

004 SCOPE OF THE WORK.
(REV 11-14-05) (FA 12-14-05) (7-06)

SUBARTICLE 4-3.2 (Pages 18-20) is deleted and the following substituted:

4-3.2 Increase, Decrease or Alteration in the Work: The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

4-3.2.1 Allowable Costs for Extra Work: The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

(a) Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1 % of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1

Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual

*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).

At the Pre-construction conference, certify to the Engineer the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 4-3.2.1,
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the

Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

(b) Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

(c) Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

(1) Allowable Hourly Equipment Rate = Monthly Rate/176
x Adjustment Factors x 100%.

(2) Allowable Hourly Operating Cost = Hourly Operating
Cost x 100%.

(3) Allowable Rate Per Hour = Allowable Hourly
Equipment Rate + Allowable Hourly Operating Cost.

(4) Standby Rate = Allowable Hourly Equipment Rate x
50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

(d) Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

(1) Solely a mark-up of 17.5% on the payments in (a) through (c), above.

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work; provided, however, that such payment for additional bond will only be paid upon presentment to the Department of clear and convincing proof that the Contractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

(ii) The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days granted for performing additional work.

4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 4-3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

The Contractor shall require the subcontractor to provide a certification, in accordance with 4-3.2.1(a), as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

SUBARTICLE 4-3.9 (Pages 22-25) is deleted and the following substituted:

4-3.9 Value Engineering Incentive:

4-3.9.1 Intent and Objective:

(1) This Subarticle applies to any cost reduction proposal (hereinafter referred to as a Value Engineering Change Proposal or VECP) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. This Subarticle does not, however, apply to any such proposal unless the Contractor identifies it at the time of its submission to the Department as a proposal submitted pursuant to this Subarticle.

(2) The Department will consider VECPs that would result in net savings to the Department by providing either:

- a. a decrease in the cost of performance of the Contract; or
- b. a reduction in cost of ownership (hereinafter referred to as collateral costs) of the work provided by this Contract, regardless of acquisition costs. VECPs must result in savings without impairing essential functions and characteristics such as safety, service, life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. However, nothing herein prohibits the Contractor from submitting VECPs when the required functions and characteristics can be combined, reduced or eliminated because they are nonessential or excessive. The Department will not recognize the Contractor's correction of plan errors that result in a cost reduction, as a VECP.

(3) The Department reserves the right to reject at its discretion any VECP submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. The Department will not allow the substitution of another design alternate, on which the Contractor could have bid, that is detailed in the plans for the one on which the Contractor has bid, under this Subarticle. Pending the Department's execution of a formal supplemental agreement implementing an approved VECP, the Contractor shall remain obligated to perform the work in accordance with the terms of the existing Contract. The Department will not grant any time extensions to allow for the time required to review a VECP.

4-3.9.2 Subcontractors: The Department encourages the Contractor to include the provisions of this Subarticle in Contracts with subcontractors and to encourage submission of

VECPs from subcontractors. However, it is not mandatory to submit VECPs to the Department or to accept or transmit subcontractor proposed VECPs to the Department.

4-3.9.3 Data Requirements: As a minimum, submit the following information with each VECP:

(1) a description of the difference between the existing Contract requirement and the proposed change, and the comparative advantages and disadvantages.

(2) separate detailed cost estimates for both the existing Contract requirement and the proposed change. Break down the cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers on the Master Pay Item list. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.

(3) an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the VECP if the Department adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.

(4) an estimate of the effects the VECP would have on collateral costs to the Department.

(6) Engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if the Department accepts the VECP with a proposal as to how these changes can be accomplished and an assessment of their effect on other project elements. The Department may require that engineering analyses be performed by a prequalified consultant in the applicable class of work. Support all design changes that result from the VECP with prints of drawings and computations signed and sealed by the Contractor's Engineer of Record. Written documentation or drawings will be provided clearly delineating the responsibility of the Contractor's Engineer of Record.

(6) the date by which the Department must approve the VECP to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.

(7) a revised project schedule that would be followed upon approval of the VECP. This schedule would include submittal dates and review time for the Department and Peer reviews.

4-3.9.4 Processing Procedures: Submit two copies of each VECP to the Engineer or his duly authorized representative. The Department will process VECPs expeditiously; however, the Department is not liable for any delay in acting upon a VECP submitted pursuant to this Subarticle. The Contractor may withdraw, in whole or in part, a VECP not accepted by the Department within the period specified in the VECP. The Department is not liable for any VECP development cost in the case where the Department rejects or the Contractor withdraws a VECP.

The Engineer is the sole judge of the acceptability of a VECP and of the estimated net savings in construction and collateral costs from the adoption of all or any part of such proposal. In determining the estimated net savings, the Department reserves the right to disregard the Contract bid prices if, in the judgment of the Engineer, such prices do not represent a fair measure of the value of work to be performed or to be deleted.

Prior to approval, the Engineer may modify a VECP, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net

savings resulting from the VECP, the Department will determine the Contractor's fair share upon the basis of the VECP as modified and upon the final quantities. The Department will compute the net savings by subtracting the revised total cost of all bid items affected by the VECP from the total cost of the same bid items as represented in the original Contract.

Prior to approval of the VECP that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the VECP design.

4-3.9.5 Computations for Change in Contract Cost of Performance: The Department will not pay for the Contractor's VECP development and implementation costs. If the VECP is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the VECP.

The Department will not include its costs to process and implement a VECP in the estimate. However, the Department reserves the right, where it deems such action appropriate, to require the Contractor to pay the Department's cost of investigating and implementing a VECP as a condition of considering such proposal. When the Department imposes such a condition, the Contractor shall accept this condition in writing, authorizing the Department to deduct amounts payable to the Department from any monies due or that may become due to the Contractor under the Contract.

4-3.9.6 Computations for Collateral Costs: To determine any collateral cost savings, prepare separate estimates for collateral costs of both the existing Contract requirement and the proposed change. Provide estimates that consist of an itemized breakdown of all costs and the basis for the data used in the estimate. Cost benefits to the Department include, but are not limited to, reduced costs of operation, maintenance or repair, and extended useful service life. Increased collateral costs include the converse of such factors.

Compute collateral costs as follows:

(1) Calculate costs over a 20-year period on a uniform basis for each estimate.

(2) If the difference in the estimates as approved by the Department indicates a savings, divide the resultant amount by 20 to arrive at the average annual net collateral savings. The Department will share the average annual net collateral savings as stipulated in 4-3.9.8.

4-3.9.7 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges: A VECP that proposes major design modifications of a category 2 bridge, as determined by the Engineer, shall have the following conditions of acceptance:

All bridge plans shall be reviewed by a single independent engineering firm (the independent Engineer) not involved in the VECP design, pre-qualified in accordance with Chapter 14-75, to assure that the design is in compliance with all Department requirements. The independent Engineer's comments, along with the resolution of each comment, shall be submitted to the Department. The independent Engineer shall sign and seal a cover letter stating that all of the independent Engineer's comments have been adequately addressed and the design is in compliance with the Department requirements. If there are any unresolved comments the independent Engineer shall specifically list all unresolved issues in the signed and sealed cover letter. Peer review will be funded by the Contractor.

Contractor shall designate a primary engineer responsible for the VECP design and as such will be designated as the Contractors Engineer of Record for the VECP

design. The Department reserves the right to require the Contractor's Engineer of Record to assume responsibility for the entire structure.

The Contractor shall have all permanent engineering work affected by the VECP, peer reviewed by an independent engineer other than the engineer initially performing the work. Engineering work includes but is not limited to: requests for acceptance for noncompliant work, repair procedures, shop drawing review, or design and review of activities affecting public safety. If the Specialty Engineer and Contractor's Engineer of Record are separate entities, either party may initiate the action; the other shall check and certify the work as being complete and correct prior to submittal to the Engineer. If the Specialty Engineer and Contractor's Engineer of Record are the same entity, the Specialty Engineer/Contractor's Engineer of Record will initiate the action of the independent firm contracted to prepare these requests and the Specialty Engineer/Contractor's Engineer of Record will check and certify the work of the independent firm as being complete and correct prior to submittal to the Engineer.

New designs shall be in compliance with all applicable Department, FHWA and AASHTO criteria requirements including bridge load ratings.

4-3.9.8 Sharing Arrangements: If the Department approves a VECP, the Contractor may be entitled to share in both construction savings and collateral savings to the full extent provided for in this Subarticle. The Contractor shall receive up to 50% of the net reduction in the cost of performance of the Contract due to an approved VECP, except for innovative ideas. Upon review and approval of the VECP, the savings shall be based on a final negotiated agreement between the Contractor and the Department. The final negotiated agreement shall include a minimum guaranteed savings, which shall be the Department's share of the savings.

For sharing purposes, the Department will not consider an idea as innovative if the idea is identical or similar to a previously submitted VECP or an idea previously used by the Department. For innovative ideas, as determined by the Engineer, the Contractor and the Department shall share the reduction in the cost of performance as follows:

Accrued Net Savings	Contractor's Share %	Department's Share %
Less than \$25,000	100	0
\$25,000 to \$50,000	75	25
Over \$50,000	50	50

When collateral savings occur, the Department will provide the Contractor with 20% of the average annual net collateral savings.

4-3.9.9 Notice of Intellectual Property Interests and Department's Future Rights to a VECP:

4-3.9.9.1 Notice of Intellectual Property Interests: The Contractor's VECP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's VECP development, have or may have that are in whole or in part implicated in the VECP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property rights that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license

protection by the Contractor or others in the future. This notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the VECP that are already on the Department's QPL or design standard indexes, or are otherwise generally known in the industry as being subject to patent or copyright protection.

4-3.9.9.2 Department's Future Rights to a VECP: Notwithstanding 7-3 nor any other provision of the Standard Specifications, upon acceptance of a VECP, the Contractor hereby grants to the Department and its contractors (such grant being expressly limited solely to any and all existing or future Department construction projects and any other Department projects that are partially or wholly funded by or for the Department) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such VECP on any and all existing and future construction projects and any other Department projects.

Contractor shall hold harmless, indemnify and defend the Department and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorneys' fees), which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to 4-3.9.9.1, unless the Department has by express written exception in the VECP acceptance process specifically released the Contractor from such obligation to hold harmless, indemnify and defend as to one or more disclosed intellectual property rights.