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United States General Accounting Office
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Office of
General Counsel

In Reply
Refer to:

B-194319

De Costa & Willis
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1710A Harford Road
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DLC
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APR 10 1979

Attention: Frank A. De Costa, Esq.

Gentlemen:

We are responding to your request for our opinion on the claim of Baltimore Electronics Associates, Inc. (BEA), regarding its [entitlement to payment on a Value Engineering Change Proposal] (VECP) under Contract No. DAAB07-78-C-2100 awarded by the Department of the Army, Headquarters, U.S. Army Communications Research & Development Command, Fort Monmouth, New Jersey (Army).

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Your letter to us characterizes the issue as presenting the following "legal question":

"whether the [Army] may implement the ideas contained in BEA's VECP by simply initiating its own ECP containing slight variations and thereby avoid having to share 50% of the cost savings achievable with BEA * * * on present and future procurement contracts for the item undertaken by other contractors." }

In this connection you state that the Comptroller General has independent jurisdiction to render an opinion with respect to any legal question raised under the value engineering regulations and applicable statutes, citing GKS, Inc., B-187593, June 26, 1978, 78-1 CPD 461.

We think GKS is distinguishable. There the claimant sought compensation on a theory of quantum meruit, for a suggestion to the Air Force which it characterized as a value engineering change proposal even though GKS's contract had no Value Engineering Incentive Clause.



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In your case the contract contained an express provision covering value engineering change proposals and there appears to be a dispute as to whether the contracting agency in fact has implemented essentially your proposed change or a change which originated in the agency. Although the decision whether to accept a value engineering change proposal is not subject to the procedures in the standard "Disputes" clause, the question whether the contracting officer has accepted BEA's value engineering change proposal is subject to the contract disputes procedure. Syro Steel Company, ASBCA No. 12530, 69-2 BCA 8046. A factual dispute is within the jurisdiction of the agency board of contract appeals and will not be considered by GAO. Braceland Brothers, Inc., B-193916, February 16, 1979, 79-1 CPD 120.

We therefore must decline to consider the issue in controversy in this case.

Sincerely yours,

Harry Van der

for

Milton J. Socolar
General Counsel