

Audit of Brevard County Compliance Contract GC686

Division of Waste Management

Report: A-1516DEP-041

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

October 17, 2016

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Tallahassee, Florida 32399-3000
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The Office of Inspector General (OIG) conducted an audit of Contract GC686 (Contract) between the Department of Environmental Protection (Department) Division of Waste Management (Division) Permitting and Compliance Assurance Program (Program) and the Brevard County Board of County Commissioners' Brevard County Natural Resources Management Office (County). This audit was initiated as a result of the Fiscal Year (FY) 2015-2016 Annual Audit Plan.

Scope and Objectives

The scope of this audit included Task Assignments 11 and 12 issued between July 1, 2014 and June 30, 2015, and selected events through March 2016. The Contract covers the compliance inspection services in Brevard and Indian River Counties. The objectives were to evaluate the:

- County's compliance performance to the Task Assignments
- Department's oversight of the compliance inspection Contract and inspections performed

Methodology

We conducted this audit under the authority of Section 20.055, Florida Statutes (F.S.), and in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*. Our procedures included review of Task Assignment documentation and interviews with Division, Central District, Southeast District, and County Staff.

Background

According to Section 376.3073(1), F.S., *the Department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of*

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its Departmental responsibilities through locally administered programs. Section 376.3073(3), F.S., indicates that eligible local governments, through written contract with the Department, shall receive funds for the implementation of a compliance verification program from the Inland Protection Trust Fund (IPTF).

The Department entered into the Contract with the County for a 10-year period beginning July 1, 2007. In 2012, the Division amended compensation for services from a lump sum payment per Task Assignment to payment for inspections.

Task Assignments include assigned annual compliance inspections and estimated variable inspections. The County performs annual compliance inspections from the facility listing provided in the Task Assignment. The County performed variable inspections in response to non-routine events such as discharges, violation follow-ups, installations, and tank closures. All inspection activities are recorded in the Florida Inspection Reporting for Storage Tanks (FIRST) database. Funding allocated for Task Assignment 11 was \$163,086.56 and Task Assignment 12 was \$42,447.19.

Contract GC680 Task Assignments		
Task Assignment	Period	Amount
11	July 1, 2014 through June 30, 2015	\$163,086.56
12	July 1, 2014 through June 30, 2015	\$42,447.19

Inspection planning and scheduling varies based on the type of tanks and date of last inspection. Title XV, Section B of the energy Policy Act of 2005 requires facilities to have an on-site inspection of underground storage tanks (UST) regulated under Subtitle I at least once

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every three years. Program Management considers the type of tanks, date of last inspection, and conflicts of interest facilities to identify the priority facilities for annual compliance inspection. The Program Contract Manager provides the list of facilities for inspection to the District and County. The District Task Manager monitors the County’s monthly performance and provides technical advice to the Program Contract Manager and County. In the event of facility inspection changes, the County notifies the Division with facility replacements. The District Task Manager monitors County performance and conducts the Storage Tank System Compliance Verification Program Review. Since the Contract included counties in two Districts, the County received two Task Assignments along with separate program reviews. The Southeast District monitored Task Assignment 12 and the Central District monitored Task Assignment 11.

The County received compensation of \$204,820.89 for the inspections completed in Task Assignment 11 and Task Assignment 12.

Task Assignment Inspections and Payments				
Task Assignment	Inspections			
	Annual Compliance Assigned	Annual Compliance Invoiced	Variable	Amount
11	365	365	82	\$158,939.34
12	95	95	31	\$ 45,881.55

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Results and Conclusions

County Performance

The County was assigned and completed 365 compliance inspections in Task Assignment 11 and 95 compliance inspections in Task Assignment 12. The County also completed 82 variable inspections in Task Assignment 11 and 31 variable inspections in Task Assignment 12.

We sampled 149 completed inspections documented in the FIRST database. Of the 149, 145¹ contained documentation indicating the results were communicated to the facility owner/operator. For the remaining four inspections, County management indicated that the inspector mailed the inspection reports, but did not upload the correspondence.

In addition, we contacted facility owners/operators to confirm the inspections performed in March 2016. For the 36 facilities inspected during the month, all confirmed the inspections occurred, and 35 indicated that a copy of the inspection report was received.

The Contract requires the County to inspect 33%, 66%, and 100% of the assigned inspections by the fourth, eighth, and twelfth months of the fiscal year. The performance metrics were met in both Task Assignments 11 and 12 and are included in the following table.

¹ The County indicated that the four inspection reports were sent, but the correspondence was not documented in FIRST.

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Task Assignment Inspections by Required Periods as a Percentage of Total Inspections											
Task Assignment	Assigned Facilities	October		February			June			Inspections	
		Inspections Completed	Percentage	Inspections Completed	Percentage	Inspections Completed	Percentage	Variable	Total		
11	365	179	49%	306	84%	365	100%	82	447		
12	95	34	36%	71	75%	95	100%	31	126		

Contract Guidance Document F, Level of Effort Guidance states, *the local program shall issue a Non-Compliance Letter within ten working days to the facility owner/operator upon discovery of a non-compliance violation.* During Task Assignment 11, the compliance rate was 82% (300/365). For the 65 facilities with non-compliance violations, 85% (55/65) of the Non-Compliance Letters were issued within 10 working days. In Task Assignment 12, the compliance rate was 84% (80/95). For the 15 facilities with non-compliance violations, 93% (14/15) of the Non-Compliance Letters were issued within 10 working days. County management indicated that some Non-Compliance Letters were delayed to allow time for the facility owner/operator to provide additional documentation.

Working Days before Non-Compliance Letters (NCLs) were Issued									
Task Assignment	Annual Compliance Inspections	Inspections with NCLs	Working Days		Working Days >10				
			=<10	>10	11-19	20-29	30-39	40-49	>50
11	365	65	55	10	2	4	4	0	0
12	95	15	14	1	0	0	1	0	0
Total	460	80	69	11					

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Contract Guidance Document F Level of Effort Guidance on Significant Non - Compliance - B (SNC-B) violations at the County states, *if after 90 days the violation remains unresolved, the local program shall refer the violation to the DEP district office. The 90 day clock begins upon issuance of the NCL. If the violation is in the process of resolution, and is being accomplished in a manner that is acceptable to both the local program and DEP, then the DEP may waive the 90-day referral.* Of the 14 facilities including 20 SNC-B violations, seven were open over 90 days without documentation agreement between the County and Department on the process to violation resolution.

According to Contract Guidance Document F Level of Effort Guidance, if after 180 days a minor violation remains unresolved, the local program shall contact the District to discuss. Once the local program and District decide on an appropriate course of action, the local program will have met the level of effort requirement. According to violation reports, 16 of 30 facilities with a total of 34 minor violations were open in excess of 180 days. Follow-up activity with the owner/operator or a course of action for these 16 facilities was not documented in FIRST.

The Contract requires the County to submit invoices for the prior month by the fifteenth day of the following month. Once invoices are received, the District has ten working days to review. The County submitted the September invoices for both Task Assignments 11 and 12 after the fifteenth day of the following month, due to invoice error and revision. The District Task Managers completed their review of the monthly invoices within the required 10 days for Task Assignments 11 and 12.

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Department Oversight

District Task Managers are responsible for review of the County's monthly invoices. This review includes the comparison of annual compliance inspections performed each month to the number of assigned facilities from the Task Assignment. The District Task Managers documented the review by including with the invoices a spreadsheet tracking the number of inspections performed and percentage of tasked inspections completed by month in Task Assignment 11 and Task Assignment 12.

The District Task Manager also monitors the County's performance by comparing the total number of routine annual inspections performed in the fourth, eighth, and twelfth months to total number tasked to determine if the County met the required metrics. The District Task Manager reviews variable inspections and ensures each routine compliance inspection on the Payment Calculation sheet is on the Task Assignment Exhibit. The District Task Manager also conducts Quality Assurance/Quality Control Inspections to support the program reviews. The District Task Managers complete a program review for each Task Assignment to evaluate County contract performance. The program review scores for Task Assignment 11 was 90 and Task Assignment 12 was 86 out of 100 points. These scores reflect a satisfactory level of performance with a score of 75 or below requiring a corrective action plan and score 95 or above allowing the District Task Manager to forgo a Program Review for the next Task Assignment.

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District Oversight			
Task Assignment	Fiscal Year	Quality Assurance/ Quality Control Inspections	Program Review Score
11	2014-2015	3	90
12	2014-2015	4	86

The Program Reviews for Task Assignments 11 and 12 included comments regarding similar follow-up and documentation issues noted during our review. According to the Contract paragraph 33, County must provide a written response to Program Review findings. The Contract does not specifically define a Program Review finding. The Task Manager indicated that deficiencies are generally documented in the comment section, rather than as a finding for response. County management indicated that a written response to comments was not requested by the District.

Findings and Recommendations

Finding 1: Contract Compliance

Non-Compliance Letters: Contract Guidance Document F, Level of Effort states, *the local program shall issue a Non-Compliance Letter within ten working days to the facility owner/operator upon discovery of a non-compliance violation.* Of the 80 facilities with violations, 11 (14%) were not issued a Non-Compliance Letter within ten working days as required. The Non-Compliance Letters serve as documentation of the facility's violation notification.

Significant Violation Resolution: Contract Guidance Document F Level of Effort, Significant Non Compliance B, states, *the owner/operator is given 90 days to resolve the*

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violation at the local program level. If after 90 days the violation remains unresolved, the local program shall refer the violation to the DEP district office. The 90 day clock begins upon issuance of the NCL. If the violation is in the process of resolution, and is being accomplished in a manner that is acceptable to both the local program and DEP, then the DEP may waive the 90-day referral. The local program may continue the resolution process with DEP oversight. Out of 14 facilities² with SNC-B violations, seven facilities including 10 violations had been open over 90 days with no documented follow-up activity indicating the County is monitoring the resolution process or referring violation to the Department for enforcement.

Minor Violation Resolution: Contract Guidance Document F Level of Effort, minor, states, *if after 180 days a minor violation remains unresolved, the local program shall contact the District Task Manager to discuss. Once the local program and District decided on the appropriate course of action needed, the local program will have met the level of effort requirement.* Out of 30 facilities with minor violations, 16 facilities with 34 violations had been open over 180 days with no documentation of follow-up activity included in FIRST.

The Districts' Program Reviews included comments regarding the number of days' violations remained open, and similar documentation concerns, but a written response to the Program Review was not requested by the Districts and any follow-up activities were not documented.

The Local Program Manager indicated that several factors contributed to the lack of follow-up activities to include personnel turnover, new employee transition, and changes in Task

² Facilities 8501048 and 8501233 had been referred.

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Assignments. It was anticipated that those facilities with open violations were included on the next fiscal year's inspection list.

During our review, of 14 facilities³ with open SNC-B violations, the County referred one facility to the District for enforcement and indicated another six facilities would be referred. The County also indicated that violations at three facilities⁴ had been resolved⁵.

Recommendation:

We recommend the Division direct the County to ensure review of required activities are conducted and are sufficiently tracked and documented. The Division should also work with Districts to refine the Program Review process so that sufficient follow up is conducted regarding areas of concern.

Finding 2: Invoice Overpayment

Invoice 2 of Task Assignment 12 included a component inspection that was not performed. The Department's review of the invoice did not identify the mistake and the inspection was used in the invoice calculation and the County was paid. County management indicated that Invoice 1 included a component inspection and when the template was cleared and the facility number removed the inspection number was not erased. During the review, the error was not identified and the County was paid \$192.96 for a component inspection.

³ Two facilities had previously been referred.

⁴ Facilities 8500936, 8628023, and 9200990

⁵ During the review, the County contacted the facility owner/operator and obtained required documentation to resolve the open violations.

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Recommendation:

We recommend the Division direct the County to reimburse the Department for the inspection paid in error.

To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of Section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Randal C. Stewart and supervised by Valerie J. Peacock.

Please address inquiries regarding this report to the OIG's Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at <http://www.dep.state.fl.us/ig/reports.htm>. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.

*Valerie J. Peacock,
Director of Auditing*

*Candie M. Fuller,
Inspector General*



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400


Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

Memorandum

TO: Valerie J. Peacock, Director of Auditing
Office of Inspector General

FROM: Wayne Kiger on behalf of F. Joseph Ullo, Jr., P.E., Director
Division of Waste Management 

SUBJECT: Response to Preliminary Audit Report A-1516DEP-041
Brevard County Compliance Contract GC686

DATE: October 13, 2016

The Division of Waste Management has reviewed the Audit of Brevard County Compliance Contract GC686, Report A-1516DEP-041. The Division concurs with the Findings and Recommendations presented in the preliminary report with regard to storage tank compliance services provided by Palm Beach County Environmental Resources Management.

Office of Inspector General Findings and Recommendations:

Finding 1: Contract Compliance

Non-Compliance Letters: Contract Guidance Document F, Level of Effort states, the local program shall issue a Non-Compliance Letter within ten working days to the facility owner/operator upon discovery of a non-compliance violation. Of the 80 facilities with violations, 11 (14%) were not issued a Non-Compliance Letter within ten working days as required. The Non-Compliance Letters serve as documentation of the facility's violation notification.

Significant Violation Resolution: Contract Guidance Document F Level of Effort, Significant Non Compliance B, states, the owner/operator is given 90 days to resolve the violation at the local program level. If after 90 days the violation remains unresolved, the local program shall refer the violation to the DEP district office. The 90-day clock begins upon issuance of the NCL. If the violation is in the process of resolution, and is being accomplished in a manner that is acceptable to both the local program and DEP, then the DEP may waive the 90-day referral. The local program may continue the resolution process with DEP oversight. Seven of 14 facilities with SNC-B, 10 violations had been open over 90 days with no documented follow-up activity indicating

the County's monitoring the resolution process or referring violation to the Department for enforcement.

Minor Violation Resolution: Contract Guidance Document F Level of Effort, minor, states, if after 180 days a minor violation remains unresolved, the local program shall contact the District Task Manager to discuss. Once the local program and District decided on the appropriate course of action needed, the local program will have met the level of effort requirement. Out of 30 facilities with minor violations, 16 facilities with 34 violations had been open over 180 days with no documentation of follow-up activity included in FIRST.

Recommendation:

We recommend the Division direct the County to ensure review of required activities are conducted and are sufficiently tracked and documented. The Division should also work with Districts to refine the Program Review process so that sufficient follow up is conducted regarding areas of concern.

Finding 2: Invoice Overpayment

Invoice 2 of Task Assignment 12 included a component inspection that was not performed. The Department's review of the invoice did not identify the mistake and the inspection was used in the invoice calculation and the County was paid. County management indicated that Invoice 1 included a component inspection and when the template was cleared and the facility number removed the inspection number was not erased. During the review, the error was not identified and the County was paid \$192.96 for a component inspection.

Recommendation:

We recommend the Division direct the County to reimburse the Department for the inspection paid in error.

Response from the Division of Waste Management:

The Permitting and Compliance Assistance Program is addressing the findings and recommendations detailed in the Preliminary Audit Report.

Finding 1: The Division has spoken with the County and provided direction on tracking and documentation. In addition, the Permitting Compliance and Assistance Program is developing a new compliance and enforcement flow chart that will assist both the Counties and the Districts in implementation of the Program Review process.

Finding 2: The billing error identified is acknowledged. The Permitting and Compliance Assistance Contract Manager requested reimbursement for the billing error on September 20, 2016, copy attached.



Florida Department of Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Jonathan P. Steverson
Secretary

September 20, 2016

Douglas Divers
Contract Manager
Brevard County Natural Resources Management Department
2725 Judge Fran Jamieson Way
Bldg. A, Suite 219
Viera, FL 32940

Subject: Brevard County Audit, Contract GC686 Task 12 – Invoice 2

Mr. Divers:

The Department has reviewed the Audit Report for Brevard County, Contract GC686 Task 12 for the Fiscal Year 14-15, and concurs with the Office of Inspector General recommendation to reimburse the Department for a Component Inspection billed in error on Invoice 2, for \$192.96.

Please remit payment via check and by mail to:

Florida Department of Environmental Protection
Attn: Revenue Department
3900 Commonwealth Blvd.
Tallahassee, FL 32399

If you have any questions, please contact Roger Ruiz at roger.ruiz@dep.state.fl.us

Sincerely,

A handwritten signature in blue ink that reads "Kim Walker".

Kim Walker
Program Administrator
Florida Department of Environmental Protection
Permitting and Compliance Assistance Program