

CALFED Program Issue Paper: Contract Amendment Process

Recommendation

The BDAC Ecosystem Roundtable and CALFED Management Team considered this issue at their May meetings. They recommended that the current amendment process be amended consistent with the staff recommendation, Option 2.

Background

The current contract amendment is cumbersome, leading to delays of two to four months before a decision can be reached. While CALFED staff and our contracting agency staff are committed to delivering projects on time and on budget, we anticipate the need for a variety of amendments. These will be needed because:

- The need for biological monitoring was not emphasized in the RFP, and some applicants did not include this task in their proposal. In addition, once the biological monitoring plans are reviewed by the CALFED Project Work Team, additional monitoring may be needed. Contract budgets will need to be amended to allow for this additional work.
- We have determined that it would help to facilitate transfers of technology if CALFED held annual review meetings, at which each contractor would make an oral presentation regarding the progress of his project. This task was not discussed in the RFP, and was therefore not budgeted by any of the contractors. Contract budgets may need to be amended by up to \$1,000 each to allow for this task.
- Contractors may need to request a time extension because of elements beyond their control, such as heavy rains, flooding, wet soil, or delays in receipt of environmental permits.
- Some of the construction proposals contained an estimated costs for items which will be bid out. Once the formal bids come back, the budgets may have to be revised.
- Due to the time which has elapsed since the proposals were submitted, the scope of some projects has been refined. If the scope is different than that in the proposal, an amendment is necessary.

Current Process

Our current amendment process is as follows:

1. Level I amendments: the contracting agency may approve requests for (a) cumulative time extensions up to six months, and (b) changes in scope of services which will not alter the final outcome of the project.

2. Level II amendments: for requests of (a) cumulative time extensions over 6 months and less than 12 months or (b) cumulative budget increases up to 30 percent of the contract amount, but not greater than \$500,000, review and input is necessary from the Ecosystem Roundtable, while the final decision rests with the Management Team.
3. Level III amendments: for amendment requests of (a) cumulative time extensions of 12 months or more, (b) cumulative budget increases of 30 percent or more of the contract amount or over \$500,000, or (c) changes in the scope of services that alters the primary objective of the proposal, review and input is necessary from the BDAC Ecosystem Roundtable and CALFED Management Team, while the final decision rests with the CALFED Policy Group.

There are a number of drawbacks to this process. For a Level III-type amendment, the issue must be discussed at three meetings, leading to problems in scheduling the item in sequence (first Ecosystem Roundtable, then Management Team, and then Policy Group). In addition, all three groups already have full meeting agendas and discussion of proposed amendments will take valuable time. We estimate that it will take three to four months for a Level III amendment to be processed, potentially leading to cost overruns for the contractor and a loss of CALFED's credibility.

Because the contracting agency staff must work with the contractor on a day-to-day basis, they may not want to position themselves by recommending approval or denial of an amendment request. When no recommendation is made, or when denial is recommended, the contractor should be able to state his case and be present during discussion of his issue. However, because the Management Team and Policy Group meetings are closed to the public, the contractor can not attend them. At this point, the only forum in which a contractor may present his side of the issue is at the Ecosystem Roundtable. A final problem is that amendment issues can be so detailed that they are extremely time consuming and inappropriate to discuss in front of a large body of people.

Proposed Change

Staff have identified three options for changes to the amendment process, as outlined below.

1. No change to current process. We would continue with Level I decisions made by staff. Level II amendments would be reviewed before the Ecosystem Roundtable with a final decision by Management Team. Level III amendments would be reviewed before the Ecosystem Roundtable and Management Team, with a final decision made by the Policy Group.
2. Continue with delegation to staff to approve/disapprove Level I amendments. The definition of Level I amendments would slightly broadened to consist of (a) cumulative time extensions up to nine months, (b) changes in scope of services which will not alter the final outcome of the project, and (c) budget increases not to exceed a total of \$25,000 for each contract. The Executive Director of the CALFED Bay-Delta Program and/or Reclamation staff would be delegated authority to approve Level 1 these changes.

The remainder of the amendment requests would be considered by an Ecosystem Roundtable subcommittee which would meet in a publicly noticed meeting and consider each amendment in detail. The Ecosystem Roundtable members would provide review and comment on the proposed amendments. A group of Management Team members would participate in reviewing the contract amendments at the same meeting with members of the Roundtable subcommittee. The Management Team members would then make their recommendation with the input from the Ecosystem Roundtable members. The Management Team subgroup could decide whether an individual item merits full Management Team review and discussion, and/or Policy Group review. If an item is identified as not meriting additional discussion, then the Management Team members' recommendation would be transmitted directly to the appropriate contracting agency. Interior, Resources Agency, and the Environmental Protection Agency would have the final approval over their respective funding sources.

The Management Team, Policy Group, Ecosystem Roundtable and BDAC would have all amendments reported to them as information items. The benefits of delegating to a subcommittee would be an opportunity to more thoroughly review amendments than currently allowed by the number of items on the Management Team agenda, and the potential to expedite the approval or disapproval of amendments.

3. Delegate authority to CALFED staff and contracting agency staff to make decisions about any type of amendment. Staff decisions would be final and would be reported (but not presented) to the Management Team.

This information was also presented to the Ecosystem Roundtable at its May 15 meeting. The Roundtable concurred with staff's recommendation that the amendment process be changed to reflect Option 2, above.

26 May 1998
amendment