

INNOVATIVE APPROACHES TO INCREASING CONTRACTOR PARTICIPATION IN THE NEW ACQUISITION ENVIRONMENT

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Ms. Vicki Loewen has been an Industrial Specialist in the Value Engineering (VE) Office at the U.S. Army Missile Command (MICOM) for the past 10 years. She is the VE professional assigned to both the JAVELIN and the Air-to-Ground Project Offices which are responsible for the development of a clause that allows VECP submittals on Performance Specification Contracts. She has a Bachelors degree in Business Administration and is presently working on her CVS.

ABSTRACT

This paper provides the value specialist with innovative approaches to Value Engineering/Value Analysis (VE/VA) under the new acquisition environment. It examines the effects of acquisition streamlining on the VE/VA process and provides examples of Federal Acquisition Regulation (FAR) deviations that extend the sharing period and the sharing and collateral rates and a clause that allows the submittal of VE Change Proposals (VECPs) against a Performance Specification contract.

INTRODUCTION

An aggressive innovative approach to increasing contractor participation in the VE/VA Program is required in light of the new acquisition environment. Program deliverables have been reduced or their deliveries stretched over more years to compensate for lack of funding. Performance specification contracts have resulted in contractor controlled product baselines that do not lend themselves to the submittal and sharing of VECP savings.

SEVEN-YEAR DEVIATION

With the downsizing of the Army, the planned production quantity of many missile systems has been reduced or stretched out over longer delivery periods. As a result, the submission of VECPs has dramatically declined. It became a concern of both

the Government and the contractor that the financial risks of submitting VECPs outweigh the returns. The reduced quantities coupled with the limited sharing period of three years as defined in FAR 52.248-1(b) did not provide adequate incentive for the contractor to expend funds and resources to develop cost reduction engineering proposals. Several U.S. Army Missile Command (MICOM) systems, seeking a solution, requested and received a FAR deviation from the three-year sharing period to a seven-year or specified quantity sharing period. The extension of the sharing period will allow the contractor to not only recoup their development and implementation costs, but to also realize a savings for their effort. The definition of "sharing period" has been modified as follows:

"Sharing period", as used in the clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending 7 years after the first unit affected by the VECP is accepted, except for the [item, i.e., missiles or launchers] for which the sharing period shall end at the sooner of (1) 7 years after the first unit affected by the VECP is accepted or (2) the [item] quantity delivered on all contracts affected by the VECP is [quantity].

SHARING PERIOD AND RATES CLASS DEVIATION

The contracting officer and the contractor have long desired the flexibility of sharing periods and rates to incentivize and reward VECP efforts. The fixed

sharing period, and fixed sharing and collateral savings rates set by FAR for VECPs do not provide the contracting officer with the flexibility needed to induce contractors to seek cost saving changes. It also does not provide adequate incentive for the contractor to expend their funds and resources to develop VECPs. The MICOM submitted three class deviations to the FAR council that would permit contracting officers at MICOM to adjust the sharing period, sharing ratio, and collateral percentages awarded to contractors submitting VECPs. The proposed changes authorize the contracting officers, at their discretion, to make the following changes: The sharing period would change from 3 years to a range of 3 to 5 years, the sharing rate on a firm fixed price contract would change from 50% to a range of 50% to 75% for the contractor, and the contractor shared collateral savings of 20% would range from 20% to 100% of an average year. Each VECP would be reviewed to determine complexity, contractor risk, contractor investment, etc., in determining the share period and rates. The contracting office is required to document the basis for determinations to use a sharing period or rate that is above the prescribed minimum of the available ranges. The contracting officer's decision on the sharing period or rate is final and is not subject to the Disputes Clause or the Contract Disputes Act. Approval of the sharing rate is required at a level above the contracting officer. The Army Material Command (AMC) has recommended approval of the deviation/FAR change request and the Department of the Army (DA) has recommended the changes as part of the FAR rewrite in a letter to the DAR Council on 2 Apr 96. The AMC has since given deviation approval to the the Principal Assistant Responsible for Contracting (PARC) to allow these percentage variations.

VECP CLAUSE UNDER PERFORMANCE SPECIFICATION CONTRACTS

In a performance specification contract, the contractor owns all but a small portion of the configuration data. When the contractor makes a change to their product controlled baseline, they receive all the savings on the instant contract. They also assume all of the risk associated with production and expenditure of funds. On the other side of the coin, the Government receives the savings on all other contracts. Any change that does not affect form, fit, or function cannot be

submitted as a VECP. Few contractors are willing to invest their funding for development and implementation of a change, especially if that investment is quite high. Contractors can add a special clause to their performance specification contract that will allow them to submit changes over a specified dollar amount as a VECP. If approved by the Government, the VECP will be treated as stated in FAR 52.248-1 and FAR part 48.001. The contractor will have to share part of the savings with the Government, but they will be reimbursed for all allowable and allocable development and implementation costs associated with the VECP. A special provision has been developed for use in a performance specification contract that will allow the submittal of VECPs. The provision works as follows: The contractor is required to submit all changes to contractor controlled product baselines which result in net acquisition savings in excess of a specified dollar amount to the Government. The Government will then decide whether to accept the changes as VECPs in accordance with FAR 52.248-1. If the Government rejects the VECP, the contractor can still implement the change but does not share in future savings. Government acceptance of the changes does not constitute Government responsibility for adequacy of the change. The contractor must still meet performance requirements. The contractor must be willing to accept the same provision in future contracts in order to receive royalties on those quantities for past VECPs. While administrative efforts for both the Government and contractor may be more than would normally be expected for changes to contractor controlled data, they should be outweighed by the benefits to both parties of pursuing VECPs. Administrative costs will be considered in negotiating a value for which a VECP must be submitted, reference FAR 1.401(c). In order to claim savings under a VECP, there must be a baseline in place at the time of contract award, and the Government must have access to that baseline. Under a performance contract, the Government accepts the burden of monitoring the VECP changes through the life of the contract. There may be added cost of VECP proposal preparation since it becomes mandatory to submit changes as VECPs if they are above the threshold. The contractor gives up some control of the contract by releasing cost and baseline information.

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