

0040309 SCOPE OF THE WORK – COST SAVINGS INCENTIVE PROPOSAL  
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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David OHagan

Comment: (Internal 5-10-10)

**4-3.9.7 Sharing Arrangements:** ...The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the contractor to design and develop a Proposal. Engineering costs will be based on the consultant’s certified invoice and may include the costs of the Independent Review Engineer in Subarticle 4-3.9.6. ...

**Response:** From the Specifications Office – This change has been made (5-7-10dt).

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Greg Davis

Comments: (Internal 5-13-10)

I recommend referencing the “Basis of Estimates Manual” in section 4-3.9.3(2) since the master pay item list may not show all valid items.

**Response:** gls Agree. Change made (6-18-10rp).

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Barbara Witten  
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Comments: (5-14-10)

I have reviewed 0040309. I have one comment. I recommend changing the word “nor” to “or” in Section 4-3.9.7

Let me know if there is any other type of form you require from Legal regarding our review of the Specs. I am new to the process and want to make sure I send you what you need.

**Response:** gls agree, change nor to or. Change made (6-18-10rp).

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Paul Harkins  
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Comments: (5-18-10))

What is the mechanism that would trigger change to the design/construction process should the same issue be repeatedly identified? When looking a VECs which are repeatedly identified prompts the Feds to dictate that it should be addressed as a Standard Specification/Design Criteria/or Design Standard, not as a VEC.

Response: gls Will address tracking of concepts as a Central Office function in the revised procedure. No changes made.

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Fred Ochoa  
D4 DSDE  
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Comments: (5-19-10)

Regarding this change to the VECF specification, it seems to me that by allowing for the extra time required to develop the proposal, an unscrupulous contractor who is behind on a project could come up with several meritless proposals just in order to gain the time. Am I reading the spec change correctly? How would we ever decline the contractor's request for time to develop the proposal, once it has been done on another similar project?

Response: gls This can be addressed in a couple of ways. First, the mandatory concept meeting 4-3.9.1 (4), would be the time where the meritless proposals would be denied by the Department. Second if the contractor does submit a legitimate proposal and requests an inordinate amount of time, the time can be reduced through negotiations or the proposal denied because it would result in a substantial delay in completing the project. The Department will be monitoring this new specification and if abuses are detected the specification can be modified in the future to prevent unintended consequences. No changes made.

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Comments: (5-19-10)

1. Article 4-3.9.3, *Data Requirements*, allows for time extensions to be considered as part of the submittal package. I think we're treading dangerous waters with this item. My fear is that some may use this provision as an "out" in the event a project has fallen behind schedule. I would suggest that the time extension provision be limited to allow only for the time the Department requires to review a proposal. I would suggest that the specification stipulate that the Contractor's preparation and processing times be removed from consideration in any time extension.

In short, the Department should allow for a time extension only to the extent that the Department requires time to review the proposal and should exclude the contractor's preparation time. Also, in the event a time extension is granted, it should be stipulated in the specification that all time extensions of this nature are "non-compensable" (i.e. no overhead costs).

Response: gls ..see previous response No changes made.

2. Article 4-3.9.7, *Cost Sharing*, in the event time extension is granted, any time-related costs (i.e. CEI, Daily MOT, Field Office, etc) should also be deducted from the cost-sharing calculation. The Department should desire to retain those costs.

Response: After discussion with the State Construction Office, these costs will not be included. No changes made.

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Steven J. King  
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Comments: (5-20-10)

Should the list at 4-3.9.8.1, Notice of Intellectual Property Interests, include trade secrets?

Response: The first sentence in the subarticle says "... any and all forms of intellectual property rights ..." No changes made.

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Comments: (6-1-10)

1. 4-3.9.1 We recommend that Cost Savings Incentive Workshop is not made mandatory.

Response: gls The workshop will be held if the contractor and Department both agree there are concepts to be discussed. If not, a pre-meeting communication could cancel the meeting. Also the preconstruction conference checklist will be revised to include a discussion on the need for the CSI Workshop. No changes made.

2. 4-3.9.3 (1) In general, contract time extensions are not practical for cost savings. The way it is written, we invite contract them extensions. We prefer to not add this language.

Response: gls This is one of the new ideas to promote additional proposals. The Department will be monitoring this new specification and if abuses are detected the specification can be modified in the future to prevent unintended consequences. No changes made.

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Louis Reis  
TP Design Engineer  
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Comments: (6-4-10)

My concerns are as follows:

1. 4-3.9.1(1)

*...mandatory Cost Savings Incentive (CSI) Workshop will be held prior to Contract Time beginning...*

Why would this workshop be needed if there are no cost savings incentives being proposed by the contractor?

Response: gls The workshop will be held if the contractor and Department both agree there are concepts to be discussed. If not, a pre-meeting communication could cancel the meeting. Also the preconstruction conference checklist will be revised to include a discussion on the need for the CSI Workshop. No changes made.

Could this be combined with a partnering workshop?

Response: gls Not recommended... No changes made.

Moreover, any project that meets VE thresholds would already have been examined by the Department for potential cost savings.

Response: gls The new aspects of this specification; time extensions, the means of determining the savings, and the concept meetings are all aimed at promoting additional proposals on all jobs. No changes made.

2. 4-3.9.1(3)

This subarticle allows the Department to reject proposals that change the pavement system or require additional R.O.W. Additionally, FTE, by supplemental specs, prohibits consideration of alternate TCP designs.

The contractor should also be precluded from substitution of a design alternate that was detailed in the plans (this provision was in the former VECF spec but omitted from the proposed CSI spec).

Response: gls If the proposal saves the Department money and meets the criteria in 4-3.9.1 (2) then we should consider the proposal. No changes made.

**When a contract time extension is requested, what restrictions, if any, are placed on the contractor's development and review time for a potential proposal?** Generally, time extensions adversely affect contracts in a number of ways including milestone dates, potentially alternative contracting incentives, sequenced projects, etc.

Response: gls The approval of the proposal includes the determination of whether a time extension is needed and the amount of the time extension just as the remaining aspects including savings are part of the overall decision by the Department to approve or deny the proposal. No changes made.

3. 4-3.9.1(4)

Concur with provisions of subarticle requiring a mandatory concept meeting prior to the contractor's submittal of a CSI.

Response: N/A

4. 4-3.9.7

*....The total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings...*

The 25 % allowance for engineering costs seems too high in comparison with construction savings.

Response: gls The Department will be monitoring this aspect of the new specification and will adjust the percent in the future if deemed appropriate. No changes made.

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Christopher Wood  
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Comments: (6-10-10)

Rudy, I have received the following comments from the D2 Construction Residencies for the above mentioned Specification change:

1. Although, I understand the intent of changing the name of this process, is it really going to encourage Contractors to turn-in more proposals?

Response: gls No, changing the name will not encourage more proposals. However by adding the other aspects, flexible start time, changes to the means of determining the saving to increase the contractor's share, and permitting time extensions which are in the new specification with the new title are all aimed at promoting the submission of additional proposals. No changes made.

2. Is the change of the name going to be worth all the amending of documents and costs it is going to cause all throughout the state?

Response: gls see previous response No changes made.

3. Is the VECP process to be done away with completely?

Response: The generic VECP process will remain unchanged. The existing VECP procedure is being revised to change the title and address the new aspects in the specification. No changes made.

4. Instead of holding a mandatory meeting, why not just hold one when there is a Proposal to be

submitted?

Response: gls The purpose of the preconstruction workshop is to discuss a concept and to determine if additional time should be allowed prior to beginning construction. The workshop will be held if the contractor and Department both agree there are concepts to be discussed. If not, a pre-meeting communication could cancel the meeting. Also the preconstruction conference checklist will be revised to include a discussion on the need for the CSI Workshop. No changes made.

5. Shouldn't the Spec. include how many days prior to start of Contract Time the mandatory Cost Savings Incentive Workshop should be held?

Response: The specification did not address the timing of the meeting since there are many factors that influence the date contract time is to begin on a project. The need and timing of the meeting should be discussed during the preconstruction conference. No changes made.

6. Is this mandatory meeting to be held for ALL projects or just for some depending on their cost and level of complexity?

Response: gls The meeting is to be held on all projects, however, the workshop does not need to be held if the contractor and Department both agree there are no concepts to be discussed. A pre-meeting communication could cancel the meeting. Also the preconstruction conference checklist will be revised to include a discussion on the need for the CSI Workshop. No changes made.

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**DAS wants "Initiative" and not Incentive. Change made.**

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James Barfield  
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Comments: (6-9-10)

1. 4-3.9.1 states..."A mandatory Cost Savings Incentive Workshop will be held prior to Contract Time beginning for the Contractor and Department to discuss potential Proposals."

Our concerns are:

a. Who in the Department will be responsible to meet and discuss the potential proposals with the Contractor?

Response: The following is taken from the CSI procedure which is being updated and outlines the expectations of the Department...

*"A mandatory Cost Savings Incentive Workshop shall be held prior to Contract Time beginning for the Contractor and Department to discuss potential Cost Savings Incentive Proposals. The Contractor, Construction Project Manager, Engineer of Record, Design Project Manager, District Value Engineer (DVE) and representatives from any office that*

*functionally could be affected by the proposed change (i.e., Design, Construction, Materials and Maintenance) shall attend the workshop. The purpose of the workshop is to discuss any ideas that could result in reducing the cost of the project, increasing the cost effectiveness of the project, or improving the quality of the project. The group should brainstorm the advantages and disadvantages of the ideas and also discuss submittal dates and review periods. On FHWA full oversight projects, the FHWA Transportation Engineer should also be notified and asked to be present at this workshop. The Structures Design Office (SDO) shall be notified and asked to be at the workshop for any project involving a Category 2 Bridge.” No changes made.(by gls)*

b. Will the Engineer of Record (EOR) be required to attend this workshop?

Response: See response to 1a. above.

c. What role will the Project Manager play in this new process?

Response: See response to 1a. above.

d. Will the Construction Projects Administration Manual (CPAM) be revised to reflect this change?

Response: No the procedure is self explanatory. No changes made.

2. Also, in 4-3.9(4) “For potential Proposals not discussed at the Cost Savings Incentive Workshop, a mandatory concept meeting will be held for the Contractor and Department to discuss the potential Proposal prior to development of the Proposal.”

a. Again, our concerns are: Who in the Department will be responsible to meet and discuss the potential proposals with the Contractor?

Response: See response to 1a. above.

b. Will the Engineer of Record (EOR) be required to attend this workshop?

Response: See response to 1a. above.

c. What role will the Project Manager play in this new process?

Response: See response to 1a. above.

d. Will the Construction Projects Administration Manual (CPAM) be revised to reflect this change?

Response: See response to 1a. above.

3. 4-3.9.3(1) “including any time extension request”

Our comment is the Department will be in a vulnerable position while the Contractor is not limited to the number of days used. This could result in the project exceeding the performance measure for time. We disagree with granting any time to prepare the Value Engineering Incentive Proposal.

Response: The number of days requested by the contractor is limited to the days the contractor submits in the submission package and if excessive time is being requested the proposal should not be approved. No changes made.

4. 4-3.9.7 this change will put the Department paying half the engineering costs on most of the Value Engineering Incentive Proposals.

Response: This was understood when the specification was modified to provide additional incentives to the contractors to submit proposals. The contractor (actually its Engineer) stands to receive 100% of the engineering cost for all Cost Savings Initiative if the amount is less than 25% of the total savings. The Department and Contractor would split equally the remainder of the savings. No changes made.

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