

48.102 Policies.

(a) As required by Section 36 of the Office of Federal Procurement Policy Act (41 U.S.C. 401, *et seq.*), agencies shall establish and maintain cost-effective value engineering procedures and processes. Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. Contracting activities will include value engineering provisions in appropriate supply, service, architect-engineer and construction contracts as prescribed by 48.201 and 48.202 except where exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the agency head.

(b) Agencies shall: (1) establish guidelines for processing VECP's; (2) process VECP's objectively and expeditiously; and (3) provide contractors a fair share of the savings on accepted VECP's.

(c) Agencies shall consider requiring incorporation of value engineering clauses in appropriate subcontracts.

(d)(1) Agencies other than the Department of Defense shall use the value engineering program requirement clause (52.248-1, Alternates I or II) in initial production contracts for major systems programs (see definition of major system in 34.001) and for contracts for major systems research and development except where the contracting officer determines and documents the file to reflect that such use is not appropriate

(2) In Department of Defense contracts, the VE program requirement clause (52.248-1, Alternates I or II), shall be placed in initial production solicitations and contracts (first and second production buys) for major system acquisition programs as defined in DoD Directive 5000.1, except as specified in subdivisions (d)(2)(i) and (ii) of this section. A program requirement clause may be included in initial production contracts for less than major systems acquisition programs if there is a potential for savings. The contracting officer is not required to include a program requirement clause in initial production contracts—

(i) Where, in the judgment of the contracting officer, the prime contractor has demonstrated an effective VE program during either earlier program

phases, or during other recent comparable production contracts.

(ii) Which are awarded on the basis of competition.

(e) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b) (see 15.404-4(c)(4)(i)).

(f) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

(g) The contracting officer determines the sharing periods and sharing rates on a case-by-case basis using the guidelines in 48.104-1 and 48.104-2, respectively. In establishing a sharing period and sharing rate, the contracting officer must consider the following, as appropriate, and must insert supporting rationale in the contract file:

- (1) Extent of the change.
- (2) Complexity of the change.
- (3) Development risk (*e.g.*, contractor's financial risk).
- (4) Development cost.
- (5) Performance and/or reliability impact.
- (6) Production period remaining at the time of VECP acceptance.
- (7) Number of units affected.

(h) Contracts for architect-engineer services must require a mandatory value engineering program to reduce total ownership cost in accordance with 48.101(b)(2). However, there must be no sharing of value engineering savings in contracts for architect-engineer services.

(i) Agencies shall establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings.

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48.103 Processing value engineering change proposals.

(a) Instructions to the contractor for preparing a VECP and submitting it to

the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency precedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

(1) The decision to accept or reject a VECP.

(2) The determination of collateral costs or collateral savings.

(3) The decision as to which of the sharing rates applies when Alternate II of the clause at 52.248-1, Value Engineering, is used.

(4) The contracting officer's determination of the duration of the sharing period and the contractor's sharing rate.

[48 FR 42443, Sept. 19, 1983, as amended at 54 FR 5057, Jan. 31, 1989; 64 FR 72449, Dec. 27, 1999]

48.104 Sharing arrangements.

48.104-1 Determining sharing period.

(a) Contracting officers must determine discrete sharing periods for each VECP. If more than one VECP is incorporated into a contract, the sharing period for each VECP need not be identical.

(b) The sharing period begins with acceptance of the first unit incorporating the VECP. Except as provided in paragraph (c) of this section, the end of the sharing period is a specific calendar date that is the later of—

(1) 36 to 60 consecutive months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or

(2) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted.

(c) For engineering-development contracts and contracts containing low-rate-initial-production or early production units, the end of the sharing period is based not on a calendar date, but on acceptance of a specified quantity of future contract units. This quantity is the number of units affected by the VECP that are scheduled to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted. The specified quantity begins with the first future contract unit affected by the VECP and continues over consecutive deliveries until the sharing period ends at acceptance of the last of the specified quantity of units.

(d) For contracts (other than those in paragraph (c) of this subsection) for items requiring a prolonged production schedule (*e.g.*, ship construction, major system acquisition), the end of the sharing period is determined according to paragraph (b) of this subsection. Agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded within the sharing period for essentially the same item,