

**APPENDIX C**  
**REQUIREMENTS FOR MILITARY CONSTRUCTION (MILCON) APPROPRIATIONS**

1. The U.S. Congress exercises intensive oversight of Military Construction, including construction in the theater of operations. The USACE commander may be required to provide MILCON funding advice to the customer who is providing the funding.

2. The following is provided as the Army's general guidance for determining the proper appropriation for Army construction projects.

a. The term MILCON is all inclusive. It applies to all construction whether funded from Operations and Maintenance, Army (OMA) or Military Construction, Army (MCA) appropriations. The body of law which provides for the OMA funding of small projects is authorized within Title 10, Section 2805(c)(1). It authorizes the use of OMA funds for construction projects up to 20 percent of that authorized for unspecified minor military construction.

b. MILCON funding applies to U.S. funded, contractor and troop executed construction projects for support of U.S. forces. It does not apply to construction in support of others, outside DoD (e.g.; refugee camps, drug interdiction camps for the Drug Enforcement Agency, and facilities for coalition forces).

c. A Deputy Assistant Secretary of the Army for Army Budget (SAFM-BUC-E) message, DTG 241808Z December 1992, subject: "Operation RESTORE HOPE (#2) Cost Estimates" revised Army policy with regard to the use of OMA funds in support of contingencies. It states: "Operations and maintenance funds are the appropriate funding source to be utilized for acquisition of materials and/or cost of erection of structures which are clearly of a temporary operational nature and intended to be used for only a temporary period by operational forces as required to facilitate operations in connection with the Somalia relief effort and which will not be used to sustain permanent or contingency operations at the conclusion of the relief effort. MILCON criteria apply to all other situations, including construction for which the United States would have a follow-on or contingency use after the termination of the military operations necessitating the construction." While this guidance was provided to support a

specific event, it applies to all subsequent operations in support of Army forces.

(1) Therefore, the following conditions must be met to use OMA funding for projects whose costs would otherwise exceed the OMA funding limitations for construction as specified in Section 2805, above.

(a) The construction must be clearly of a temporary nature; not just used temporarily. Some types of commercial building systems which have a relatively long economic life would still be subject to the provisions of Title 10 Section 2805(c)(1) even though the intent is for temporary use.

(b) The project(s) intent must be for use only during the temporary period by operational forces. This means that the project(s) will not be used to sustain operations beyond the end of the contingency for which it was constructed. Care must be taken with regard to any declaration that a given contingency has been concluded and that a sustained operation is in effect. Once a continuing (not necessarily permanent) presence is established, the provisions of Title 10 USC, Section 2805(c)(1) apply.

(c) The project is not on a U.S. owned or operated installation nor an installation with a continuing U.S. presence.

(2) All the provisions of MILCON apply with regard to modification of or improvements to existing host nation facilities for use by U.S. forces. An example of a modification requiring appropriated funds (e.g., MCA) would be the installation of air conditioning, associated up-graded wiring, and insulation to a leased warehouse structure which exceeds the limits for OMA funding per Title 10, USC 2805(c)(1). In this example, the intent may be for temporary use, but, as with improvements to any leased structure, the improvement(s) remain with the structure after U.S. use and are therefore subject to the provisions of Title 10 USC, Section 2805(c)(1).

3. In theater, the USACE commander may have customers from other Services. The issue of the use of their appropriations (military construction or operations and maintenance) is the same as for the Army. However, their guidance may vary from that of the Army which is reflected above. If the differences can not be quickly and successfully resolved in theater, the USACE commander

must quickly advise the USACE chain of command. As a DoD Contract Construction Agent, USACE must take great care to execute its missions within the law.