SEC. 808. CHANGE IN AUTHORITIES RELATING TO SCOPE OF WORK VARIATIONS.

Section 2853(b) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking "The scope of work" and inserting "Except as provided in paragraph (3), the scope of work"; and

(2) by adding at the end the following new paragraph:

"(3) The scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased by not more than 5 percent if the Secretary concerned determines that such increase is necessary to accommodate revised design criteria or new technologies not available at the time of budget submission, but only if the increase in the scope of work does not change the function of the project.".

Section-by-Section Analysis

This proposal would allow the Department of Defense (DoD) to increase the scope of a military construction project for specific reasons by a marginal amount above the size authorized by Congress.

The Department submits its annual requests for military construction projects well before the projects are fully defined and designed. The budget preparation and submission timeline requires project documentation (that includes the project description, size, price, and justification) that DoD submits to Congress for authorization to be prepared 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.

During this 15-month (or longer) period, requirements for facility size may increase without any associated increase or change in the functional purpose (such as the required number of occupants or their mission requirement). This increase generally falls into either of two categories. DoD Components may refine their facility size criteria to accommodate adjustments in user organization (mix of personnel), equipment, or configuration (such as whether to include a common lounge area in unaccompanied enlisted housing, and of what size). Furthermore, facility designers may identify emerging technologies that drive increases in space required for building systems such as wastewater collection and reuse, active and passive solar energy

collection, other renewable energy systems, and high-efficiency HVAC components. Typically, these space increases are modest—less than five percent of the total facility size—and may generate no associated increase in overall cost. However, the current prohibition on any increase to facility size requires a designer to either reduce needed functional space to accommodate these refinements, or ignore them. Both of these outcomes are detrimental to the Department's mission and efficient use of resources.

Budget Implications: Allowing increases to the authorized project scope for the stated reasons will not directly impact military construction budgets. The Department will continue to develop project budget estimates based upon the most current criteria available at the time of budget preparation. This proposal will allow projects to accommodate the most current criteria and technology at the time of construction, within existing project budgets.

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 (d), 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)(1), 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 paragraph (3), ~~T~~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.

(3) The scope of work for a military construction project or for the construction, improvement, and acquisition of a military family housing project may be increased by not more than 5 percent if the Secretary concerned determines that such increase is necessary to accommodate revised design criteria or new technologies not available at the time of budget submission, but only if the increase in the scope of work does not change the function of the project.

(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 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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