

Decision

Case Number: 400257

BACKGROUND

The Issues as Raised in the Complaint:

The complaint raises issue with the fairness of the CALWMC's March 9th recommendation to amend the LWMP to include Clover Point as a potential tertiary sewage treatment plant option. Specifically, the complainant wonders why the Technical Oversight Panel (TOP) was not engaged to oversee the work of the Consultants with respect to recommending this option to the CALWMC. It is argued that the CALWMC failed to follow its agreed-to procedures of considering the advice of the TOP prior to putting forward this recommendation.

FINDINGS

What do the CALWMC TOR say about the options selection process?

The Terms of Reference (TOR) do not restrict the Committee from putting forward recommendations to the CRD which have not been vetted by the TOP. While indicative of a good practice, there is nothing in the TOR for the CALWMC that binds them to having to vet options or recommendations through the TOP. There is a vital distinction between expectation and obligation and while it has come to be expected that the TOP would provide analysis and comment on costing, it is not required.

What does the Project Charter say about the options selection process?

The Project Charter speaks to the roles and responsibilities of the various bodies, including procedural aspects with respect to the presentation of options and their assessment (costing and feasibility).

The Charter provides the following description of the TOP's mandate:

“[t]he role of the Technical Oversight Panel is to review the costing and feasibility studies developed by the Engineering Team during the planning phase of the project and to ensure that the studies for the wastewater treatment options include the necessary due diligence... The ToP receives information from and liaises with the Engineering Team (Urban Systems and Carollo Associates), and provides feedback and recommendations to the CALWMC...”

As such, it would appear that the role of the TOP, at a minimum, is to review the costing and feasibility studies as developed by the engineering team.

What do the TOP TOR say about the options selection process?

The Terms of Reference for the TOP offer some additional parameters for the Panel's work:

“The Technical Oversight Panel:

“Will provide independent oversight to the work of the engineering, business case, lifecycle costing and other project analysis done post August 2015. The panel must be proactive, ...

vetting the options in conjunction with the consultant... The Technical Oversight Panel (TOP), in conjunction with experienced consultants, must undertake a “rapid assessment” to assess if a concept or configuration is feasible or not, and whether it should be taken to the next level of analysis or not.” [emphasis added]

Taken together, the TOP Terms of Reference and the Project Charter confirm that the TOP has a clear mandate to oversee the options studies conducted by the Consultants, review findings, and report to the CALWMC.

The TOR further clarify the Panel’s role with respect to making recommendations to the CALWMC on the wastewater treatment site(s) to be included in an amended LWMP:

“The team will begin its work with the option set sites provided. But it **may consider additional sites... Once identified, the TOP will recommend to the CALWMC that the budget be amended and the respective councils will be asked to put forward the sites for further analysis.”**

This statement implies that the TOP be involved in supporting the Committee’s consideration of additional sites, and that such support may extend to further analysis of recommended site(s).

What are the timelines for the TOP’s work?

The TOP’s Terms of Reference confirm that the Panel’s mandate was originally envisioned to terminate March 2016, but could be extended upon mutual agreement by the CALWMC and TOP members:

“The Technical Oversight Panel:

Will commence work in August 2015 and end no later than March 2016, or be extended according to need as determined by the Core Area Liquid Waste Management Committee (CALWMC) and with the willingness of the panel members to continue to serve.”

The FTA notes that it is still currently March 2016 and that the Committee’s recommendation to consider new options came forward at the February 24th and 26th CALWMC meetings, thus extending the options study into March. As such, the FTA finds the TOP’s mandate to be ongoing.

What was the CALWMC’s process in recommending an additional site be included in the LWMP?

Neither the March 9th Options Analysis and Recommendation Report to the CALWMC nor the technical letter from Urban Systems mention the TOP providing review to the Consultants’ study of the new options put forward at the February 24th CALWMC meeting. This report only states that “staff” were “referred” to work “with consultants”:

“Upon deliberation, the committee referred to staff to work with consultants to undertake value engineering and report back as soon as possible with cost estimates for a series of options, including Rock Bay as a centralized site, Macaulay/McLoughlin together with Clover Point, and other combinations of these sites...” [emphasis added]

The FTA notes that options costing factors and approaches were previously vetted by the TOP in their review of the Consultants’ technical memos. According to Urban Systems, these same costing factors and approaches were applied to the costing of the new option sets.

I further note that throughout the process of evaluating options, the TOP has been engaged in reviewing, assessing and providing direction on the Consultants' work. This guidance has included commenting on actual cost estimates. The TOP's meeting minutes and reports mirror this level of analysis as well as comment on the feasibility and costing work throughout the options study.

The FTA was unable to find evidence in the minutes that such a review of the studies for the new sites had taken place. The minutes for the February 24th and 26th CALWMC meetings provide some evidence that the Committee solicited input from the TOP on the potential feasibility of the new sites. However, this input was not in the form of a considered, technical review characterized by a substantive analysis of the engineering and costing metrics; rather it seems that the input was in the form of a question and answer period with the TOP Chair. The Chair stated in these discussions that the TOP had considered but never examined the feasibility of these new sites as they had not been on the table. As such, it is unclear to what extent prior deliberations by the TOP were reflected in the Chair's comments.

In summary, the FTA found no evidence that the TOP or some other party providing oversight vetted the actual value engineering studies and cost estimates, which led to the proposal of a wastewater treatment site at Clover Point.

Conclusion

There is a vital distinction to be made here between expectations and obligations. As determined, the CALWMC is not required to vet options through the TOP. It is also confirmed that the TOP has a mandate to review and vet the options feasibility and costing work completed by the Consultants. While the Committee is not obligated to ensure oversight, the Committee has communicated to the public the merits of providing such oversight and this has been a prominent and expected feature of the process to date.

As the TOP's TOR allow for their role to continue as needed, the question becomes one of whether or not the CRD has considered the pros and cons of maintaining such an oversight panel. Along these lines, the CRD could consider extending the mandate of the TOP or establishing new procedures to provide oversight to ongoing engineering and costing work, (e.g., through existing CRD staff). The FTA notes that the CRD, through the Integrated Resource Management task force, has given some consideration to this matter and that further deliberations are planned on the provision of oversight in the process moving forward.

In my view, the issue is not so much which party is providing oversight – so long as they are qualified – but rather that independent review of technical studies takes place.

The importance of maintaining process oversight was confirmed early on in the process. As stated in the TOP Terms of Reference, the Panel's role is to provide "necessary due diligence" with respect to the options studies. As such, the TOP's review of the Consultants' work is a best practice measure to confirm the accuracy and reliability of the options study outcomes.

The May 2015 RFP scope of services for the Phase 2 work¹ noted that:

¹ RFP 15-1834 Core Area Liquid Waste Management Plan Wastewater Treatment System Feasibility & Costing Analysis.

*“[i]n order to **ensure transparency and achieve public confidence** in the analysis, the CRD will retain a Technical Oversight Panel of up to five individuals with **relevant technical expertise** to **provide oversight of this work.**” [emphasis added]*

Providing oversight to the options study was intended to add transparency to the process and to ensure that the recommended option is the *best* option for the Core Area; one which meets or exceeds the regulations, commitments and goals set out in the Project Charter.

Ultimately, the CRD has to put forward a recommendation that will withstand scrutiny. The CRD must be confident that there is limited potential for any flaws in the engineering or cost analysis that might affect the actual viability of recommendations. At this juncture with new options having been put forward at the eleventh hour, it is unclear why this safeguard of maintaining the TOP’s oversight would no longer be utilized.

Recommendations Moving Forward

The FTA recommends that the CRD pursue deliberations to consider the value of providing technical oversight for ongoing studies. The CRD’s decision on this matter and its supporting reasons should be communicated to the public – whether the Committee determines to extend the provision of technical oversight through the TOP, through other staff, or to discontinue the oversight role.

More generally speaking, project roles at this juncture appear somewhat unclear and it would be beneficial for the CRD to clarify roles and decision-making processes moving forward. Such information should be provided to the public in a clear and concise manner, including associated timelines.