

PROPOSED SHARED SAVINGS (VALUE ENGINEERING) CLAUSE FOR GPO CONTRACTS OVER \$100,000 OR NEW TECHNOLOGY.

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(a) General. The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below.

(b) Definitions.

Acquisition savings, as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same product. Acquisition savings include -

(1) Current contract savings, which are the net cost reductions on this, the current contract, and which are equal to the current contract cost affected by the VECP, less the Contractor's allowable VECP implementation costs set forth in a change order.

(2) Concurrent contract savings, which are net reductions in the prices of other contracts to which the VECP is applied and for which an IFB or RFP has been issued or a contract awarded at the time the VECP is accepted; and

(3) Future contract savings, which are the future cost reduction on products or services actually purchased (calculated on a contract or unit basis, at the sole discretion of the Contracting Officer) during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities ordered during subsequent renewal or option periods.

Collateral costs, as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property. Examples of collateral costs include the government's cost of using the finished product, mailing or distribution costs, storage costs and multi-media conversion costs.

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

Contracting office includes any contracting office to which the acquisition is transferred.

Contractor's implementation costs, as used in this clause, means those costs the Contractor incurs on a VECP specifically to make the contractual changes required by Government acceptance of a VECP. (NOTE: Contractor's or subcontractor's VECP development costs are not reimbursed or utilized to determine savings.)

Future unit cost reduction, as used in this clause, means the current unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

Government costs, as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative current contract savings.

Current contract, as used in this clause, means this contract, under which the VECP is submitted. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance (which are included under "future contract savings"). If this contract is a fixed-price contract with prospective price redetermination, the term current contract refers to the period for which firm prices have been established.

Current cost reduction means the amount of the decrease in total cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the current contract. For services charged by the hour, the current cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

Negative current contract savings means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable implementation costs over the current contract cost reduction achieved by acceptance of the VECP.

Net acquisition savings means total acquisition savings, including current, concurrent, and future contract savings, less Government costs.

Sharing base, as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

Sharing period, as used in this clause, means the period beginning with acceptance of the first unit or product incorporating the VECP and ending at the later of (1) 3 years after the first unit or product affected by the VECP is accepted or (2) the last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted.

Value engineering change proposal (VECP) means a proposal that -

- (1) Requires a change to this, the current contract, to implement; and
- (2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change -
 - (i) In deliverable end item quantities only;
 - (ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or
 - (iii) To the contract type only.

(c) VECP preparation. As a minimum, the Contractor shall include in each VECP the information described in subparagraphs (1) through (8) below:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the specific contract product to which the VECP applies.

(4) A separate, detailed cost estimate comparing (i) the affected portions of the existing contract requirement and (ii) the contract modified by the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable VECP implementation costs, including any amount attributable to subcontracts.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) 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.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved and previous Government actions, if known.

(d) Submission. The Contractor shall submit VECP's to the Contracting Officer.

(e) Government action.

(1) The Contracting Officer shall notify the Contractor of the status of the VECP within a reasonable time after the contracting office receives it. The Government will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contractor shall not be reimbursed for expenditures for VECP preparation and submission, other than implementation costs, if the VECP is accepted by the Contracting Officer.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. The Contracting Officer's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be final and not subject to the Disputes clause or otherwise subject to litigation or appeal.

(4) Until and unless such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract requirements and schedule. The preparation, submission or consideration of a VECP does not entitle the contractor to a schedule extension.

(f) Sharing rates. If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below.

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS

Contract Type: Fixed-price, Incentive (Submission of VECP is voluntary)

Sharing Arrangement -- Current contract rate: 50%

Sharing Arrangement -- Concurrent and future contract rate: 50

(g) Calculating net acquisition savings.

(1) Acquisition savings are realized when (i) the cost or price is reduced on the current contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative current contract savings (caused by an increase in the contract price required to implement the VECP) have been fully offset against acquisition savings.

(2) Government costs and any price or cost increases resulting from negative current contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

- (h) Contract adjustment. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall –
- (1) When there is an increase in the cost of the work on the current contract (Negative current contract savings) increase the contract price by that amount; when there is a decrease in the cost of the work on the current contract, decrease the contract price by that amount;
 - (2) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;
 - (3) Specify the amount of any Government costs or negative current contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and
 - (4) Provide the Contractor's share of any net acquisition savings under the current contract by adding it to contract price by contract modification.
- (i) Concurrent and future contract savings.
- (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the current contract in a manner deemed appropriate by the Contracting Officer.
 - (2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative current contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.
 - (3) The Contracting Officer shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units actually delivered during the sharing period, (ii) subtracting any Government costs or negative current contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.
 - (4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.
 - (5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no cost settlement method, the following applies:
 - (i) The Contractor will keep all the savings on the current contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed with other sources, savings from all future contracts, and all collateral savings.

(j) Collateral savings. If a VECP is accepted, the current contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (1) the contract's firm-fixed-price, or estimated cost, at the time the VECP is accepted, or (2) \$100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation or appeal.

(k) Relationship to other incentives. Only those benefits of an accepted VECP not rewardable under other incentives shall be rewarded under this clause.

(l) Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for current contract savings (or negative current contract savings), the Contractor's allowable implementation costs shall include any subcontractor's allowable implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) Data. The Contractor may restrict the Government'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 clause of contract - - - - , shall not be disclosed outside the Government or duplicated, used, disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data has been obtained or is otherwise available from the Contractor or from another source without limitations.' If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms unlimited rights and limited rights are defined in part 27 of the Federal Acquisition Regulation.)