



The Mobile Source Air Pollution Reduction Review Committee (MSRC)

## **POLICY ON CONTRACT MODIFICATIONS**

### **A. CONTRACTOR RESPONSIBILITIES FOR CONTRACT MODIFICATIONS**

1. Contract extensions or scope changes may be requested on AB 2766 Discretionary Fund contracts. Contractors must submit signed requests in writing to the Contracts Administrator's office (scanned copies submitted via electronic mail are acceptable). Reasons for the request should be well documented by the Contractor. Except as discussed in Paragraph B.7. below, the Contracts Administrator will present the requests to the MSRC-TAC and the MSRC for approval/disapproval.
2. The MSRC-TAC generally meets on the first Thursday of the month. Contract extension or scope change requests must be submitted by 9:00 a.m., ten days prior to the scheduled MSRC-TAC meeting, in order to be considered at that meeting. Requests received less than ten days prior to the MSRC-TAC meeting will be considered at subsequent MSRC-TAC and MSRC meetings. Late extension requests must include a discussion of the compelling reasons for the untimely submission of the request.
3. Extension requests and scope changes will be considered by the MSRC-TAC and MSRC on a case-by-case basis. An option clause shall be included in all contracts that will allow MSRC staff the ability to extend a contract an additional 12 months at no cost to the MSRC or the contractor. All subsequent extension requests will be brought to the MSRC for its consideration.

If a contract extension or scope change is for the **contractor's convenience**, the MSRC shall have the discretion to request a downward adjustment in the contract price, an additional task, an additional report or seek other legal consideration as a condition of granting the extension or scope change. Situations defined as convenience are problems or delays caused by internal management or administration, for example, failure to submit progress reports or final reports in a timely manner, failure to aggressively monitor the project, and extensions merely to exhaust unexpended funds.

A delay due to problems with the delivery or manufacturing of equipment or vehicles and **circumstances beyond the control of the contractors** will not be considered as changes for the contractor's convenience. Documentation of delays

will be required. The MSRC shall have the discretion to seek legal consideration for contract extensions granted under these circumstances.

4. Any contract changes made without prior approval of the MSRC will be at the contractor's own risk. If the MSRC does not approve the change, the contractor will not be reimbursed for any costs incurred as a result of the unapproved change.
5. The contractor is responsible for properly monitoring the project and should notify the Contracts Administrator immediately if the Contractor feels the project is in jeopardy of falling behind schedule.
6. Notwithstanding Paragraph A.2. above, requests for extensions must be received in writing by the Contract Administrator no later than 60 days prior to the close of the contract. The approval process for contract extensions and scope changes takes approximately six weeks. If a request is made within 60 days of the end date of the contract, the contract may expire prior to review, approval, and processing of the request. If this situation occurs, the contractor must stop work until a replacement contract is approved. In the event a replacement contract is not approved the contractor must consider the end date of the contract firm and may not bill for work done after this date.

#### **B. CONTRACTS ADMINISTRATOR RESPONSIBILITIES FOR MODIFICATIONS**

1. The Contracts Administrator shall ensure that all prime contractor subcontract agreements are executed and approved by South Coast AQMD Procurement Manager, or designee, prior to execution of MSRC contracts. If a subcontract is part of scope of work, the contractor may not proceed with related tasks until requisite subcontract is executed and approved by South Coast AQMD Procurement Manager or designee. This provision shall be included in all MSRC contracts and RFPs.
2. Changes in subcontractor(s) or other scope modifications which do not change the technical nature or emissions reductions, and which do not increase the approved contract cost or increase the funding for any vehicle or infrastructure within the contract, can be processed administratively by the Contracts Administrator without MSRC consideration/approval.
3. Subcontractor changes or other modifications which affect the following parameters must be approved by the MSRC (and South Coast AQMD Board when required) or the project cannot proceed:

- a. the technical nature of the project. Changes in the technical nature of a project can be characterized as i) changes in the technical scope; and ii) changes in the technology proposed to be used which would result in a conflict with the terms of the original solicitation document;
  - b. emissions reductions; or
  - c. reductions in the quantity of vehicles or items purchased, when the Work Program solicitation required purchase of a minimum number of vehicles or items, or when another element of the contract is tied to the purchase of a minimum number of vehicles or items.
4. The Contracts Administrator shall ensure that potential contractors provide fully signed memorandums of understanding (MOUs) or teaming agreements with all parties on the contractor side prior to contract execution. If for some reason, the MOU or teaming agreement is part of the scope of work, contractor shall not proceed with related tasks until such time that teaming agreements are fully signed. This provision shall be added to all MSRC contracts and RFPs.
5. The Contracts Administrator shall ensure that contractor's co-funding to fund the total cost of the project is in place prior to release of MSRC's contribution to the project. In the event contractor cannot provide satisfactory written evidence of co-funding the MSRC reserves the right to terminate or renegotiate the contract. This provision shall be added to all MSRC contracts and RFPs.
6. An option clause shall be included in all contracts that will allow the Contracts Administrator the ability to extend a contract up to an additional twelve months, in one action or cumulatively, at no cost to MSRC and or the contractor. All subsequent extensions shall require MSRC approval. This provision shall be added to all MSRC contracts and RFPs.
7. If the Contracts Administrator finds that the contractor has failed to make an adequate case for extending their contract, the Contracts Administrator may deny the contractor's request. Subsequent to denial, they may appeal the denial to the MSRC. Contracts in this situation would still be subject to the time limits in Paragraph A.6. above.
8. Cost reallocations between tasks and/or cost elements (cost categories) that do not exceed a total cumulative amount of 15% of the contract value or a maximum of \$20,000 (including the \$5,000 allowed to contractor), and which are necessary to achieve performance of the contract scope of work will be processed administratively by the Contracts Administrator. The Contracts Administrator will

- ensure that the cost reallocations do not conflict with the conditions under which the project was awarded and ensure that the revised labor mix and hours expended allow for proper performance of the contract. Cost reallocations over 15% of the contract value or \$20,000, or which increase or decrease the scope of work, require MSRC-TAC review and MSRC approval.
9. Any change, which results in cost escalation beyond the approved budget, must go before the MSRC for consideration/approval.
  10. Reductions in co-funding and/or change or co-sponsors will require MSRC (and South Coast AQMD Board when required) approval unless the project would still have been included within the applicable Work Program if the reduced co-funding amount had been listed and if the full project scope can be completed with the reduced co-funding, in which case only MSRC approval is required.
  11. Any costs incurred by Work Program awardees prior to South Coast AQMD receipt of a fully executed contract shall be incurred solely at the risk of the awardee. In the event that a formal contract is not executed, neither the MSRC nor the South Coast AQMD shall be liable for any amounts expended in anticipation of a formal contract.
  12. If any awardee expends funds at his or her sole risk prior to receipt of a fully executed contract and a formal contract does result, the pre-contract expenditures authorized by the contract will be reimbursed in accordance with the cost schedule and payment provisions of the resultant contract.
  13. Information on time extensions, subcontract changes, and/or cost reallocations, which are processed administratively, will be provided to the MSRC-TAC and MSRC for their information in each monthly Contract Administrator Report.

Combining “Policy on Contract Modifications, Scope Changes, Extensions and Cost Reallocations” last amended November 1999 and “Policies on Contracts Administrator Responsibilities for Scope Changes” last amended December 2010 – Adopted February 2022