

ARTICLE 25. VALUE ENGINEERING

25.01 General.

The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (25.06) below.

25.02 Definitions.

"Collateral costs," as used in the clause, means the Commission's costs of operation, maintenance, logistic support, or the Commissions' property.

"Collateral savings" as used in the clause, means those measurable net reductions resulting from a VECP in the Commission's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in the clause, means those costs the Contractor incurs on a VECP, specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by the Commission's acceptance.

"Commission costs," as used in this clause, means those costs incurred by the Commission that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractor's development and implementation costs.

"Value engineering change proposal (VECP)" means a proposal that—

- (1) Requires a change to this, the instant contract, to implement, and
- (2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics of the work.

25.03 VECP Preparation.

At a minimum, the Contractor shall include the information described in subparagraphs (1) thru (7) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- (1) Description of the difference between the existing contract requirement and that proposed, including the comparative advantages and disadvantages of each. A justification when an item's function or characteristics are being altered and the effect of the change on the end item's performance.

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- (2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.
- (3) A separate, detailed cost estimate for (25.06.2) the affected portions of the existing contract requirement and (25.06.2.b) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (25.08) below.
- (4) A description and estimate of costs the Commission may incur in implementing the VECP, such as test and evaluation and operating and support costs.
- (5) A prediction of any effects the proposed change will have on collateral costs to the Commission.
- (6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.
- (7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Commission actions, if known.

25.04 Submission.

The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Authorized Commission Representative.

25.05 Commission action.

1. The Authorized Commission Representative shall notify the Contractor of the status of the VECP within 15 calendar days after the contracting office receives it. If additional time is required, the Commission Representative shall notify the Contractor within the 15-day period and provide the reason for the delay and expected date of the decision. The Commission will process the VECP's expeditiously; however, it shall not be liable for any delay in acting upon VECP.

2. If the VECP is not accepted, the Authorized Commission Representative shall notify the Contractor in writing, explaining the reason for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Commission. The Contractor must provide written notification before undertaking significant expenditures (i.e., expenditures in excess of \$5,000) for any VECP Effort.

3. Any VECP may be accepted, in whole or in part, by the Commission's award of a modification to this contract citing this clause. The Authorized Commission Representative may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Authorized Commission Representative.

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25.06 Sharing.

1. Rates. The Commission's share of savings is determined by subtracting Commission's costs from instant contracts savings and multiplying times 45 percent.

2. Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

- a. Accept the VECP;
- b. Reduce the contract price or estimated costs by the amount of instant contract savings; and
- c. Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

25.07 Subcontracts.

1. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000.00 or more, and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) above, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Commission Representative under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided that these payments shall not reduce the Commissions share of the savings resulting from the VECP.

2. If the Contractor engages an architect, engineer or other consultant to provide professional services pertaining to the development and/or implementation of a VECP, the Contractor's subcontract with any such provider of professional services must name the Commission as a third-party beneficiary to such subcontract, and provide the Commission with a direct right of action against the subcontractor. The Commission and the User Department must also be named as additional insureds on any policy for professional liability insurance held by any such subcontractor for the performance of services on the VECP.

25.08 Data.

The Contractor may restrict the Commission's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts.

"These data, furnished under the Value Engineering – Construction clause of contract, shall not be disclosed outside the Commission or duplicated, used, or disclosed, in whole or part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Commission's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without such limitations. "

If a VECP is accepted, the Contractor hereby grants the Commission unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited right technical data, the Commission shall have the rights specified in the contract modification implementing the VECP and shall

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appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in part 27 of the Federal Acquisition Regulations, available at www.acquisition.gov.)