SEC. ___. CHANGE IN AUTHORITIES RELATING TO SCOPE OF WORK VARIATIONS FOR MILITARY CONSTRUCTION PROJECTS.

(a) LIMITED AUTHORITY FOR SCOPE OF WORK INCREASE.—Section 2853 of title 10, United States Code, is amended—

(1) in subsection (b)(2), by striking "The scope of work" and inserting "Except as provided in subsection (d), the scope of work";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following new subsection (d):

"(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if—

"(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

"(2) the increase is approved by the Secretary concerned;

"(3) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase in scope and the reasons therefor; and

"(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.".

(b) CROSS-REFERENCE AMENDMENT.—Subsection (a) of such section is amended by striking "or (d)" and inserting "or (e)".

Section-by-Section Analysis

This proposal would allow the Department of Defense (DoD) to increase the scope of a military construction project by up to 10 percent above the amount authorized by Congress after notifying the appropriate committees of Congress and waiting the appropriate time period.

The Department submits its annual requests for military construction projects well before the projects are fully designed. The budget timeline requires DoD to prepare project documentation (including description, size, price, and justification) to Congress for authorization at least 15 months in advance of the award of construction contracts. DoD uses this time to concurrently refine projects and either complete project design work, or prepare packages for soliciting design-build proposals. Therefore, although the functional requirements of a project are generally well defined in a DD Form 1391, for the preceding reasons, the primary and supporting facilities quantities shown are only approximations of the actual quantities that will be needed to fulfill the authorized purpose of the project. Performing more advanced design on the projects to better define the scope quantities on the DD Forms 1391 would not be cost effective, and it would be inconsistent with the design build acquisitions that are used for the majority of projects.

During this 15-month (or longer) period, increases in project scope quantities can occur for generally two reasons. Functional changes are the first reason as DoD Components may refine their facility sizing criteria (e.g., standard designs) to respond to late developing mission changes or to incorporate important lessons learned. Technical design changes are the second reason as designers may identify emerging technologies or life-safety issues that lead to the need for additional space, e.g., thicker wall sections for energy conservation, wastewater collection and reuse, active and passive solar energy collection, high-efficiency heating, ventilating, and air-conditioning (HVAC) components, and egress requirements. Typically, space increases for either reason are modest and may generate no associated increase in overall cost. However, some space increases, primarily associated with functional changes, may exceed five percent.

One example for needing the flexibility to increase scope is in the case where a value-engineering study during design shows that it is more economical for buildings to have self-contained HVAC systems than to be connected to a central energy plant. However, self-contained HVAC systems require larger mechanical rooms that would marginally increase the square footage of a building. Without scope flexibility, the choices would be either to forgo the cost saving measure, reduce the space of needed functional areas, or delay the project for at least one year to obtain authorization of the additional square footage.

The type of acquisition can also spur a need for scope flexibility. Design-build, which has become the most widely used method for executing military construction projects, allows the government, by using requirements based specifications, to benefit from innovation and alternate solutions developed in the private sector. Design-Build allows competing proposers the opportunity to identify efficiencies and alternative engineering solutions that meet the government’s functional requirements within the government’s stated criteria. By restricting a project to the precise square footage and engineering attributes stated in a DD Form 1391, the government would hinder industry's ability to contribute towards better design solutions and undermine many of the benefits achieved under the Design-Build approach. For example, the

military family housing construction program, which started using design-build in the 1970's quickly recognized that for the government to achieve the best value, proposers needed the flexibility to offer their standard homes, which for same number of bedrooms and features still varied slightly in square footage between different home builders.

In view of a DoD Inspector General report on scope of work (DoDIG-2012-057, February 27, 2012), the Department recognizes that there have been situations where insufficient oversight was being provided to ensure the scope authorized by Congress was not being exceeded. As a result, internal management controls are being established to more clearly define and measure scope. Nevertheless, the current prohibition on any increase to facility size is detrimental to providing facilities that support important missions in a timely and cost efficient manner. Without relief, inevitable changes to projects after being submitted to Congress for approval will lead to a number of unfavorable outcomes such as: reducing needed functional space to accommodate required refinements, not adopting lessons learned that would improve mission accomplishment or reduce energy consumption, or even delaying the project for one or more years until a new authorization can be obtained for the increased scope. For DoD to effectively respond to rapidly changing missions, and to demands for the installation enterprise to become more agile and efficient, it is critical that military construction project authorizations have some limited scope flexibility with Congressional notification. Other federal agencies with large construction programs have such flexibility, which provides added reason for the Department's request.

Budget Implications: Allowing increases to the scope of individual authorized projects will not impact overall military construction budgets, as the total construction appropriation would be locked by the time these changes may occur. Moreover, allowing increases to the authorized scope of a project does not necessarily result in a need to increase the project appropriation. This proposal will allow projects to accommodate the most current criteria and technology at the time of construction, within existing project budgets. Also, this scope increase authority will likely be used only rarely. The Department will continue to develop project budget estimates based upon the most current criteria available at the time of budget preparation.

Changes to Existing Law: This proposal would make the following change to section 2853 of title 10, United States Code:

§ 2853. Authorized cost and scope of work variations

(a) Except as provided in subsection (c) or (e), the cost authorized for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased or decreased by not more than 25 percent of the amount appropriated for such project or 200 percent of the minor construction project ceiling specified in section 2805(a), whichever is less, if the Secretary concerned determines that such revised cost is required for the sole purpose of meeting unusual variations in cost and that such variations in cost could not have reasonably been anticipated at the time the project was approved originally by Congress.

(b)(1) Except as provided in subsection (c), the scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project

may be reduced by not more than 25 percent from the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(2) Except as provided in subsection (d), the ~~The~~ scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may not be increased above the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition.

(c) The limitation on cost variations in subsection (a) or the limitation on scope reduction in subsection (b)(1) does not apply if the variation in cost or reduction in the scope of work is approved by the Secretary concerned and—

(1) in the case of a cost increase or a reduction in the scope of work—

(A) the Secretary concerned notifies the appropriate committees of Congress in writing of the cost increase or reduction in scope and the reasons therefor, including a description of the funds proposed to be used to finance any increased costs; and

(B) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title; or

(2) in the case of a cost decrease, the Secretary concerned notifies the appropriate committees of Congress in writing not later than 14 days after the date funds are obligated in connection with the military construction project or military family housing project.

(d) The limitation in subsection (b)(2) on an increase in the scope of work does not apply if—

(1) the increase in the scope of work is not more than 10 percent of the amount specified for that project, construction, improvement, or acquisition in the justification data provided to Congress as part of the request for authorization of the project, construction, improvement, or acquisition;

(2) the increase is approved by the Secretary concerned;

(3) the Secretary concerned notifies the appropriate committees of Congress in writing of the increase in scope and the reasons therefor; and

(4) a period of 21 days has elapsed after the date on which the notification is received by the committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

(e) The limitation on cost variations in subsection (a) does not apply to the following:

(1) The settlement of a contractor claim under a contract.

(2) The costs associated with the required remediation of an environmental hazard in connection with a military construction project or military family housing project, such as asbestos removal, radon abatement, lead-based paint removal or abatement, or any other legally required environmental hazard remediation, if the required remediation could not have reasonably been anticipated at the time the project was approved originally by Congress.

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