropriations available to fund the project.

⁵⁰ The cost of transporting unit equipment is a funded cost if the equipment is being transported solely for the construction project; otherwise, it is an unfunded cost (i.e., where the construction project is part of a larger activity, such as an annual training exercise). AR 415-32, para. 2-5a(9) and b(1).

⁵¹ Travel and per diem costs for military personnel are funded costs if these costs are incurred solely for the construction project; otherwise, they are unfunded costs (i.e., where the construction project is part of a larger activity, such as an annual training exercise). AR 415-32, para. 2-5a(10) and b(2).

2. Unfunded costs include, but are not necessarily limited to:
 - a. Military and civilian prisoner labor;
 - b. Depreciation of government-owned equipment;⁵²
 - c. Materials, supplies, and equipment obtained for the project on a non-reimbursable basis as excess distributions from another military department or federal agency.⁵³
 - d. Licenses, permits, and other fees chargeable under:
 - (1) A State or local statute; or
 - (2) A status of forces agreement (SOFA);
 - e. Unfunded civilian fringe benefits;
 - f. Gifts from private parties;⁵⁴
 - g. Contract or in-house planning and design costs;⁵⁵ and
 - h. Donated labor and material.⁵⁶

⁵² Equipment maintenance and operation costs are funded costs.

⁵³ Transportation costs are funded costs.

⁵⁴ The acceptance of monetary gifts may violate the Miscellaneous Receipts Statute. 31 U.S.C. § 3302(b). “Fisher Houses” at major military and VA medical centers are a prime example of donated construction funding. The houses, donated by Zachary and Elizabeth Fisher, provide comfortable places for families to stay while attending to sick or injured family members. To date, the Fishers have completed, or are in the process of completing 32 Fisher Houses. See, <http://www.fisherhouse.org/>.

⁵⁵ See DOD Reg. 7000.14-R, vol. 3, ch. 17, para. 070102.I.4 (stating that planning and design costs are excluded from the cost determination for purposes of determining compliance with 10 U.S.C. § 2805). But see OPNAVINST 11010.20F, para. 2.1.1.f. (stating that planning and design costs are funded costs in design-build contracts).

3. Report unfunded costs to higher headquarters even though they do not apply toward the military construction appropriation limitations.

XI. SELECTING THE PROPER APPROPRIATION.

A. Statutory Thresholds.

1. If the approved cost of the project is \$750,000 or less (\$1.5 million if the project is intended solely to correct a deficiency that threatens life, health, or safety), use O&M funds.
2. If the approved cost of the project is between \$750,000 and \$1.5 million (\$3 million if the project is intended solely to correct a deficiency that threatens life, health, or safety), use UMMC funds.
3. If the approved cost of the project is greater than \$1.5 million, use “specified” MILCON funds.

B. Exceeding a Statutory Threshold. AR 415-15, app. B, para. B-4a; AFI 32-1021, para. 4.7.

1. Exceeding a statutory threshold violates the Purpose Statute and may result in a violation of the Antideficiency Act. See AR 415-15, app. B., para. B-4a.
2. When a project exceeds—or is expected to exceed a statutory threshold—the department or agency must:
 - a. Stop all work immediately;
 - b. Review the scope of the project and verify the work classification;
and

⁵⁶ The acceptance of donated labor may violate the prohibition against accepting voluntary services. 31 U.S.C. § 1342.

- c. Consider deleting unnecessary work.⁵⁷
 3. If the project still exceeds the statutory threshold, the department or agency must correct the Purpose violation by deobligating the improper funds and obligating the proper funds.
 4. In addition, the department or agency should attempt to avoid a final Antideficiency Act report by obtaining proper funds that were available:
 - a. When the violation occurred;
 - b. When the violation was discovered and corrected; and
 - c. Continuously between the date of the violation and the date of correction.⁵⁸
- C. Authorized Variations.⁵⁹ 10 U.S.C. § 2853; AR 415-15, paras. 5-16 and 5-17; AFI 65-601, vol. 1, para. 9.4.3; AFI 32-1021, para. 4.6.5; OPNAVINST 11010.20F.
 1. Cost Increases.

⁵⁷ The department or agency must avoid project splitting. Therefore, the department or agency should only delete truly unnecessary work. AR 415-15, app. B, para. B-4b(3).

⁵⁸ Obtaining the proper funds (i.e., funds that meet the 3-part test) does not obviate the commander's obligation to investigate and report the alleged Antideficiency Act violation. See 31 U.S.C. §§ 1351, 1517; OMB Cir. A-34, para. 32.1, DOD Reg. 7000.14-R, vol. 14, chs. 4-7; Memorandum, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller), subject: Supplemental Guidance to AR 37-1 for Reporting and Processing Reports of Potential Violations of Antideficiency Act Violations [sic] (Aug. 17, 1995); DFAS-IN 37-1, ch. 4, para. 040204.

⁵⁹ These authorized variations apply only to "specified" military construction projects. 10 U.S.C. § 2853. They do not generally apply to UMMC projects. However, 10 U.S.C. § 2805(a)(1) permits the Secretaries of the military departments to carry out UMMC projects "within an amount equal to 125 percent of the amount authorized by law for such purpose." In addition, 10 U.S.C. § 2863 permits the SECDEF and the Secretaries of the military departments to use unobligated funds appropriated to the department and available for military construction or family housing construction to pay meritorious contractor claims arising under military construction contracts or family housing contracts "[n]otwithstanding any other provision of law."

- a. The Secretary of a military department may increase the cost of a “specified” military construction project by the lesser of:
 - (1) 25% of the appropriated amount; or
 - (2) 200% of the UMMC ceiling (i.e., \$3 million).
 - b. However, the Secretary concerned must first determine that:
 - (1) The increase is required solely to meet unusual variations in cost; and
 - (2) The military department could not have reasonably anticipated the cost variation at the time Congress originally approved the project.
2. **Scope Decreases.** The Secretary of a military department may also reduce the scope of a “specified” military construction project by not more than 25% of the amount approved for the project.
 3. **Notification Requirements.** The Secretary concerned must notify the appropriate committees of Congress of any cost increases or scope reductions that exceed the authorized variations.

XII. VERIFYING THE IDENTITY OF THE PROPER APPROVAL AUTHORITY.

A. Approval of Construction Projects.

1. Army. AR 415-15, app. B; AR 420-10, para. 4-3a.
 - a. MACOM commanders may approve – or delegate approval authority for – UMMC projects costing \$750,000 or less (\$1.5 million or less if the project is intended solely to correct a deficiency that threatens life, health, or safety).⁶⁰
 - b. The Deputy Assistant Secretary of the Army for Installation and Housing (DASA(IH)) approves UMMC projects costing between \$750,000 and \$1.5 million. AR 415-15, app. B.
2. Air Force. AFI 32-1032, paras. 1.4 and tbl 1.1; AFI 65-601, vol. 1, tbl 9.1.⁶¹
 - a. The Deputy Assistant Secretary of the Air Force (Installations) (SAF/MII) has delegated approval authority for UMMC projects costing \$500,000 or less to the Civil Engineer (AF/ILE).⁶²
 - b. The SAF/MII approves UMMC projects costing between \$500,000 and \$1.5 million.

⁶⁰ MACOM commanders may delegate their approval authority to MACOM staff or subordinate commanders, who may then redelegate the authority. AR 420-10, para. 4-3a.

⁶¹ These regulatory provisions pre-date the amendment that increased the statutory threshold for O&M projects to \$500,000.

⁶² The AF/ILE may further delegate this authority. AFI 32-1032, para. 1.4.

3. Navy. OPNAVINST 11010.20F, app. B, tbl 1.
 - a. The Commanding Officer (C.O.) or Major Claimant approves projects costing \$300,000 or less (\$1 million or less if the project is intended solely to correct a deficiency that threatens life, health, or safety).
 - b. The Chief of Naval Operations (CNO) approves projects costing between \$300,000 and \$500,000.
 - c. The Assistant Secretary of the Navy (Installations & Environment) (ASN(I&E)) approves projects costing between \$500,000 and \$1.5 million (\$3 million if the project is intended solely to correct a deficiency that threatens life, health, or safety).
4. Congressional notification and approval is required for projects expected to exceed \$1.5 million. AR 415-15, app. B, para. B-2f; AFI 32-1032, para. 3.5.4; OPNAVINST 11010.20F, tbl 1.

B. Approval of Maintenance and Repair Projects.⁶³

1. Army. AR 420-10, para. 4-5.
 - a. MACOM commanders may normally approve – or delegate approval authority – for maintenance and repair projects costing \$2 million or less.⁶⁴
 - b. HQDA approves maintenance and repair projects costing \$2 million or more.

⁶³ Before a military department can carry out a repair project that costs more than \$5 million, the Secretary concerned must approve the project. 10 U.S.C. § 2811(b). In addition, if the project costs more than \$10 million, the Secretary concerned must notify the appropriate committees of Congress in writing. 10 U.S.C. § 2811(d).

⁶⁴ MACOM commanders may delegate their approval authority to MACOM staff, subordinate commanders, or installation commanders, who may then redelegate the authority. AR 420-10, para. 4-3a.

2. Air Force. AFI 32-1032, paras. 3.7 and 4.4.1.
 - a. Installation commanders have unlimited approval authority for maintenance projects.
 - b. The AF/ILE may approve – or delegate approval authority for – repair projects costing \$5 million or less.
 - c. The SAF/MII approves repair projects costing more than \$5 million.

3. Navy. OPNAVINST 11010.20F, app. B, tbl. 1.
 - a. The C.O. approves recurring maintenance projects, specific maintenance projects costing \$1 million or less, and general repair projects costing \$1 million or less.
 - b. The Major Claimant approves specific maintenance projects costing \$1 million or more and general repair projects costing between \$1 million and \$5 million.
 - c. The ASN(I&E) approves general repair projects costing \$5 million or more.

XIII. CONCLUSION.

- A. Use a structured methodology to analyze construction funding issues.
- B. Document rationale for funding decisions.
- C. Different rules may apply during overseas exercises and contingency operations.



DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON DC 20310-0104

February 22, 2000

MEMORANDUM FOR ASSISTANT SECRETARY (FINANCIAL MANAGEMENT
& COMPTROLLER)

SUBJECT: Construction of Contingency Facility Requirements

This memorandum supercedes a memorandum from this office dated January 21, 1997, subject as above, regarding the proper funds to use for construction of facilities to support military operations.

Operation and Maintenance, Army appropriations are the appropriate funding source for acquisition of materials and/or cost of erection of structures during combat or contingency operations, as defined in 10 U.S.C. Section 101(a)(13) that are clearly intended to meet a temporary operational requirement to facilitate combat or contingency operations. Such structures may not be used for the purpose of satisfying requirements of a permanent nature at the conclusion of combat or contingency operations. Military Construction, Army appropriations shall be used in all other situations, including all construction used after the termination of military operations necessitating the construction, except those minor construction projects authorized pursuant to 10 USC Section 2805(c).

A handwritten signature in black ink, appearing to read "M. RERES".

Matt Reres

Deputy General Counsel
(Ethics & Fiscal)



DEPARTMENT OF THE ARMY
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND
1777 HARDEE AVENUE SW
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO
ATTENTION OF

AFEN-ENO

06 MAR 00

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Funding and Approval Authority

1. References:

- a. Memorandum, AFPI-ENO, 7 Dec 98, SAB.
- b. AR 420-10, Management of Installation Directorates of Engineering and Housing, 15 Apr 97.

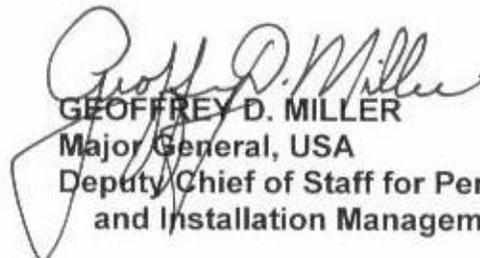
2. The purpose of this memorandum is to provide installation commanders an updated, consolidated listing of Engineer funding and approval limitations. The enclosed table provides the different levels of approval authority and supersedes reference 1a.

3. Installation commanders are authorized to delegate their approval authority to their staff as necessary, except as otherwise noted. Installations must document Life, Health and Safety (LHS) deficiencies and verbally discuss with FORSCOM prior to approving minor construction projects using Operation and Maintenance, Army (OMA) funds (L account).

4. All appropriated funded and non-appropriated funded projects requiring approval by higher headquarters will be forwarded to FORSCOM, ATTN: AFEN-ENO. For non-appropriated funded (NAF) projects, also provide a copy to this headquarters, ATTN: AFPI-MWS. For more information, contact Muthu Kumat at this headquarters, AFEN-ENO, DSN 367-5311 or COMM 404-464-5311, E-mail address: kumarm@forscom.army.mil, or FAX: DSN 367-7751/7697.

FOR THE COMMANDER:

Encl


GEOFFREY D. MILLER
Major General, USA
Deputy Chief of Staff for Personnel
and Installation Management

AFEN-ENO

SUBJECT: Funding and Approval Authority

DISTRIBUTION:

COMMANDER

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U.S. ARMY RESERVE COMMAND, ATTN: AFRC-CG



MILITARY CONSTRUCTION, ARMY (MCA) OPERATION AND MAINTENANCE, ARMY (OMA) FUNDING LIMITATIONS, APPROVAL AUTHORITIES

PROJECT REQUIREMENT	HQDA	FORSCOM	Installation	Reference
I. Military Construction, Army (MCA)				
a. Major MCA	Not Authorized	Not Authorized	Not Authorized	AR 415-15
b. Unspecified Minor MCA (UMMCA)	\$1.5M (1.) \$3M (3.)	Not Authorized	Not Authorized	AR 415-15 App. B PL 104-106, 10 USC, Sect 2811
II. Operation & Maintenance, Army (OMA)				
a. Maintenance (K-Account)	>\$3M (2.)	\$3M	\$3M	AR 420-10 FORSCOM Memo, 11 DEC 95
b. Repair (K-Account)	>\$3M (2.)	\$3M	\$3M (4.)	AR 420-10 FORSCOM Memo, 11 DEC 95
1. If repair cost, including alterations, is greater than 50% of facility replacement cost	>\$500K (2.)	Delegated	\$500K (4.)	AR 420-10 FORSCOM Memo, 11 DEC 95
c. Minor Construction (L-Account)	Not Applicable	Delegated	\$500K \$1M (3.)(4.)	PL 104-106 10 USC, Sect 2811 AR 415-15 & 420-10

(1.) Assistant Chief of Staff for Installation Management (ACSIM) approval. (2.) Assistant Secretary of the Army (ASA IL&E) approval. (3.) **Correction of life, health or safety (LHS) deficiencies. Installation must document the LHS deficiencies and verbally review with FORSCOM before giving approval.** (4.) Installation commander can approve repair or alteration work on WWII Temporary buildings in excess of \$20/SF, but cannot redelegate (FORSCOM memo 17 Mar 95)



ARMY FAMILY HOUSING FUNDING LIMITATIONS, APPROVAL AUTHORITIES

PROJECT REQUIREMENT	HQDA	FORSCOM	Installation	Reference
I. New Construction (BP 1000)	\$2M per Project; (4.)	Not Authorized	Not Authorized	AR 210-50
II. Improvements/Revitalization (BP 6000)	\$2M per Project; <\$50K/DU (4.)	Not Authorized	Not Authorized	AR 210-50
III. Maintenance & Repair (BP 1920) (Non-GEOQ)				
a. Per Project	>\$1M (1.)	Delegated	<\$1M (1.)	AR 210-50
b. Per DU	>\$20K (1.) (2.) <\$50K (3.)(7.)	Delegated	<\$20K (1.)	AR 210-50 PL 106-52
IV. Operations, Maintenance, & Repair (O&M)- (GFOQ)				
a. Single Major M&R project per DU per yr	>\$20K (1.) (2.)(7.)	Delegated	<\$20K	AR 210-50 PL 106-52
b. Total M&R per DU per yr	>\$25K (2.)(6)(7.)	Delegated	<\$25K	AR 210-50 PL106-52
c. O&M per DU	>\$50K (5)(7.)	Delegated	<\$50K	AR 210-50 PL106-52

- (1.) Project cost will not exceed 50% of dwelling unit replacement cost and includes incidental improvements.
 (2.) Projects must be reported to Congress one year prior to planned obligation. (3.) Fire or natural disaster damaged DU.
 (4.) If funding is available within existing amount appropriated by Congress. All projects authorized and appropriated by Congress.
 (5.) ASA-O&M greater than \$50K when maintenance and repair (BP 1920) is less than \$25K. (6.) Includes M&R of security and antiterrorism measures. Excludes work associated with communications equipment required by occupants to perform their mission.
 (7.) Lead Based Paint & Asbestos abatement which cause total project cost to exceed \$20K/DU can be approved by HQDA.



ARMY FAMILY HOUSING FUNDING LIMITATIONS, APPROVAL AUTHORITIES

PROJECT REQUIREMENT	HQDA	FORSCOM	Installation	Reference
V. Incidental Improvements (BP 1920) per DU per FY	>\$3K (1.)	Delegated	<\$3K (1.)(4.)	AR 210-50
a. Per Project	>\$500K	Delegated	<\$500K	AFPI-ENO 14 JAN 97
VI. AFH Cumulative Major Maintenance, Repair and Incidental Improvements				
b. BP 1920 per DU per FY	> \$20K (4.)	Delegated	\$20K	AR 210-50
VII. M&R (BP 1920) with concurrent improvements per DU	M&R > \$20K (2.) Improvement \$50K (3.)	Delegated	Total \$20K(5) Improvement \$3K (1) (4.)	AR 210-50

Notes: (1.) Limit for improvements to quarters of family having an exceptional family member is \$ 20K, DAİM-FDH-F, Memo, 27 Oct 99, Subject: Interim Policy Change, AFH Maintenance and Repair (M&R) Limitation. (2.) Projects must be reported to Congress one year prior to planned obligation. (3.) Reprogram under BP 1000 or BP 6000. (4.) Incidental improvements cannot increase size of DU, increase # of rooms, add A/C, or add new or alter garages, carports, storage sheds, detached facilities, patios, decks, porches, perimeter fencing, or lawn sprinkler systems. (5) Includes costs for concurrent incidental improvements and excludes costs for asbestos and lead-based paint abatement.



NON-APPROPRIATED FUNDS (NAF) REAL ESTATE, OTHER PROCUREMENT FUNDING LIMITATIONS, APPROVAL AUTHORITIES

REQUIREMENT	HQDA	FORSCOM	Installation	Reference
I. Non-Appropriated Funds (NAF)				
a. NAF Minor Construction	Not Authorized	\$200-\$500K	\$200K	AR 415-19/215-1 AFPI-MWS MEMO 6 Feb 98
b. Combined NAF/APF or Special Const	Unlimited	Delegated	500K (APF) \$200K (NAF)	AR 415-19/215-1
c. NAF Maintenance	Unlimited	Delegated	\$2M (1.) (2.)	AR 420-10/215-1
d. NAF Repair				
1. Cost < 50% of facility replacement cost	Unlimited	Delegated	\$2M (1.) (2.)	AR 420-10/215-1
2. Cost, including alteration, is greater than 50% of facility replacement cost	Unlimited	Delegated	\$500K	AR 420-10/215-1
II. Real Estate				
a. Short-Term Leases	Not Applicable	Not Applicable	\$500	C1 to AR 405-10
b. Initiate Acquisition Actions				
1. Requests	Not Applicable	Unlimited	Unlimited	AR 405-10
2. Acquisition Report	Not Applicable	Not Authorized	Not Authorized	AR 405-10
3. Lease Execution	Not Applicable	Not Authorized	Not Authorized	AR 405-10
(Listing Continues Next Page....)				

(1.) M&R projects over \$500K will be reported to USA CFSC along with annual capital purchase and construction budget.

(2.) Installation Commanders must certify that no APF funds are available if NAF are used .



NON-APPROPRIATED FUNDS (NAF) REAL ESTATE, OTHER PROCUREMENT FUNDING LIMITATIONS, APPROVAL AUTHORITIES

REQUIREMENT	HQDA	FORSCOM	Installation	Reference
II. Real Estate (continued...)				
c. Approve Disposal (Form 337)	Not Applicable	>\$200K	\$200K	AR 405-90
d. Reports of Availability				
1. Special Events	Not Applicable	Not Authorized	(4.)	AR 405-80
2. Other New - Time Frame	>5 Years	5 years	Not Authorized	AR 405-80
3. Renewals - Time Frame	Not Applicable	Delegated	5 years	AR 405-80
III. Other Procurement				
a. Base Level Commercial Equipment (BCE) (with OPA funds)	Not Applicable	Not Applicable	>\$100K	PL 104-61, Sect 8065
b. Noncentrally managed commercial Equipment (BCE) (with OMA funds)	Not Applicable	Not Applicable	<\$100K	PL 104-61, Sect 8065
c. Centrally managed commercial Design Vehicles (with OPA funds)	Unlimited (3.)	None	None	AR 58-1
d. Noncentrally managed commercial Design Vehicles (with OMA funds)	Not Applicable	<\$100K	None	AR 58-1
e. Relocatable Building	<\$100K & <1 yr (1.) >\$100K & >1 yr (2.)	Delegated	\$50K/ 1 year	AR 420-18 FORSCOM Memo, 27 Apr 95
1. Lease				
2. Lease Extension	<\$100K & <1 yr (1.) >\$100K & >1 yr (2.)	Delegated	\$50K/ 1 year	AR 420-18 FORSCOM Memo, 27 Apr 95
3. Transfers (Other Locations)	<\$100K & <1 yr (1.) >\$100K & >1 yr (2.)	Delegated	\$50K/ 1 year	AR 420-18 FORSCOM Memo, 27 Apr 95
4. Purchase	No Authority (1.) Unlimited (2.)	Not Authorized	Not Authorized	AR 420-18
5. Continued Use Beyond 3 years	No Authority (1.) Unlimited (2.)	Not Authorized	Not Authorized	AR 420-18

Notes: (1.) ACSIM can approve. (2.) Assistant Secretary of the Army (ASA) can approve. (3.) Tank Automotive Command can approve. (4.) Seven (7) consecutive days or up to 30 days in a 12-month period.

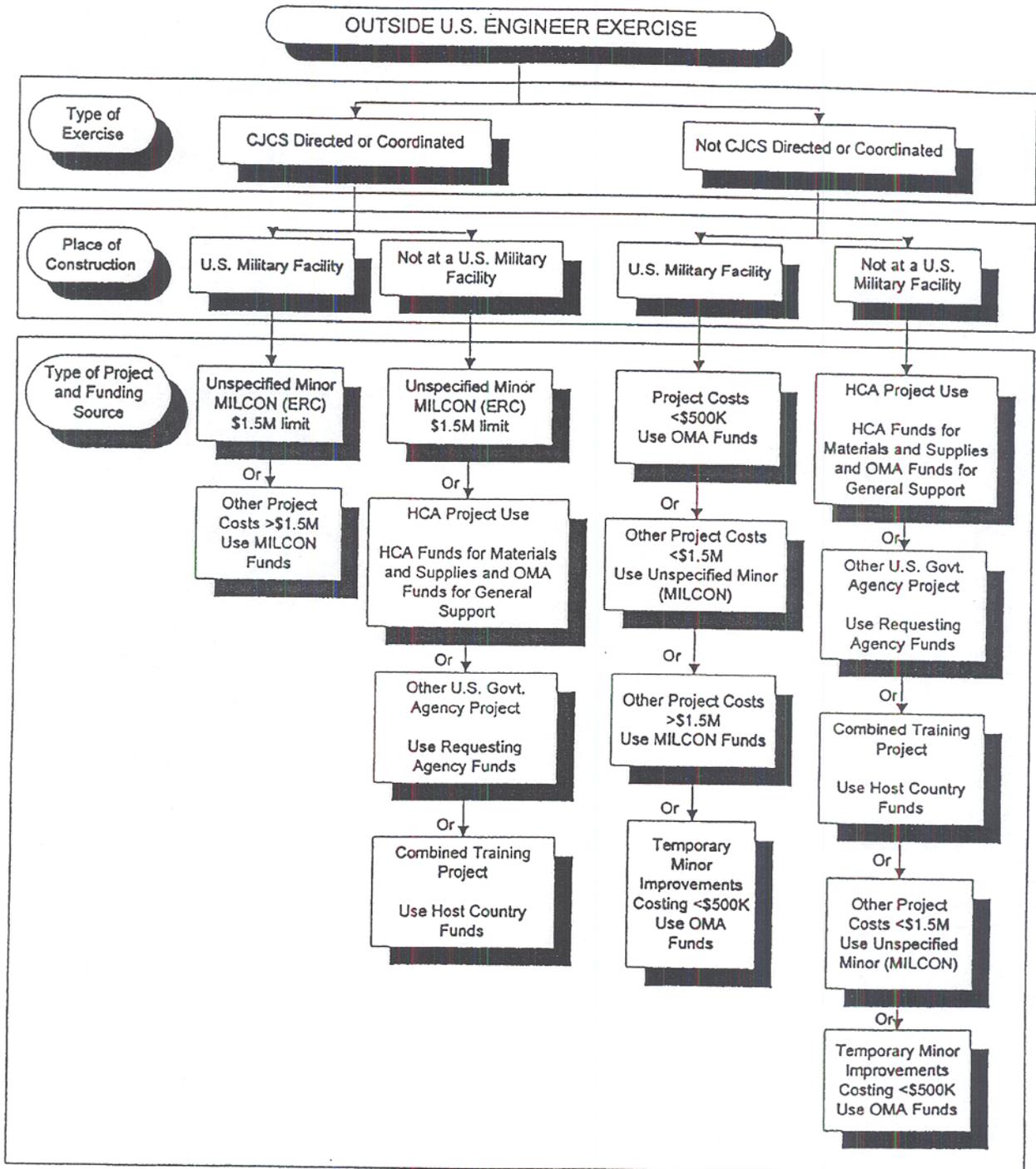


Figure 3-1. Engineer Exercise Conducted Outside the United States