

# **ENGINEERING & CONSTRUCTION Bulletin**

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Type: Policy

**Subject:** Proper Use of Military Construction (MILCON) Funds**1. Purpose.**

a. The authorized uses of MILCON design and construction funds are defined in Title 10 USC Chapter 169 and related congressional report language. DoD Financial Management Regulation (FMR), Volume 3, Chapter 17, provides further direction. To ensure the proper use of design and construction funds within these authorities, the following guidance applies to all design and construction efforts funded from the Family Housing Construction and Improvements (FHCON), Military Construction (MCON), Military Construction Reserves (MCNR), and Base Realignment and Closure Construction (BRACON) accounts. This guidance supersedes all previous COMNAVFACENGCOM guidance on this subject, and must be followed when executing all Navy MILCON programs as well as MILCON work for other military services and Defense agencies. If the policies of the non-Navy customers differ, refer any questionable issues to headquarters MILCON.

b. This replaces NAVFACENGCOM policy on this subject issued by policy memo March 31, 2004. Changes include:

- (1) Clarification of NEPA versus other kinds of environmental requirements that are considered “advance planning” requirements;
- (2) The use of MILCON SIOH rather than design funds for preparation of Land Planning Reports for land acquisition after congressional authorization; and
- (3) Elimination of the use of MILCON construction funds to temporarily protect, preserve, or mitigate damage to archaeological objects or findings discovered during construction.

**2. Background.** DoD policy directs that design funds may be used up to the award of the construction contract. Construction funds must be used for all design products and services after award of the construction contract. Design products and services after construction contract award include post-construction award services (PCAS) which is a subcategory of design funded by construction funds.

**3. Policy.**

a. **Planning.** Congress has directed that operation and maintenance (O&M) funds be used for advance planning purposes. MILCON design or construction funds shall not be used for advance planning requirements. Examples of specific items considered within the definition of “advance planning” include but are not limited to:

- (1) Master plan or Base Electronic Systems Engineering Plan (BESEP) development.
- (2) Site selection efforts, including preliminary site investigation and utility analysis for the purpose of determining a suitable site for a MILCON project.
- (3) Development of project requirements, concept studies, an economic analysis, and DD 1391

documentation (except for cost certification effort) required as part of the budget development, justification and submission process.

- (4) Studies, documentation, consultation or other efforts necessary to meet other federal, state or local environmental requirements (e.g. Fish and Wildlife, NOAA, SHPO, EPA).
- (5) Development of a Preliminary Hazards Analysis (PHA), or any radiation contamination, asbestos, radon or other hazardous substance investigations/surveys necessary to quantify the remediation required for budget and NEPA purposes.
- (6) Preservation activities associated with historic properties and archaeological sites, including investigation, documentation and consultation (e.g. state historic preservation office (SHPO) recordation effort), any subsequent documentation of further study required by agreement, and recovery/salvage. Mitigation entailing the physical preservation or protection of historically significant items may be funded by MILCON construction funds if included in the enacted DD Form 1391.

**b. Design.**

- (1) Design products and services funded with MILCON design funds prior to award of the construction contract include but are not limited to all direct and indirect costs related to:
  - (a) Architectural and engineering (A&E) services required to produce designs, architectural plans, drawings, specifications, interior designs and requests for proposals (RFP) for MILCON projects, whether performed by contract or by in-house personnel.
  - (b) All in-house efforts related to the oversight and approval of A&E products and services performed before construction contract award.
  - (c) Comprehensive site investigations, soils analysis, value engineering studies, etc directly in support of a project design solution whether accomplished by contract, in-house or Navy personnel. Such efforts are not included if they are considered “advance planning” products and services as described in paragraph 3a.
  - (d) Preparation of cost estimates, including cost certification efforts related to DD 1391 project teams.
  - (e) Routine radiation contamination (RADCON), asbestos, radon or other hazardous substance investigations/surveys performed as standard procedure in the absence of advance knowledge or expectation of a problem. Such efforts are not included if they are required to determine the presence or extent (scope) of contamination for the development of project requirements (i.e. as part of the DD 1391 or NEPA documentation efforts), in which case they are considered “advance planning” products and services as described in paragraph 3a.
  - (f) Costs of obtaining environmental/construction permits (e.g. a dredging permit).
  - (g) Minor demolition, destructive, or other investigative work to assist in determining the design requirement.
  - (h) Land Planning Report, including title search, appraisal and final hazardous materials survey costs, to determine fair market value associated with MILCON land acquisition prior to

congressional authorization.

- (i) Preparation of standard designs, design criteria, design manuals, and other overhead costs associated with design programs funded from MILCON appropriations.
  - (j) All efforts related to review and participation on source selection boards for design and construction contracts.
- (2) Design funds must be used for the above purposes up to the award of the construction contract, including the award of a design-build or turnkey contract. Design-build/turnkey contracts are considered “construction” contracts. Design funds may not be used to fund any portion of a design-build/turnkey construction contract or to fund in-house review of design accomplished under the contract, with the exception of projects approved by NAVFACHQ for participation in the Design-Build Early Start Demonstration authorized by PL 108-375 Sec 2807 and PL 109-163 Sec 2807 where design funds shall be used to fund the design portion of the design-build contract. For projects with more than one construction contract (i.e. secondary/follow-on contracts), design funds may be utilized on each separate contract’s design effort until each is awarded for construction. Construction funds must be used after construction contract award for all new “design” purposes.
- (3) Title 10 USC Section 2807 also authorizes the use of MILCON design funds for construction management of projects that are funded by foreign governments directly or through international organizations for which funds would not be available or sufficient for normal U.S. oversight functions, including supervision, inspection and overhead (SIOH) efforts. This authority has limited use, does not apply to construction costs, and should be coordinated with headquarters MILCON if applicable.

**c. Construction.**

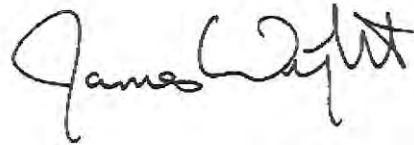
- (1) Construction products and services funded with MILCON project construction funds include any new construction, renovation, repair, land acquisition, built-in equipment and its installation, demolition, and post-construction award services (PCAS). Specific examples considered within this definition include but are not limited to:
  - (a) All facility acquisition or improvement within the scope of the approved DD 1391 cost estimate/description (blocks 9 and 10).
  - (b) The development of field modification proposals/sketches, shop drawings, as-built drawings and OMSI.
  - (c) Environmental and historic preservation mitigation costs if included in the cost estimate and description of work on the DD Form 1391 or if the condition was unknown and unforeseen before the annual CNIC CIB project approval. The mitigation is not eligible for MILCON funding if the condition was known before CIB approval but not included on the DD Form 1391, or if it is something other than the physical preservation or protection of an environmentally sensitive or historically significant item. Other kinds of preservation activities as described in the first sentence of paragraph 3a(6) are considered “advance planning” requirements not eligible for either MILCON design or construction funding.
  - (d) Costs of obtaining initial operating permits, including any continued monitoring efforts required by such approved permits for a period of up to one year after beneficial occupancy.

- (e) Public Works support for utility outages or other services required during construction.
  - (f) Full-scale prototype development that produces a facility ready for its intended use.
  - (g) All SIOH services (ref: NAVFAC INST 7820.1J or current version and FMR Vol 3 Chap 07, Sec 07583) associated with construction, such as construction inspection services; contract administration; project management services; forensic work, consultation by experts, litigation or other costs related to determining A&E or construction contractor liability; post-award evaluations such as post-occupancy evaluations and customer surveys regardless of whether performed in-house or by contract; and preparation of Land Planning Reports, including title search, appraisal and final hazardous materials survey costs, to determine fair market value associated with MILCON land acquisition after congressional authorization of the land acquisition or exchange (per DoD FMR Vol. 3, Chapter 17, Sec. 170204).
  - (h) All PCAS costs, which are design products and services that occur after construction contract award. PCAS costs should not normally exceed 1 percent of the project's total funding requirement. More definitive guidance on the allowable use of PCAS funds will be addressed in a subsequent Engineering & Construction Bulletin. PCAS costs include but are not limited to:
    - 1. Designs for contract changes and post-award interior designs.
    - 2. Review of field modification proposals/sketches (e.g. shop drawings).
    - 3. Development and review of VE proposals.
    - 4. Design support for design-build contracts after contract award, including design review and approval of the design-build contractor's design.
    - 5. Verification of design intent and optimization of system performance to ensure expected energy savings and required performance are achieved, including acceptance testing for high-risk, critical systems (i.e. HVAC, fire protection/ life safety, electrical, vertical transportation, roofs, and underwater structures) and any required special systems certification (e.g. weight handling equipment, shielding, acoustic barrier, etc.).
  - (i) Facility maintenance for up to five years after construction completion for a limited number of projects selected by headquarters to participate in the Design-Build-Commission (DBC) demonstration authorized by P. L. 107-107, Sec. 2814, and P. L. 107-314, Sec. 2813.
  - (j) Temporary facilities only if specifically included in the enacted DD 1391.
  - (k) Design of U.S. requirements in NATO projects, but only when Host Nation Infrastructure Support (HNIS) construction funds have been specifically provided for that purpose via an enacted HNIS DD 1391.
  - (l) All products and services within the scope of a design-build/turnkey contract.
- (2) MILCON construction funds shall not be obligated on a project until the project has received obligation authority via a Funding Authorization Document (FAD) and an approved SD 460 apportionment document. NAVFAC Atlantic and NAVFAC Pacific will be advised and financial controls preventing obligation on the project will be removed when NAVFACENCOM receives the approved SD 460 and corresponding FAD from FMB.



d. **Client Participation.** There is no authority to fund client participation/review of MILCON design or construction products and services from either design or construction MILCON appropriations. Clients should be afforded the opportunity to review design documents and to provide input throughout the design and construction phases of a project (see BMS B1.4 & B1.5), however such client involvement cannot be construed as performing any of the functions eligible for MILCON funding.

e. **Exceptions.** It is recognized that there will be situations where exception to the above guidance is warranted if not precluded by law.



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