

## VALUE ENGINEERING CHANGE PROPOSALS

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### *Contractor Entitled to Costs for VECP*

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#### INTRODUCTION

FAR 52.248-3 “Value Engineering Construction” allows cost recovery by a contractor which develops a more cost-effective method to perform the contract work. In effect, the Scope of Work is reduced because of the contractor’s identification of collateral savings. The collateral savings typically result in the Contracting Officer increasing the “instant contract amount by 20%” but it cannot exceed either the firm fixed-price, estimated cost, or \$100,000 whichever is greater. (See FAR 52.248-3 (g))

The Government is obligated to compensate the contractor for 45% of the contract savings on a fixed-price contract or 75% on a cost-reimbursable contract. The Government has the discretion to accept all or part of any VECP as a unilateral decision. The VECP must not involve a change in delivered end-item quantities only, per FAR 52.248-3 (2)(i). Under [FAR provision 52.248-3](#) (2)(i) through (c) (1-7), the VECP means a proposal that:

*(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; provided, that it does not involve a change –*

*(i) In deliverable end item quantities only; or*

*(ii) To the contract type only,*

*(c)VECP preparation. As a minimum, the contractor shall include in each VECP the information described in subparagraphs (c)(1) through (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: (Items 1-7 below are summarized due to the length of each item)*

*(1) A description of the difference between the existing contract requirement and that proposed, (to include)... advantages and disadvantages...*

*(2) A list and analysis of the contract requirements that must be changed...*

*(3) A separate, detailed cost estimate...*

*(4) A description and estimate of costs the Government may incur...*

*(5) A prediction of any effects the proposed change would have on collateral costs...*

*(6) A statement of the time by which a contract modification...must be issued...*

*(7) Identification of any previous submissions of the VECP...*

Often a contractor will incur and expend substantial costs to develop the VECP itself, plus additional costs to make the contractual changes required by the Government’s acceptance of a VECP. In such instances, the

contractor may perform testing or other physical exploration efforts to arrive at a final VECP for submission to the Government, and the contractor's incurred costs associated with "allowable development and (any) implementation costs" are considered recoverable by the contractor.

## PRIOR CASE INVOLVING VECP

In one such instance, in preparation for a bid on a runway project, the contractor raised its concerns about the soil subgrades and the plasticity of the subgrades at time of bid (See *King Construction Company*, ASBCA No. 38303, (1993)). Borings were taken by the contractor because the Government had not taken borings since the original runway work was performed some 20 years prior. The borings showed that the secondary subgrade had a high plasticity and the Government design specification was defective. The contractor feared that if the Government's design was followed, then "pumping" would occur in the unstable subgrade during construction. The contractor proposed the use of a different method to avoid the "pumping" effort which would increase the costs of performance.

The Government treated the pumping problem as a differing site condition and issued a deductive change order based on the contractor's request for a variance, which was resubmitted as a VECP. Accordingly, the Government deducted costs for the contractor's proposed method. As a result of the deductive change order, the contractor was not permitted to share in the savings achieved by use of the contractor's proposed method (i.e. only the Government would benefit from the cost savings achieved by the proposed method).

The contractor's VECP represented a novel engineering alternative which became reality only after the contractor enterprisingly availed itself of (1) the latest scientific testing techniques and (2) explored the existing bored soil conditions and consulted with a recognized runway expert. The contractor's investment in research and development produced a better, simpler and cheaper design to accomplish the contract's objective.

When this case was appealed to the ASBCA, the Board found that the Government's interpretation of what met the definition of VECP was unreasonable. What the VECP accomplished was not a simple reduction in deliverable end item quantities. Rather, the VECP eliminated, to a large extent, the need for lime stabilization in the subgrade by proper utilization of existing site conditions. The contractor was found entitled to 55% of the savings realized by the unilateral deductive change order. Otherwise, the contractor would have been penalized by deducting costs which reduced the contract price.

## POTENTIAL IMPACT

Contractors should be careful when submitting a VECP to state clearly that the engineering concept does not involve a change in deliverable end item quantities only. Otherwise, the Government may not allow cost sharing for savings associated with the VECP. This could mean a significant loss in the sharing of savings between the contractor and the Government as a direct result of the VECP. Sharing in the savings and benefitting financially from saving money on the project is the purpose of contract clauses governing VECP procedures.

## CONCLUSION

Excell Consulting has professionals who are experienced with VECP submittals and the intricacies of the VECP process. Thus, retaining the assistance of a professional consultant should be seriously considered to protect a contractor's interests properly and thoroughly. The experts at Excell Consulting International, Inc. have experience with Small Businesses and are informed about the standards and requirements, and stand ready to assist and evaluate your company's position and provide valuable and cost-effective guidance for your business.

**In the end, you will be glad you made the call; by the way, it's a FREE CALL.**

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