MARTIN MARIETTA

Value Engineering Incentive Clause

A. **General.** The contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings actually paid or credited to Martin Marietta pursuant to the "Value Engineering" clause of the prime contract, realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) below. Acceptance of any VECP by Martin Marietta from the Contractor is expressly contingent upon acceptance of that VECP by the Government from Martin Marietta. Contractor must formally and specifically identify all VECPs in writing, and, as a condition to any incentive consideration pursuant to this clause, must submit such written VECP prior to the earliest date upon which either Martin Marietta or the Government undertakes affirmative action to modify this contract or the prime contract to implement the change encompassed by the VECP.

B. **Definitions.** "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor (and by other contracting offices if included in an extended sharing base specified in the Schedule) for essentially the same unit. Acquisition savings include-

1) Instant contracts savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

2) Concurrent contract savings, which are measurable net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

a. "Collateral costs," as used in this clause, means Martin Marietta and agency cost of operation, maintenance, logistic support, or Government-furnished property.

b. "Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in Martin Marietta and the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

c. "Contracting office" includes any contracting office that the prime contract is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

d. "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, as well as those costs the Contractor incurs to make the contractual changes required by Martin Marietta or Government or the acceptance of a VECP.

e. "Future unit reduction," as used in this clause, means the instant unit cost reduction adjusted as Martin Marietta or the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either (1) throughout the sharing period, unless Martin Marietta or the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated or (2) to the calculation of a lump-sum payment, which cannot later be revised.

f. "Government costs," as used in this clause, means those Martin Marietta or agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

g. "Instant contract," as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

h. "Instant unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

i. "Negative instant contract savings" means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

j. "Net acquisition savings" means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

k. "Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP or, if the sharing base has been extended under paragraph 48.102(e) of the Federal Acquisition Regulation (48 CFR Chapter 1), the number of affected end items on contracts of contracting offices included in the extended base specified in the Schedule.

l. "Sharing period," as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at the later of (1) 3 years 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 this contract's delivery schedule in effect at the time the VECP is accepted.

m. "Unit," as used in this clause, means the item or task to which Martin Marietta, the Contracting Officer and the Contractor agree the VECP applies.

n. "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 overall projected cost to the agency without impairing essential functions or characteristics; provided, that it does not involve a change-

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

C. **VECP Preparation.** As a minimum, the Contractor shall include in each VEDCP the information described in subparagraph (1) through (8) below. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to 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 the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

3) Identification of the unit to which the VECP applies.

4) A separate, detailed cost estimated for (i) the affected portions of the existing Contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause, below.

5) A description and estimate of costs the Government or Martin Marietta may incur in implementing the VECP, such as test and evaluation and operating and support costs.

6) A prediction of any effects the proposed change would have on collateral costs to Martin Marietta or the Government.

7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Martin Marietta or Government actions, if known.

D. **Submission.** The Contractor shall submit VECP's to Martin Marietta unless this Contract states otherwise.

E. **Martin Marietta Action.**

1) Martin Marietta shall notify the Contractor of the status of the VECP after Martin Marietta receives it. Martin Marietta will process VECP's expeditiously; however, it shall not be liable for any delay in acting upon a VECP, or for any delay arising from Government review of the VECP.

2) If the VECP is not accepted, Martin Marietta shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by Martin Marietta. Martin Marietta may require that the Contractor provide written notification before undertaking significant expenditures for VECP efforts.

3) Any VECP may be accepted, in whole or in part, by Martin Marietta's award of a modification to this Contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. Martin Marietta's decision to accept or reject all or part of any VECP and the decision as to which of the sharing rates applies shall be made in its sole and absolute discretion, shall be final and not subject to the Disputes clause.

F. **Sharing Rates.** If a VECP is accepted, the Contractor shall share in net acquisition savings actually paid or credited to Martin Marietta under the prime contract, according to the percentages shown in the table below. The percentage paid the Contractor depends upon (1) this contract's type (fixed-price, incentive, or cost-reimbursement), (2) the sharing arrangement specified in paragraph (a) above (incentive, program requirement, or a combination as delineated in the Schedule), and (3) the source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS PAID OR CREDITED TO MARTIN MARIETTA

(Figures in Percent)

Contract Type	Sharing Arrangement: Incentive (Voluntary) — Instant Contract Rate	Incentive (Voluntary) — Concurrent Future Contract Rate	Program Requirement (Mandatory) — Instant Contract Rate	Program Requirement (Mandatory) — Concurrent and Future Contract Rate
Fixed-Price (Other Than Incentive)	50	50	25	25
Incentive (Fixed-Price or Cost)	*	50	*	25
Cost-Reimbursement (Other Than Incentive)**	25	25	15	15

* Same sharing arrangement as the contract's profit or fee adjustment formula.
** Includes cost-plus-award-fee contracts.

G. **Calculating Net Acquisition Savings.**

1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see subparagraph (i)(4) below). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) above). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

4) If Martin Marietta or the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse Martin Marietta or the Government for the proportionate share of these payments.

H. **Contract Adjustment**. The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall-

1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts--add to contract price.

(ii) Cost-reimbursement contracts-add to contract fee.

I. **Concurrent and Future Contract Savings.**

1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with subparagraph (h)(5) above. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

2) Martin Marietta shall calculate the Contractor's share of concurrent contract savings by (i) subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset and (ii) multiplying the result by the Contractor's sharing rate.

3) Martin Marietta shall calculate the Contractor's share of future contract savings by (i) multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period, (ii) subcontracting any Government costs or negative instant contract savings not yet offset, and (iii) multiplying the result by the Contractor's sharing rate.

4) When Martin Marietta wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of Martin Marietta's or the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The contractor's share shall be included in a modification to this Contract (see subparagraph (h)(3) above) and shall not be subject to subsequent adjustment.

5) Alternate no-cost settlement method. When, in accordance with subsection 48.104-3 of the Federal Acquisition Regulation, Martin Marietta and the Contractor mutually agree to use the no-cost settlement method, the following applies;

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) Martin Marietta will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

J. **Collateral Savings.** If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) above, by 20 percent of any projected collateral savings determined to be realized 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, target price, target cost, or estimated cost, at the time the VECP is accepted, or (2) $100,000, whichever is greater. Martin Marietta shall be the sole determiner of the amount of collateral savings in its sole and absolute discretion, and that amount shall not be subject to the Disputes clause or otherwise subject to litigation.

K. **Relationship to Other Incentives.** Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

L. **Subcontracts.** The Contractor shall include an appropriate value engineering clause in any subcontract of $100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by Martin Marietta under this Contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; provided, that the payments shall not reduce Martin Marietta's or the Government's share of concurrent or future contract savings or collateral savings.

M. **Data.** The Contractor may restrict Martin Marietta's or 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 clause of contract ___________, shall not be disclosed outside Martin Marietta or the Government or 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 Martin Marietta's or 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 hereby 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 the General Provisions of this Contract.)

If Martin Marietta selects a mandatory value engineering program requirement as specified in the schedule, substitute the following paragraph (a) for paragraph (a) of the basic clause:

Alternate

A. **General**. The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to Martin Marietta any resulting value engineering change proposals (VECP's). In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECPs, and actually paid or credited to Martin Marietta pursuant to the "Value Engineering" clause of the prime contract, in accordance with the program requirement sharing rates in paragraph (f) below. Acceptance of any VECP by Martin Marietta from the Contractor is expressly contingent upon acceptance of that VECP by the Government from Martin Marietta.