

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 3-132
Hawaii Administrative Rules

October 14, 1997

SUMMARY

Chapter 3-132, Hawaii Administrative Rules, entitled "Value Engineering Incentives in Construction Contracts", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 132

VALUE ENGINEERING INCENTIVES IN
CONSTRUCTION CONTRACTS

§3-132-1	Definitions
§3-132-2	Applicability
§3-132-3	General provisions
§3-132-4	Conditions for a value engineering change proposal
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§3-132-1 Definitions. As used in these rules:

"Net savings" means those savings in project costs realized by the State as the result of a value engineering change proposal after deducting the contractor's share of the cost savings.

"Single contract" means the single construction for which the cost savings is proposed.

"Value engineering" means an analysis of the requirements for the systems, equipment, and supplies of the single contract for the purpose of achieving a net savings by providing less costly items than those specified without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operations, ease of maintenance, and necessary standing functions.

"Value engineering change proposal" means a cost reduction proposal based on value engineering submitted by the contractor pursuant to this chapter and particularly identified as such. [Eff NOV 17 1997]
(Auth: HRS §§103-49, 103D-202) (Imp: HRS §103-49)

§3-132-2 Applicability. (a) The provisions of this chapter shall apply to all construction contracts in excess of \$100,000. The application of value engineering incentives to contracts shall not be construed to have an effect on the solicitation or the selection of the contractor.

(b) The contractor may develop and submit value engineering change proposals for drawings, designs, specifications, or other requirements of the contract. If any proposal is accepted and approved, in whole or in part, by the procurement officer, the contract shall be modified and shall include an equitable adjustment of the contract price in accordance with this chapter.

(c) This chapter shall not apply to any cost reduction proposal that is not identified as a value engineering change proposal by the contractor at the time of its submission to the procurement officer.
[Eff NOV 17 1997] (Auth: HRS §§103-49, 103D-202)
(Imp: HRS §103-49)

§3-132-3 General provisions. (a) The processing of a value engineering change proposal shall be similar to that for any proposed contract change order and shall be considered only after the construction contract is awarded.

(b) Nothing herein shall be construed to mean that the State must accept or approve any or all value engineering change proposals submitted in accordance with this chapter. The procurement officer's interpretation and findings relative to the impairment of the functions or characteristics of the item or items covered by the value engineering change proposal shall be final.

(c) Adjustment in contract prices and allowances for implementation costs shall be in accordance with this chapter and shall only be considered if and when the value engineering change proposal is approved by the procurement officer. The receipt of the value engineering change proposal by the State or a verbal acceptance of a value engineering change proposal by any employee of the State shall not obligate the State to accept the value engineering change proposal.

(d) The procurement officer may impose, as a condition of acceptance of any value engineering change proposal, a requirement that the contractor warrant the statements, claims, and other information contained in the value engineering change proposal. In addition,

the contractor's responsibility under any such warranty shall be in addition to the liability imposed by the "guarantee of work" requirement as included in the contract.

(e) The contractor shall be responsible for the new design of the facility or a portion of the facility submitted as a value engineering change proposal, including errors and omissions and, if the value engineering change proposal is for a portion of the facility, for any adverse impacts the new design may have on the unchanged portions of the facility.

(f) Attached to this chapter and made a part of this chapter is Exhibit A, titled "Value Engineering Change Proposal", dated 10/14/97, with two attachments that may be used to initiate a value engineering change proposal. [Eff NOV 17 1997] (Auth: HRS §§103-49, 103D-202) (Imp: HRS §103-49)

§3-132-4 Conditions for a value engineering change proposal. (a) A value engineering change proposal to a contract shall:

- (1) Result in an estimated net savings to the State in the project cost of at least four thousand dollars by providing less costly items than or using different construction methods from those specified in the contract without impairing any essential functions and characteristics as service life, reliability, substitutability, economy of operation, ease of maintenance, and necessary standardized features of the completed work;
- (2) Require, in order to be applied to the contract, a change order to the contract; and
- (3) Not adversely impact on the performance schedule or the contract completion date.

(b) As a minimum, the following information shall be submitted by the contractor with each value engineering change proposal:

- (1) A description of the difference between the existing contract requirements and the value engineering change proposal and the comparative advantages and disadvantages of each including durability, service life, reliability, substitutability, economy of operation, ease of maintenance, desired appearance, design, safety standards, impacts due to construction, and other essential or

- desirable functions and characteristics as appropriate;
- (2) An itemization of the requirements of the contract which must be changed if the value engineering change proposal is adopted and a recommendation as to how to make each change;
- (3) An itemized estimate of the reduction in performance costs that will result from adoption of the value engineering change proposal or parts thereof taking into account the costs of implementation by the contractor, including any amounts attributable to subcontractors, and the basis for the estimate;
- (4) A prediction of any effects and impacts the value engineering change proposal would have on: other costs to the State as the costs of State-furnished property, related items, and maintenance and operation over the anticipated life of the material, equipment, or facilities as appropriate; the construction schedule, sequence and time; and bid item totals used for evaluation and payment purposes;
- (5) A statement of the time by which a change order adopting the value engineering change proposal must be issued so as to obtain the maximum cost reduction during the remainder of the contract, noting any effect on the contract time; and
- (6) If previously submitted, the date(s) of any previous submission(s), the contract number(s) of those contract(s) for which it was submitted and the previous action(s) by the State, if known;
- (c) When, in the judgment of the procurement officer, a value engineering change proposal alters the design prepared by a registered professional architect or engineer, the contractor shall ensure the changes to be prepared are by or under the supervision of a registered professional architect or engineer, and stamped and so certified.
- (d) A value engineering change proposal will be processed expeditiously and in the same manner as prescribed for any other proposal which would likewise necessitate issuance of a contract change order. Unless and until a change order applies a value engineering proposal to a contract, the contractor

shall remain obligated to perform in accordance with the terms of the contract and the State shall not be liable for delays incurred by the contractor resulting from the time required for the State's determination of the acceptability of the value engineering change proposal.

The determination of the procurement officer as to the acceptance of any value engineering change proposal under a contract shall be final.

(e) The procurement officer may accept in whole or in part any value engineering change proposal submitted pursuant to this chapter by issuing a change order to the contract. Prior to issuance of the change order, the contractor shall submit complete final contract documents similar to those of the original contract showing the accepted changes and the new design and features as well as the following:

- (1) Design calculations;
- (2) The design criteria used; and
- (3) A detailed breakdown of costs and expenses to construct or implement such revisions.

The change order will identify the final value engineering change proposal on which it is based.

(f) When a value engineering change proposal submitted pursuant to this chapter is accepted under a contract, an equitable adjustment in the contract price and in any other affected provisions of the contract shall be made in accordance with this chapter and the "change order" clause of the contract. The equitable adjustment shall first be established by determining the effect on the contractor's cost of implementing the change, including any amount attributable to sub-contractors and to the State's charges to the contractor for architectural, engineering, or other consultant services and the staff time required to examine and review the proposal. The contract price shall then be reduced by fifty per cent of the net estimated decrease in the cost of performance.

(g) The contractor may restrict the State's right to use the data or information or both on any sheet of a value engineering change proposal or of the supporting data, submitted pursuant to this section, if it is stated on that sheet as follows:

"This data or information or both shall not be disclosed outside the ["State" or "Name of County"], or be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this value engineering change proposal.

This restriction does not limit the ["State" or "Name of County"]'s right to use this data or information or both if obtained from another source, or is otherwise available, without limitations. If this proposal is accepted by the ["State" or "Name of County"] by issuance of a change order to the contract after the use of this data or information or both in such an evaluation, the ["State" or "Name of County"] shall have the right to duplicate, use and disclose any data or information or both pertinent to the proposal as accepted, in any manner and for any purpose whatsoever, and have others so do".

(h) In the event of acceptance of a value engineering proposal, the State shall have all rights to use, duplicate, or disclose in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so, any data or information or both reasonably necessary to fully utilize such proposal.

(i) Notwithstanding the provisions of this chapter, for any construction contract, the contractor shall not be precluded from making substitution requests in accordance with applicable rules and policies of the State. The procurement officer shall be the sole judge of whether a proposal is a value engineering change proposal or a substitution request. [Eff NOV 17 1997] (Auth: HRS §§103-49, 103D-202) (Imp: HRS §103-49)

§3-132-5 Preparation, evaluation, and acceptance of value engineering change proposal. (a) The contractor shall submit with each value engineering change proposal the information as required by this chapter and provide all additional information as may be required by the procurement officer to evaluate and implement the value engineering change proposal. The cost for preparing the value engineering change proposal shall be the contractor's responsibility, and will be part of the contractor's cost for implementing the change, and compensation shall be made only when the proposal is accepted by the State and the adjustment in contract price is made as provided for in this chapter.

(b) If the services of the State's architect, engineer, or consultant is necessary to review and evaluate a value engineering change proposal, the cost

therefor shall be paid for by the contractor.

(c) The evaluation and acceptance of all value engineering change proposals shall be in accordance with the requirements as listed in this chapter.

(d) Each value engineering change proposal shall be evaluated as applicable to the particular project, and past acceptance on another State project for a similar item shall not be automatic grounds for approval. [Eff NOV 17 1997] (Auth: HRS §§103-49, 103D-202) (Imp: HRS §103-49)

§3-132-6 Value engineering sharing method. The method by which the contractor will share a portion of the cost savings from an accepted value engineering change proposal shall be in accordance with section 3-132-4 and the following:

- (1) The contractor's share in cost savings shall be for the single contract only, and no consideration shall be made for future acquisition, royalty type payment, or collateral savings.
- (2) The State may accept the proposed value engineering change proposal, in whole or in part. The engineer shall issue a contract change order or modify the contract to identify and describe the accepted value engineering change proposal.
[Eff NOV 17 1997] (Auth: HRS §§103-49, 103D-202) (Imp: HRS §103-49)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Chapter 3-132, Hawaii Administrative Rules, on the Summary Page dated October 14, 1997, was adopted on October 14, 1997, following a public hearing held on September 22, 1997 in Honolulu, Hawaii; and via video conference from Honolulu, Hawaii on September 23, 1997 to Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai; after public notice was given in the Honolulu Star Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 22, 1997.

The adoption of chapter 3-132 shall take effect ten days after filing with the Office of the Lieutenant Governor.

ROBERT E. OYAMA
Chairperson
Procurement Policy Board

SAM CALLEJO
State Comptroller

APPROVED:

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed