



Department of Defense INSTRUCTION

NUMBER 4270.37

May 18, 2011

USD(P)

SUBJECT: Unspecified Minor Military Construction Projects Pursuant to DoD Counterdrug Authority

- References:**
- (a) DoD Directive 5111.1, "Under Secretary of Defense for Policy (USD(P)), December 8, 1999
 - (b) Section 1004 of Public Law 101-510, "The National Defense Authorization Act for FY 1991," November 5, 1990, as amended
 - (c) Section 1022 of Public Law 108-136, "The National Defense Authorization Act for FY 2004, November 24, 2003, as amended
 - (d) Sections 2801 and 2805 of title 10, United States Code

1. PURPOSE. This Instruction:

a. Establishes policy, assigns responsibilities, and provides procedures in accordance with the authority in Reference (a) for unspecified minor military construction funded through the use of DoD operation and maintenance funds appropriated for drug interdiction and counterdrug activities pursuant to Reference (b).

b. Supersedes all previous guidance regarding unspecified minor military construction projects pursuant to Reference (b).

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within DoD (hereinafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that DoD counternarcotics funds may be used for unspecified minor military construction under certain conditions:

a. Unspecified minor military construction may be undertaken pursuant to Reference (b) for projects to establish or operate bases of counterdrug operations or training in support of the counterdrug activities of Federal, State, local, and foreign law enforcement agencies. This support may also be provided to foreign military organizations that conduct counternarcotics law enforcement activities.

b. Joint task forces supporting foreign law enforcement or military organizations that perform counternarcotics law enforcement activities may also, subject to applicable laws and regulations, provide unspecified minor military construction support for law enforcement agencies conducting counterterrorism activities in accordance with section 1022 of Public Law 108-136, as amended (Reference (c)).

5. RESPONSIBILITIES

a. Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats (DASD(CN>)). The DASD(CN>), under the authority, direction, and control of the Under Secretary of Defense for Policy, through the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and Interdependent Capabilities, shall approve or disapprove military construction requests, and shall comply with all reporting requirements to Congress for unspecified minor military construction projects executed under DoD counternarcotics authorities. However, for projects undertaken under the authority of Reference (C), the Secretary of Defense shall make the determinations and perform the functions required by paragraph d.2. of Reference (C). Such projects may be commenced only after the end of a 21-day period beginning on the date on which the written notice required by Reference (b) is received by Congress.

b. Commanders of the Combatant Commands (CCDRs). The CCDRs, through the Chairman of the Joint Chiefs of Staff, shall vet unspecified minor military construction projects in accordance with this Instruction prior to submitting projects for approval to the DASD(CN>).

6. PROCEDURES. See Enclosure.

7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective upon its publication to the DoD Issuances Website.


Michèle A. Flournoy
Under Secretary of Defense for Policy

Enclosure
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ENCLOSURE

PROCEDURES

1. USING COUNTERNARCOTICS FUNDS FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION

a. The CCDR will submit unspecified minor military construction requests to the DASD(CN>) for approval.

b. DASD(CN>) shall notify Congress when required by section 1004(h) of Reference (b). Notification to Congress will be prepared by the DASD(CN>). For military construction performed pursuant to Reference (b), notice to Congress under section 2805(b) of title 10, United States Code (Reference (d)) is not required.

2. PROJECT SCOPING AND DEFINITION

a. Responsibilities. The determination of project scope will be made by the CCDR. The Combatant Command legal office will review and coordinate all project request documentation to ensure engineer scoping and project definition decisions are not erroneous or otherwise improper. The mission requirements are an important element in the engineer's decision process; the engineer must consult with mission requirements officials and others. For any proposal for construction at a single location that includes multiple facilities with a total estimated cost of more than \$1.8 million dollars, the Combatant Command proposal will include an analysis by the project engineer that addresses project scoping and definition. This analysis will include an explanation for the engineer's conclusions regarding whether facilities are interdependent or interrelated. An important factor in project scope determinations will be the language in the request for support. This request, required by section 1004(a) of Reference (b), shall state the purpose of the proposed project and identify all facilities necessary to achieve that purpose. A project may not be split or incrementalized in an attempt to circumvent the statutory cost ceiling.

b. Engineering Judgment. Facility(ies) work scoping, classification, and project definition decisions are engineering judgments. The engineer judgment must be sound and based in good faith when determining what constitutes a complete and usable facility(ies) or a complete and useable improvement to an existing facility(ies). There are no exceptions to standard project scoping procedures for unspecified minor military construction undertaken pursuant to Reference (b). Generally, the threshold question for the engineer should be: What requirement is this construction project intended to satisfy? In turn, satisfying the requirement should define the scope of the construction project. Combatant Commands will ensure that project definitions and scoping decisions are supported in the project approval file by clear explanations and rationale.

c. Interrelated Vice Interdependent. Project scope determinations include an analysis of whether individual facilities, as defined by section 2801 of Reference (d), are interrelated or

interdependent. Interdependent facilities are those that are mutually dependent in performing the function for which they were constructed, and so constitute one complete and usable facility and must be funded as a single project subject to the statutory cost ceiling of section 2805 of Reference (d). A facility(ies) whose mission function is independent of the mission function of any other facility on the site is interrelated. One characteristic of an interrelated, but not interdependent, facility is that the facility will be able to fully perform its mission even if all other facilities were cancelled. A base consisting of many interrelated facilities may be built, but those facilities minimally required for the operation or mission of the base are considered interdependent.

GLOSSARY

PART I. ACRONYMS AND ABBREVIATIONS

CCDR Commanders of the Combatant Commands

DASD(CN>) Deputy Assistant Secretary of Defense for Counternarcotics and Global Threats

PART II. DEFINITIONS

facility. Defined in section 2801 of Reference (d).

statutory cost ceiling. Established in section 2805 of Reference (d), and is currently 2 million dollars.

unspecified minor military construction project. Defined in section 2805 of Reference (d).