

SECTION 103 SCOPE OF WORK

103.02 **DISPUTES** – Add the following to this Subsection:

- a. Notwithstanding any other provision of the Contract, before the contractor may bring any action law equity relating to any dispute relating to the Contract, including but not limited to claims for wrongful termination or breach, the Contractor must first submit the dispute to administrative resolution and appeal as provided by this clause.
- b. Any dispute between the Commonwealth and the Contractor relating to the performance, interpretation of, or compensation due under the Contract, must be filed in writing with the Director of Procurement Services and with the Secretary of Public Works within ten calendar days after the Contractor obtains knowledge of the facts surrounding the dispute.
- c. The Secretary of Public Works will attempt to resolve the dispute by mutual agreement. If the dispute cannot be settled, either the Contractor or the Contracting Officer may request a decision on the dispute from the Director of Procurement Services. The Director shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a decision that shall include:
 - (i) Description of the dispute;
 - (ii) Reference to pertinent contract terms;
 - (iii) Statement of the factual areas of disagreement or agreement; and
 - (iv) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.
- d. The Director of Procurement Services may require a hearing or that information be submitted on the record, in his discretion.
- e. Whenever the Contractor has a dispute pending before the Secretary of Public Works or the Director of Procurement Services, the Contractor must continue to perform according to the terms of the contract, and failure to so continue shall be deemed to be a material breach of the contract unless the Contractor obtains a waiver of this provision by the Secretary of Public Works.
- f. Paragraphs (b) through (e) are derived from §5-201 of the CNMI Procurement Regulations, and shall be interpreted so as not to be in conflict with the CNMI Procurement Regulations. If an officer of the Commonwealth other than the Secretary of Public Works executes the Contract and Agreement as “expenditure authority”, then that officer shall be substituted for “Secretary of Public Works” in paragraphs (b) through (e).
- g. Disputes arising out of the Labor Standards Provisions of this Contract (if any) shall be subject to this clause, except, to the extent such disputes involve classifications or wage rates contained in the CNMI Title and Pay Plan, which questions shall be referred to the Contracting Officer.
- h. Nothing in this clause shall serve to limit any remedies at law or equity available to the Commonwealth.

- i. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

103.03 VALUE ENGINEERING – Revised this subsection to read as follows:

- a. 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, according to paragraph (f) below.
- b. Definitions. "Collateral costs," as used in this clause, means agency cost of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those reductions resulting from a VECP in the agency's general projected collateral costs, exclusive of acquisition savings, whether the acquisition cost changes.

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

"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 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 VECP, minus allowable Contractor's development and implementation costs, including subcontractor's development and implementation costs (see paragraph (h) below).

"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 provided 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 (1) through (7) below. If the proposed change is affected by the contractual required management configuration or similar procedures, the instructions in those procedures related to the format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

- 1) A description of the difference between the existing contract requirement and that proposed, 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.
 - 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 (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall consider the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) below.
 - 4) A description and estimate of costs the Government 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 would have on collateral costs to the agency.
 - 6) A statement of the time by which a contract modification accepting the VECP must be issued 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 Government actions, if known.
- d. Submission. The Contractor shall submit VECP's to the Contracting Officer Authorized Representative at the work site, with a copy to the Contracting Officer.
- e. Government Action.
- 1) The Contracting Officer shall notify the Contractor of the status of the VECP within 15 calendar days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor immediately and provide the reason for the delay and the expected date of the decision. 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, any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.
 - 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. The Contracting Officer may accept the VECP, although 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 a contract modification applies a VECP to this contract, the Contractor shall perform according to the existing contract. The Contracting Officer's decision to accept or reject

all or part of any VECP shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

f. Sharing.

- 1) Rates: Contractor's share of savings is determined by subtracting the Government costs from instant contract savings and multiplying the result by (I) 55 percent for fixed-price contracts or (ii) 25 percent for cost-reimbursement contracts.
- 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 -
 - (i) Accept the VECP,
 - (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
 - (iii) Provide the Contractor's share of savings by adding the amount calculated under paragraph (1) above to the contract price or fee.

g. Collateral savings. If a VECP is accepted, the instant contract amount shall be increased by 20 percent of any projected collateral savings to be determined 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 determine the amount of collateral savings, and the amount shall not be subject to the Disputes clause or otherwise subject to litigation under 41 U.S.C. 601-613.

h. Subcontracts. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 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 Government 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, if these payments shall not reduce the Government's share of the savings resulting from the VECP.

i. 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-Construction clause of contract shall not be disclosed outside the Government, duplicated, used, or 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 if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor 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.)

103.04 CONTRACTOR RECORDS: - The Following are added to this subsection:

FAILURE TO FURNISH INFORMATION AND RECORDS:

- a. If the Contractor or any subcontractor or the officers or agents of the Contractor or any subcontractor shall refuse or have refused, except as provided otherwise by the terms Contract, to furnish to any Commonwealth agency, or any establishment in the legislative or judicial branch of the Commonwealth, information or records reasonably pertinent to the Contract or any other Commonwealth contract in connection with which the Contractor or any such subcontractors has or shall have performed work or furnished materials or supplies or undertaken so to do, the following action may be taken:
- b. In the case of a refusal by the Contractor, its officers or agents, the Commonwealth may, after affording an opportunity to explain or justify such refusal, terminate the Contractor's right to proceed with the work under the Contract and thereupon the Commonwealth may avail itself of the rights and remedies provided in the "Termination for Default" clause, in addition to any other rights and remedies provided by law or under the Contract.
- c. In the case of a refusal by a subcontractor, its officers or agents, the Commonwealth may, after affording an opportunity to explain or justify such refusal, require the Contractor to terminate the subcontract without cost to the Commonwealth, or if the Contractor fails or refuses to effect such termination, the Commonwealth may terminate the Contractor's right to proceed with the work under the Contract and thereupon the Commonwealth may avail itself of the rights and remedies referred to in the "Termination for Default" clause.

103.05 PARTNERING: - Delete the third to the fifth paragraphs of this subsection.

END OF SECTION 103