

[CORRECTED COPY]
CHAPTER 67

AN ACT authorizing value engineering change orders and supplementing P.L.1971, c.198 (C.40A:11-1 et seq.).

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.40A:11-16.6 Definitions relative to value engineering change orders; requirement for certain contracts.

1. a. For the purpose of this act:

"Construction" means the construction, reconstruction, demolition, erection, alteration, or repair of a structure or other improvement to real property, other than the construction, reconstruction, demolition, or renovation of a public building.

"Value engineering construction change order" means a change order that results in cost reductions to a project or any portion of the work from the original bid specifications after a construction contract is awarded.

"Value engineering construction proposal" means a cost reduction proposal based on analysis by a contractor of the functions, systems, equipment, facilities, services, supplies, means and methods of construction, and any other item needed for the completion of the contract consistent with the required performance, quality, reliability, and safety.

b. All construction contracts issued by a contracting unit when the total price of the originally awarded contract equals or exceeds \$5,000,000, shall allow for value engineering construction change orders to be approved after the award of the contract.

c. Value engineering construction change orders shall be subject to the following provisions:

(1) Value engineering construction change orders shall not be used to impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(2) The contractor shall submit a value engineering construction proposal that completely describes the changes to the original specifications or proposal, impact on other project components, advantages and disadvantages of the proposed change, cost estimates and calculations on which they are based, any impact on the contract time schedule, and any other relevant information that the contracting unit may require in order to review the value engineering construction proposal. The contractor's cost for developing the value engineering construction proposal shall not be eligible for reimbursement by the contracting unit.

(3) The contractor shall be liable for all reasonable costs incurred by the contracting unit for the technical evaluation and engineering review of a value engineering construction proposal presented by the contractor.

(4) The contracting unit's engineer shall prepare a written report for the governing body that shall evaluate the value engineering construction proposal, make a recommendation on whether or not it should be accepted, rejected, or modified, and state to the contracting unit and contractor the amount of any projected cost savings.

(5) The proposal shall not be approved unless the engineer reports to the governing body that the proposal appears consistent with the required performance, quality, reliability, and safety of the project and does not impair any of the essential functions, or characteristics of the project, or any portion of the work involved.

(6) The contracting unit shall have the sole discretion to approve or disapprove a value engineering construction proposal.

(7) The contractor and the contracting unit shall equally share in the cost savings generated on the contract as a result of an approved value engineering construction change order. Once the project is completed, the contracting unit's engineer shall verify the cost savings to reflect the actual cost of the work, and such verified cost saving shall be the basis for the savings shared equally with the contractor.

(8) The contractor shall have no claim against the contracting unit as a result of the contracting unit's disapproval of a value engineering construction proposal.

(9) A contracting unit shall include in its bid specifications and contract documents procedures to regulate the value engineering construction change order process. Such procedures shall be based on procedures established by the New Jersey Department of Transportation, or any other appropriate State agency, or rules adopted by the director of the Division of Local Government Services.

d. This section shall not invalidate or impair rules regarding change orders adopted by the director of the Division of Local Government Services prior to the effective date of this act. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the director deems necessary to implement the provisions of P.L.2005, c.67 (C.40A:11-16.6) which shall be effective for a period not to exceed 12 months. The regulations shall thereafter be amended, adopted or readopted in accordance with the provisions of P.L.1968, c.410 (C.52:14B-1 et seq.).

2. This act shall take effect on the first day of the fourth month next following enactment.

Approved April 7, 2005.