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APR 25 2008

GENERAL COUNSEL

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515

Dear Madam Speaker:

The Department of Defense requests that the Congress enact the enclosed legislative proposals as part of the National Defense Authorization Bill for Fiscal Year 2009.

The purpose of each proposal is stated in the accompanying section-by-section analysis.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presenting of these legislative proposals for your consideration and the consideration of the Congress.

Sincerely,

A handwritten signature in black ink that reads "Daniel J. Dell'Orto".

Daniel J. Dell'Orto
Acting

Enclosure:
As stated





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GENERAL COUNSEL

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20515

Dear Mr. President:

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Daniel J. Dell'Orto
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SEC. ____ . AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS

FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

1 (a) IN GENERAL.—Section 2808 of the Military Construction Authorization Act for Fiscal
2 Year 2004 (division B of Public Law 108–136; 117 Stat. 1723), as amended by section 2810 of
3 the Military Construction Authorization Act for Fiscal Year 2005 (division B of Public Law
4 108–375; 118 Stat. 2128), section 2809 of the Military Construction Authorization Act for Fiscal
5 Year 2006 (division B of Public Law 109–163; 119 Stat. 3508), section 2802 of the Military
6 Construction Authorization Act for Fiscal Year 2007 (division B of Public Law 109–364; 120
7 Stat. 2466), and section 2801 of the Military Construction Authorization Act for Fiscal Year
8 2008 (division B of Public Law 110-181; 122 Stat. ____) is amended—

9 (1) in subsection (a)—

10 (A) in the heading, by striking "TEMPORARY AUTHORITY" and inserting
11 "IN GENERAL";

12 (B) in the matter preceding paragraph (1), by striking "During fiscal year
13 2004, and, subject to subsection (d)(2), fiscal years 2005 through 2008, the
14 Secretary of Defense may use this section as authority to obligate" and inserting
15 "The Secretary of Defense may obligate"; and

16 (C) in paragraph (1), by inserting "declared by the Secretary of Defense"
17 before the period at the end;

18 (2) by redesignating subsections (b), (c), (d), (e), (f), and (g) as subsections (c),
19 (d), (e), (f), (g), and (h), respectively;

20 (3) by inserting after subsection (a) the following new subsection (b):

21 "(b) WAIVER OF CONDITIONS.—(1) The Secretary of Defense may waive the conditions

1 of paragraphs (2) and (3) of subsection (a) if the Secretary determines that construction of
2 additional capabilities or capacity at long-term installations located in Afghanistan is vital to
3 support urgent operational requirements as described in paragraph (1) of subsection (a).

4 "(2) Consistent with the prenotification requirements described in subsection (c), the
5 Secretary of Defense shall submit to the congressional subcommittees specified in subsection (g)
6 notice containing reasons for the waiver.";

7 (4) in subsection (e)(1), as redesignated by paragraph (2)—

8 (A) by striking "30 days" and inserting "45 days"; and

9 (B) by inserting "under the authority of this section" after "United States";

10 (5) subsection (h), as redesignated by paragraph (2)—

11 (A) in the heading, by striking "PROJECT NOTIFICATIONS" and inserting

12 "PROJECT OR WAIVER NOTIFICATIONS";

13 (B) by striking "under subsection (d) or the advance notice of the proposed

14 obligation of funds for a construction project require by subsection (b)" and

15 inserting "under subsection (e), the notice of the obligation of funds for a

16 construction project required by subsection (c), or the notice of a waiver granted

17 under subsection (b)"; and

18 (C) by striking "subsection (f)" and inserting "subsection (g)"; and

19 (6) by adding at the end the following new subsection:

20 "(i) TERMINATION OF AUTHORITY.—The authority under this section will expire on

21 December 31, 2010."

22 (b) CLERICAL AMENDMENTS.—Such section is further amended—

1 (1) in subsection (c), as redesignated by subsection (a)(2), by striking "subsection
2 (f)" and inserting "subsection (g)";
3 (2) in subsection (d)(2), as redesignated by subsection (a)(2), by striking
4 "subsection (f)" and inserting "subsection (g)"; and
5 (3) in subsection (e)(1), as redesignated by subsection (a)(2), by striking
6 "subsection (f)" and inserting "subsection (g)".

Section-by-Section Analysis

This section would allow the Secretary of Defense to use funds appropriated for operation and maintenance for construction to meet temporary operational requirements during a time of declared war, national emergency, or contingency operation. This authority would provide basic facilities and infrastructure critical to military operations months and years ahead of the regular annual authorization and appropriation process for construction projects. This legislation will provide continuous, needed support to our commanders and troops during all ongoing and future contingency operations.

This section provides the Congress a pre-notification of the decision to use funds appropriated for operation and maintenance under the conditions set forth in subsection (a). In addition, the Department cannot proceed with execution of these projects until after a 7-10 day waiting period after the pre-notification is delivered to the Congress.

This section adds language allowing the Secretary to waive the long-term base restriction on a "by exception" basis for construction projects in Afghanistan. Currently, Contingency Construction Authority (CCA) is not authorized at installations where the United States is reasonably expected to have a long-term presence. However, from an operational standpoint, the intent for long-term presence at key locations does not preclude the emergence of critical, urgent operational capability requirements at these locations and thus the need for this authority. For example, Bagram and Kandahar are critical locations directly supporting the Operation Enduring Freedom, Operation Iraqi Freedom, and Global War on Terror operations in Afghanistan, and locations for which the Department foresees enduring operational value in the long-term, yet the current CCA does not allow Operation & Maintenance funding to be used for urgent projects at those locations. Waiver authority will enable the Department to have an alternative method of financing critical requirements (other than supplemental requests) at these locations in Afghanistan.

This section provides the Congress a quarterly report on the worldwide obligation and expenditures of funds under this authority, delivered 45 days after the end of the quarter.

This section adds language to make CCA authority valid for two years through December

31, 2010.

**SEC. ____ . DEADLINES FOR STANDARDS REQUIRED FOR ENTRY TO MILITARY
INSTALLATIONS IN UNITED STATES.**

1 Section 1069 of the National Defense Authorization Act of Fiscal Year 2008 (Public Law
2 110-181; 122 Stat. 327) is amended—
3 (1) in subsection (c)(1)—
4 (A) by striking "July 1, 2008" and inserting "February 1, 2009"; and
5 (B) by striking "January 1, 2009" and inserting "October 1, 2012"; and
6 (2) in subsection (c)(2), by striking "implemented".

Section-by-Section Analysis

This section would amend section 1069 of the National Defense Authorization Act for Fiscal Year 2008 to change the dates for the development of standards and for implementation from July 1, 2008 and January 1, 2009, to February 1, 2009 and October 1, 2012, respectively. It also would strike "implemented" from subsection (c)(2) for clarity.

The Department of Defense (DoD) is unable to implement Department-wide standards fully by the statutorily-set date of January 1, 2009. Although the Department can start implementation before that date, full implementation is planned to occur in concert with Federal and State identity verification and security efforts. Among these are the Intelligence Reform and Terrorism Protection Act, the Maritime Transportation Act, multiple National Security Presidential Directives (NSPDs) and multiple Homeland Security Presidential Directives (HSPDs), including HSPD 12. Full implementation of these policies will support enhanced security across Federal departments and agencies, through official Federal identity verification programs such as the Transportation Worker Identification Credential (which affects maritime transport and trucking industry), e Passport (which affects all foreign visitors), Terrorism Watch List Screening, as well as other law enforcement, physical and personnel security identity initiatives. In addition to Federal efforts, the DoD will leverage State-led efforts such as the implementation of the REAL ID ACT (which affects States' driver's licenses and identification cards and Federal recognition of such cards). Further, section 1069 of the National Defense Authorization Act for Fiscal Year (FY) 2008 will require the Department to develop procedures and policy to address the civilian populations who aren't affiliated with the military, but who require physical access to our bases. For example, residents of the town of Quantico, Virginia, whose town is surrounded by Quantico Marine Corps Base; allowance for civilians to travel through Fort Huachuca, Arizona, to and from work due to road accessibility and time (congressional request); provisions for emergency medical support agreements with cities adjacent to posts, such as Fort Sam Houston; unfettered access to national cemeteries located on

military installations; and what screenings can be done for public transport (buses and taxis) and school buses.

The DoD plans to capitalize on these Federal initiatives, particularly HSPD 12, the REAL ID Act and Terrorism Watch Lists to support secure access to the Department's facilities and installations. Critical components to the Department's Physical Security Access Programs are badge and credential requirements and issuance procedures, card security features, identity proofing and vetting, database interfaces, access point widening and construction (vehicle and pedestrian gates and lanes, and entrapment and inspection areas), the DoD-wide installation of interoperable security hardware (readers, computer systems, closed circuit television screens, and barriers) and trained security and law enforcement personnel. Due to the mandated reduction to contract security forces conducting access control screening, the Department will not only need to provide training for the legacy force, but also hire and provide training to a large population of new personnel. DoD-wide comprehensive standards in development will provide visitor access standards equivalent to Federal identity credential processes while also identifying requirements and access procedures for each security level and type facility. Implementation of these standards, in concert with the REAL ID Act, HSPD 12 Federal credentials and other identify verification initiatives implementation programs is projected to be complete at the end of FY 2012.

Cost Implications: The implementation of section 1069 of the National Defense Authorization Act for FY 2008 is not physically feasible by January 1, 2009, as required in the statutory language, for all of the many types of visitors, as well as those who transit the thousands of DoD facilities. Supporting such requirements on the statutory schedule would generate very large unprogrammed costs for the Department. If the Department, however, can implement section 1069 in synchronization with Federal access standards (as amended in this proposal), it will be able to identify and program for any additional costs during the normal budget development cycle.

**SEC. ____ . AUTHORITY TO ACQUIRE PRODUCTS AND SERVICES PRODUCED IN
A CONTINGENCY THEATER OF OPERATIONS OUTSIDE THE
UNITED STATES.**

1 (a) IN GENERAL.—In the case of a product or service to be acquired in support of military
2 operations or stability operations (including security, transition, reconstruction, and humanitarian
3 relief activities) in a contingency theater of operations outside the United States for which the
4 Secretary of Defense makes a determination described in subsection (b), the Secretary may
5 conduct a procurement in which—

6 (1) competition is limited to products or services that are from a country within
7 the contingency theater of operations;

8 (2) procedures other than competitive procedures are used to award a contract to a
9 particular source or sources from a country within the contingency theater of operations;

10 or

11 (3) a preference is provided for products or services that are from a country from
12 within the contingency theater of operations.

13 (b) DETERMINATION.—A determination described in this subsection is a determination by
14 the Secretary that—

15 (1) the product or service concerned is to be used only in the contingency theater
16 of operations outside the United States; or

17 (2) it is in the national security interest of the United States to limit competition,
18 use procedures other than competitive procedures, or provide a preference as described in
19 subsection (a) because—

20 (A) such limitation, procedure, or preference is necessary to provide a

1 stable source of jobs in a country within the contingency theater of operations;
2 and

3 (B) such limitation, procedure, or preference will not adversely affect—

4 (i) military operations or stability operations in the contingency
5 theater of operations; or

6 (ii) the United States industrial base.

7 (c) PRODUCTS, SERVICES, AND SOURCES FROM A CONTINGENCY THEATER OF
8 OPERATIONS.—For the purposes of this section—

9 (1) a product is from a contingency theater of operations outside the United States
10 if it is mined, produced, or manufactured in a country within the contingency theater of
11 operations;

12 (2) a service is from a contingency theater of operations outside the United States
13 if it is performed in a country within the contingency theater of operations by citizens or
14 permanent resident aliens of a country within the contingency theater of operations; and

15 (3) a source is from a contingency theater of operations outside the United States
16 if it—

17 (A) is located in a country within the contingency theater of operations;

18 and

19 (B) offers products or services that are from a country within the
20 contingency theater of operations.

21 (d) DEFINITION.—In this section, the term "contingency theater of operations" means an
22 operational area defined by the Secretary of Defense where a contingency operation as defined in
23 section 101(a)(13) of title 10, United States Code, is being conducted.

Section-by-Section Analysis

This proposal would authorize the Department of Defense to procure goods and services from a foreign country within a contingency theater of operations to support military or stability operations taking place in that contingency theater of operations.

This proposal is wholly consistent with section 886 of the National Defense Authorization Act for Fiscal Year 2008 ("Enhanced Authority to acquire products and services produced in Iraq and Afghanistan") (Public Law 110-181). Section 886 authorizes the Secretary of Defense to establish a preference for the acquisition of products and services in Iraq and Afghanistan for the purpose of providing a stable source of jobs and employment in Iraq and Afghanistan in cases where the preference will not have an adverse effect on U.S. military operations or stability operations in the contingency operation theater country or the U.S. industrial base. This proposal is a logical extension of the authority under section 886 that would be pre-positioned as a tool that could be used in our national interests and serve as a counterinsurgency initiative in the event that the United States were to become engaged in military operations or stability operations (including security, transition, reconstruction, and humanitarian relief activities) in any foreign country other than Iraq or Afghanistan.

This proposal is a result of lessons learned from such U.S. operations in Iraq and Afghanistan, consistent with the President's National Strategy for Victory in Iraq and the U.S. Operational Commander's campaign plan for creating a moderate, stable, and representative Afghanistan and Iraq capable of controlling and governing its respective territory. Specifically, this proposal would authorize the Department of Defense to purchase products, construction materials, or services in support of military operations or stability operations in a contingency theater of operations outside the United States from a country within the contingency theater of operations.

Leading U.S. efforts in Iraq, General David H. Petraeus offered this noteworthy observation: "Empowering Iraqis to do the job themselves has, in fact, become the essence of our strategy — and such an approach is particularly applicable in Iraq. Despite suffering for decades under Saddam, Iraq still has considerable human capital, with the remnants of an educated middle class, a number of budding entrepreneurs, and many talented leaders." Indeed, our military commanders in Iraq and Afghanistan identified unemployment (between 25 and 60 percent in Iraq and 40 percent in Afghanistan) as a major concern that directly affects the security situation because the pool of unemployed locals is available for recruitment by either militias or insurgents. This proposal seeks to secure authority for the Department of Defense to award contracts that provide meaningful opportunities for economic development and expansion for business concerns in a contingency theater of operations as well as entrepreneurship, employment, and skills training for the citizens of any country within the contingency theater of operations. These flexibilities will provide meaningful counterinsurgency options to U.S. warfighters.

This proposal is consistent with recommendations advocated by the Key Elements for Future Success as recently reported by the Commission on Army Acquisition and Program Management in Expeditionary Operations that was chaired by the Honorable Jacques Gansler,

and it is consistent with the objectives of section 849(b) of the National Defense Authorization Act for Fiscal Year 2008.

Cost Implications: It would not increase costs to the government to establish a preference for the acquisition of products and services in a contingency theater of operations outside the United States for the purpose of providing a stable source of jobs and employment in any country within the contingency theater of operations in cases where the preference will not have an adverse effect on U.S. military operations or stability operations in the contingency theater of operations or on the U.S. industrial base.