



Topic: **Reservoir Committee Agenda Item 2.5**

2020 October 16

Subject: **Task Order Amendment (Brown and Caldwell)**

Requested Action:

Approve Brown and Caldwell (Project Controls) Amendment 2 Task Order No. 3 in an amount not to exceed \$614,282 which increases the total contract ceiling to \$3,120,018 which supports accomplishing the development of plan of finance supporting documents.

Detailed Description/Background:

The Amendment 2 work plan was approved in August 2020. A \$1.5M placeholder budget was included for meeting the Prop 1 (WSIP) 75% local cost share commitment under the title "Plan of Finance" where a better framing of the required scope was necessary. At the joint September meeting, there was concurrence on a set of deliverables to achieve the required local cost share commitment and direction was given to prepare an action plan involving these items. This item pertains to the scope of work involving B&C.

A major part of the project financing action plan involves staff augmentation support. JP Robinette has been working on the project in a control PM capacity since February 2019 and was involved in the 2019 plan of finance evaluations and is best qualified to lead this current effort. Backfilling the Controls PM duties during this period will be Marcus Maltby. This personnel change does not have any effect on the scope, schedule or budget of the Controls work that B&C has already contracted to perform.

This amendment which incorporates the Plan of Finance activities (Amendment 3.1) contains the following tasks:

- **Plan of Finance:** This task involves work associated with supporting the Authority with updating and adopting a plan of finance. B&C will work with the Authority's municipal advisor and bond counsel to develop a plan of finance and support approval by the Reservoir Committee and Authority Board. B&C will lead discussions supporting the evaluation of alternative forms of financing and individual participant financial processes and lead the development of an updated plan of finance including interim and permanent finance alternatives. B&C will coordinate the documentation of individual participant financial processes. B&C will present updates to Reservoir Committee, Authority Board and appropriate workgroups and committees. (\$130,114)
- **Participant Contract Term Sheet:** This task involves work associated with developing a term sheet for approval by the Reservoir Committee and Authority Board describing the relationship between the entities and forming the basis of a future Storage and Supply Services Contract. B&C will lead discussions including an inventory of risks and benefits, principles for allocation of risks, and benefits, and principles for allocation of costs

(beneficiary pays). B&C will provide review comments for Reclamation and DWR operations agreement term sheets, support the updating of the storage policy, support confirmation of Prop 1 benefits and support confirmation of federal participation. B&C will also maintain financial model assumptions inventory. The final deliverable in this task is the development of a Storage and Supply Services Contract term sheet. (\$379,182)

- **Shared Facilities Term Sheets:** This task involves work associated with developing term sheets with shared facility project partners. B&C will serve as delegated lead negotiator for facilities use agreement term sheets with the Tehama Colusa Canal Authority (TCCA), Glenn Colusa Irrigation District (GCID) and the Colusa Basin Drain representatives (collectively the "Shared Facilities Parties"). B&C will develop principles of agreements, established with the Reservoir Committee and Authority Board as part of a collaborative process and agreed to before negotiations are to take place. As a final deliverable, B&C will develop shared facilities agreement term sheets to document negotiation outcomes. (\$104,987)

To the extent Mr. Robinette is involved in sensitive and confidential discussions or has access to proprietary information during the course of performing these duties, special contract terms have been negotiated that provide protections to the Authority that avoid any of this information from being accessible to others within B&C, and firewall Mr. Robinette from B&C involvement in these activities during and after the performance of the work. In effect, the new terms place Mr. Robinette into a position of confidentiality equivalent to the Agents and Executive Director. The confidentiality and firewall provisions are shown in Attachment A and will be included in Amendment 3.1. Any of the consultants involved in confidential matters will be required to agree to these same terms.

Prior Action:

August 26, 2020: Approved the Brown and Caldwell's (B&C) (Project Controls) Amendment 2 Task Order No. 3.0 scope of work with a not to exceed contract authority of \$2,505,736 for the period of September 1, 2020 through December 31, 2021.

July 22, 2020: Approved an amendment to Brown and Caldwell's (Project Controls) contract and task order scope of work and budget in the amount of \$31,881 for a new total contract authority of \$1,942,399.

February 21, 2020: Approved an amendment to Brown and Caldwell's (Project Controls) contract and task order scope of work, budget and period of performance.

January 17, 2020: Approved Amendment 1B Work Plan for the period of January 1, 2020 through August 31, 2020 as part of a no cost time extension to the then current Participation Agreement. The Amendment included summary-level descriptions of the deliverables with estimated Reservoir Committee budgets. Each deliverable budget was further defined in the document by the level of effort required to complete each deliverable by consultant for use in developing amended consultant task orders intended to be submitted for approval to the Reservoir Committee and Authority Board in February 2020.

December 19, 2019: Approved a recommendation to the Sites Project Authority to approve an amendment to Brown and Caldwell's (Project Controls) contract period of performance by extending their task order from December 31, 2019 through June 30, 2020 with no change in their cost.

March 22, 2019: Approved a recommendation to the Sites Project Authority to approve the Brown and Caldwell Phase 2 (2019) task order and budget for project controls services from April 1, 2019 through December 31, 2019.

January 18, 2019: Delegated responsibility to the Ad Hoc Finance and Economics Work Group to review and consider accepting the terms and conditions and recommending to the Sites Project Authority to approve the agreement negotiated by staff.

November 16, 2018: Approved a recommendation to the Sites Project Authority to accept the evaluation panel's selection of B&C for Service Area B – Project Controls.

August 16, 2018: Approved a recommendation to the Sites Project Authority to release of the Project Development Support Services RFQ-18-04.

Fiscal Impact/Funding Source:

There is no change to the cost of services previously scoped. Sufficient funds are included in the revised Amendment 2 Work Plan - plan of finance placeholder. Consultant activity will be monitored closely to ensure quality, timely deliverables and to ensure a positive project cash balance is always maintained.

Staff Contact:

Jerry Brown

Attachments:

Attachment A: Confidentiality and Firewall Task Order Language

Confidentiality and Firewall Task Order Language

It is understood that the Consultant staff will be involved in negotiator duties for the development of agreement term sheets as defined in the September 16, 2020 memo outlining responsibilities and expectations (Memo). As such, the following confidentiality and firewall controls have been included in the task order.

Confidentiality:

Consultant will handle confidentiality of negotiating positions as part of this scope consistent with the Memo, as further clarified herein. Specifically, in order to protect against disclosure of Authority's negotiation positions during negotiations, Consultant will maintain such non-public and confidential information it may obtain as a result of the negotiations not only throughout the period that those negotiations are still being pursued but also kept confidential after completion unless the Authority (Executive Director or Authority Agent) provide written approval of the release of the material, to the extent permitted by applicable law. While it is not anticipated that these instances will arise during the course of negotiations, this will not apply to information that is (1) in or becomes part of the public domain, or (2) already known at the time of disclosure, or (3) required by law, court or regulatory order to be disclosed.

Refer to signed MSA, Article 12 "Ownership of Work Product" and Article 13 "Confidentiality" for additional requirements. The concept that the Authority owns work product and Consultant can't use or disclose the Authority's confidential information without the Authority's prior written consent is covered in the MSA.

Firewall:

The Consultant does not believe that Consultant performing Authority's requested efforts in conjunction with negotiations poses either an actual or potential conflict given how the role is defined in the Memo, as may be further clarified here and as the work progresses. Out of an abundance of caution, however, Consultant has agreed to implement certain additional protective steps including, as described here, implementing a firewall.

The staff assigned to perform substantial activities on the Authority's negotiations will not include parties that are performing, or will during the course of negotiations perform, substantial activities for any of the Parties involved in the negotiation outside of the Authority. There will be no personnel overlap, in that regard.

Further, to the extent any staff currently performs substantial activities for any of the Facilities Parties, they will be instructed to not discuss their work with staff performing substantial activities on the Authority's negotiation project, and vice versa. Consultant's representative on the Authority's negotiation will routinely reinforce this communications policy to Consultant's staff through periodic internal project review blogs, which are communications to the entire project team.

Consultant will also work with Authority to confirm that project information related to negotiations will be initiated in Consultant's internal Document Control System as a confidential project, which means that access to electronic project files and correspondence will be restricted to those personnel authorized to work on the Authority's negotiation project elements. In the case of hard copies of reports, communications, or other project-related documents, those will be treated similarly.

Lastly, during the course of any negotiations, Consultant will not engage in any assignment for the other parties to these negotiations related in any way to this Project.