



CORVERS

COMMERCIAL & LEGAL AFFAIRS

Value Engineering

How to promote innovation also in COTS

Value Engineering for innovation

- **Value Engineering:** A systematic process of reviewing and analyzing the requirements, functions and elements of systems, project, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life-cycle cost consistent with required levels of performance, reliability, quality, or safety.
- **Value Engineering Change Proposal (VECP)** A proposal submitted by a contractor consistent with the VE clause(s) in the contract that, **through a change in the contract, would lower the project's life-cycle cost to the Government without impairing essential functions, characteristics, or performance.**
- The contract change requirement can be the addition of the VECP to the contract with attendant savings. VECPs are applicable to all contract types, **including contracts with performance-based specifications.**

[52.248-1 Value Engineering. | Acquisition.GOV](#)



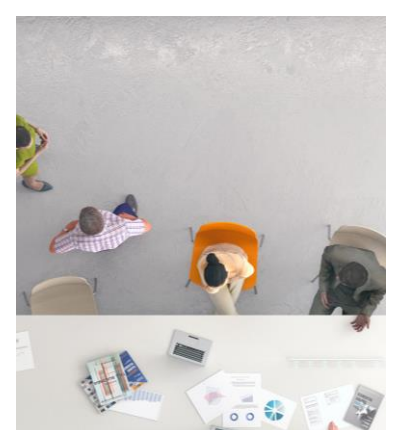
'Innovation' means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations inter alia with the purpose of helping to solve societal challenges

...
Directive 2014/24/EU Art. 2 (22) Definition

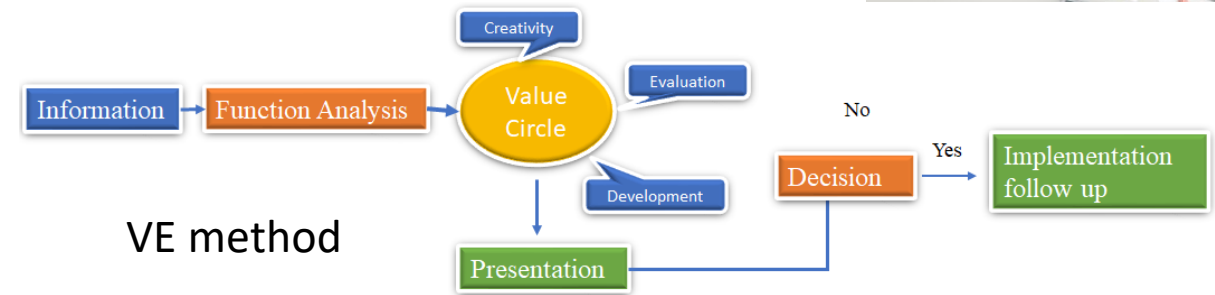
VE is the **sum of activities and actions**, aiming to ensure that the Contractor fulfils its obligations such as to **create added value** for the Contracting Authority; these activities and actions **target innovative development, effective and/or efficient organization of the project or similar.**



How to apply VE in EU procurement?



- Functional specifications
- Contract performance clauses
- Substantial modifications



Contract performance - Directive 2009/81/EC

Article 20 Conditions for performance of contracts

Contracting authorities/entities may lay down **special conditions relating to the performance of a contract, provided that these are compatible with Community law and are indicated in the contract documentation (contract notices, contract documents, descriptive documents or supporting documents)**. These conditions may, in particular, concern subcontracting or seek to ensure the security of classified information and the security of supply required by the contracting authority/entity, in accordance with Articles 21, 22 and 23, or take environmental or social considerations into account.

Contract performance - Directive 2014/24/EU

Article 70 Conditions for performance of contracts

Contracting authorities may lay down **special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract within the meaning of Article 67(3) and indicated in the call for competition or in the procurement documents**. Those conditions may include economic, **innovation-related**, environmental, social or employment-related considerations.

Legal requirements



The **intention to use VE should be advertised upfront**, in the contract notice, and clearly established as part of the technical specifications, **in compliance with the principles of equal treatment, non-discrimination and transparency.**

The VE approach and its application should be in line with the European Public Procurement Directives and the case-law of the European Court of Justice, particularly in what concerns to the **modifications of a contract and the limitations regarding the material or substantial changes of the contract.**

Modification of Contracts – Directive 2014/24/EU

Article 72 Modification of contracts during their term

1. Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Directive in any of the following cases:
 - (a) where the modifications, **irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses, or options.** Such clauses shall state the **scope and nature of possible modifications** or options as well as the conditions under which they may be used. They shall not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

VE clauses

WBL example

EXAMPLE of Value Engineering clause

1. Value engineering definition The sum of activities and actions, aiming to ensure that the [Contractor] fulfils its obligations such as to create added value for the [CA]; these activities and actions target innovative development, effective and/or efficient organization of the project or similar.

2. Value Engineering proposals

2.1. The Contractor shall submit twice a year a written proposal based on Value Engineering.

The proposal shall contain the following information:

- (i) a description of activities that will increase the quality of the project;
- (ii) the change in the parameters of the Total Cost of Ownership (TCO) calculation, as a direct consequence of the value engineering, as well as an analysis of the estimated savings for the remaining time of the contract;
- (iii) a risk analysis related to the implementation of Value Engineering and the description of the planned prevention or mitigation measures;
- (iv) an overview of those Contract clauses that need to be amended as a consequence of Value Engineering, and an overview of the reasons why these changes are needed;

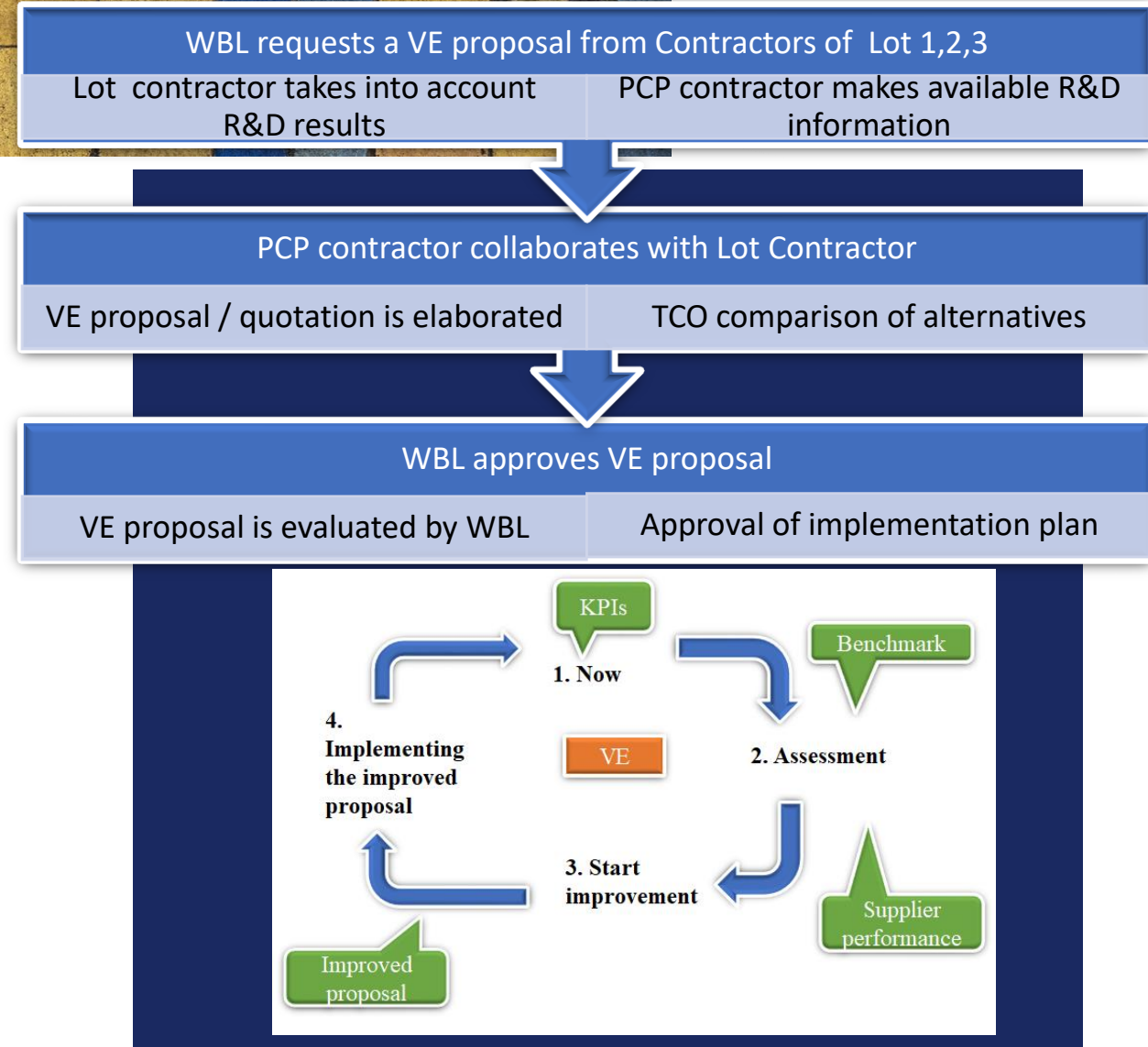
2.2. The proposal mentioned will be orally presented and explained by the Contractor to the [CA] within 20 Business Days from the initial submission date. The [CA] may accept or reject the (amended) proposal, following its presentation. The rejection of the proposal by the [CA] shall not bear any consequence on the fulfilment of the contractual obligations by the Contractor.

2.3 Savings that are realized through Value Engineering, based on a proposal priory accepted by the [CA] will be equally shared between the [CA] and the Contractor.

3. Contract cancellation and termination

3.1. Notwithstanding its right to cancel the Contract based on applicable legislation, the [CA] has the right to partially or entirely cancel the Contract, out-of-court, by registered letter, containing a notice of default with a remedy period of ten business days, provided that the Contractor does not comply with its obligation to submit a Value Engineering proposal, as described above.

3.2. The Party who cancelled the Contract has a right to compensation for the damage that may be caused by the cancellation, except in cases of force majeure.



Conclusions



- **Flexibility of EU legal framework to engineer the Value Engineering Clause for a lower TCO and savings sharing.**
- **Modification within the estimated value according to the legal framework (e.g. each modification cannot exceed 50% of the value of the original contract).**
- **Establish a clear, precise and unequivocal VE clause.**



Questions? - Thank you!

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