USA

DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

APR 1 2004

ACQ FYI 04-011

MEMORANDUM FOR SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE
CHAIRMAN, JOINT CHIEFS OF STAFF
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Use of Operation and Maintenance Appropriations for Construction During Fiscal Year 2004

This memorandum implements section 2808 of the National Defense Authorization Act for Fiscal Year 2004, and provides guidance on the use of operation and maintenance appropriations for construction activities pursuant to that section.

Section 2808 authorizes the Secretary of Defense to use funds available for operation and maintenance to carry out military construction projects outside the United States that the Secretary determines meets each of the following conditions:

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

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

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

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

The total amount of construction projects that can be carried out under section 2808 using operation and maintenance funds is limited to $200 million. The Secretary of Defense may waive this limitation if the Secretary determines that it is vital to national security, and notifies Congress of the reasons for the waiver.

OSD 04476-04

Section 2808 also requires the Secretary of Defense to submit to the cognizant congressional committees, within seven days after operation and maintenance funds are obligated for a construction project, notice that includes the following:

- Certification that the conditions specified in subsection (a) of section 2808 are satisfied with regard to the construction project.
- A description of the purpose for which operation and maintenance funds are being obligated.
- All relevant documentation detailing the construction project.
- An estimate of the total amount obligated for the construction project.

In addition, the Secretary of Defense must submit, not later than 30 days after the end of each quarter of fiscal year 2004, a report on obligation and expenditure of operation and maintenance funds during that quarter for construction projects.

Accordingly, the following procedures will apply to the use of operation and maintenance appropriations for construction activities during FY 2004 under section 2808:

- The Military Department or Defense Agency will submit candidate construction projects to USD(C). The request will include a description and estimated cost of the project (use attached format and provide DD 1391 if available). The request will also include a certification by the Secretary of the military department (or his designee) or Director of the Defense Agency that the project meets the conditions in subsection (a) of section 2808.

- The USD(C) will review the candidate projects in coordination with the USD(AT&L) and the Director of Joint Staff.

- The USD(C) will notify the Military Department or Defense Agency when to proceed with the construction project.

- Not later than 24 hours after the obligation of operation and maintenance funds for the project, the Military Department or Defense Agency will fax the attached form (with the bottom portion completed) and DD 1391 to the USD(C). Explain any differences from the original request.

- Not later than 15 days after the end of each quarter of FY 2004, the Military Department or Defense Agency will submit to the USD(C) a spreadsheet showing obligation and expenditure for each construction project during that quarter. Explain any adjustments to the data previously submitted to USD(C).

The Under Secretary of Defense (Comptroller) is delegated the authority and assigned the responsibility of the Secretary of Defense to make such determinations and certifications, issue such waivers, and submit such notifications and reports as may be required under section 2808.

Paul Wolfowitz

Enclosure

cc: USD(AT&L)
USD(C)

PROJECT TITLE
(Complete a separate sheet for each project)

Installation: (Identify base/camp/town/city/country)

Authorization: Public Law 108-136, Section 2808

Estimated Cost: (Estimated cost of the project, including contingency and S&A)

Description: (Describe the project in sufficient detail to enable readers to understand what is to be constructed. If a DD Form 1391 is available for the proposed project, summarize here the information contained in block 10 of that form. Do not use this paragraph to justify the project – that should be done in the Justification paragraph below.)

Justification: (Explain why this project is necessary, and what the impact will be if this project is not approved. If a DD Form 1391 is available for the proposed project, summarize here the "Requirement," "Current Situation," and "Impact If Not Provided" paragraphs contained in block 11 of that form.)

Source of Funds:
a. FY/Appropriation: (e.g., FY 2004/O&M, Army/BA title/Subactivity)

b. Reason for Availability of Funds: (explain why the funds are available and the impact of not funding the operation and maintenance activity)

Planned Contract Award Date:

FUNDS OBLIGATION DATA
(Complete and email/fax the following information to OUSD(C) within 24 hours after the funds are obligated for the above project.)

a. Date of contract award:

b. Date Funds Obligated:

c. Amount Obligated:

d. Amount remaining to be obligated (if applicable) and a brief explanation of what part of the project that remain to be obligated.

e. Provide any additional information relevant to the project and explain any variance in the amount obligated compared to the original estimate for the project.