

Audit of Orange County Compliance Contract GC702

Division of Waste Management

Report: A-1617DEP-025

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

August 31, 2017

3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000
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The Office of Inspector General (OIG) conducted an audit of Contract GC702 (Contract) Agreement for Storage Tank System Compliance Verification Program between the Orange County Board of County Commissioners' Environmental Protection Division (County) and the Florida Department of Environmental Protection (Department) Division of Waste Management (Division). This audit was initiated as a result of the Fiscal Year (FY) 2016-2017 Annual Audit Plan.

Scope and Objectives

The scope of this audit included performance and oversight activities under the Contract for Task Assignments 10 and 11 beginning July 1, 2015, through June 30, 2016 and selected performance events through March 2017. Compliance inspection services under the Contract were performed in Orange, Lake, Volusia, Seminole, and Osceola Counties. The objectives were to evaluate the:

- County's compliance inspection performance to the task assignments
- Department's oversight of the compliance inspection contract and inspection 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 include review of task assignment documentation and interviews with Division, Central District (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 for 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. Under this compensation agreement, the County is paid based on the number and type of inspections performed.

Task Assignment 10 included 1,355 assigned annual compliance inspections and estimated variable inspections. The County performs annual compliance inspections from the facility listing¹ 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 of Storage Tanks (FIRST) database². The County also received Task Assignment 11 to conduct Compliance Assistance Visits (CAVs) at approximately 250 facilities.

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 every three years. Division management considers the type of tanks, date of last inspection, and conflicts of interest facilities to identify the priority facilities for annual compliance inspections.

¹ Exhibit 1 of the Task Assignment.

² FIRST is the database application utilized by inspectors in the field to input data on the conditions of inspected facilities statewide.

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The Division Contract Manager provides the list of facilities for inspection to the District and County. The District Tank Manager monitors the County’s monthly performance and provides technical advice to the Division Contract Manager and County. In the event of facility inspection changes, the County notifies the Division about facility replacement. The Division identifies the replacement facility and notifies the County and District. The District Task Manager monitors County performance and conducts the Storage Tank System Compliance Verification Program Review.

Funding for Task Assignment 10 was \$798,474.40. An Amendment was issued June 6, 2016 that increased funding by \$25,000 for additional variable inspections. Funding for Task Assignment 11 was \$47,527.50. Task Assignment 11 also had an Amendment issued on March 24, 2016 that reduced funding by \$9,505.00 (50 CAVs).

Orange County Contract GC702 – July 1, 2015 through June 30, 2016				
Task Assignment	Amount	Amendment	Total Task Amount	Compensated
10	\$798,474.40	\$25,000.00	\$823,474.40	\$823,474.40
11	\$47,527.50	(\$9,505.00)	\$38,022.50	\$ 30,797.82
		Total		\$854,272.22

Contract GC702 expires as of June 30, 2017. New contracts have been developed for FY 2017-2018.

Results

The County performed and invoiced for all 1,355 compliance inspections assigned under Task Assignment 10. The County also completed 581 variable inspections in Task Assignment 10. Under Task Assignment 11, the County completed and invoiced for 168 CAVs. Of the total,

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we selected a sample of 56 CAVs documents and verified that documents³ were uploaded to OCULUS⁴. The goal of the CAVs effort was to increase the compliance rate by allowing the owners/operators to correct violations before the compliance inspection. The CAVs were offered to owners/operators assigned compliance inspections during Task Assignment 10. The compliance rate for the CAV's facilities was 66% and the compliance rate overall for compliance inspections performed was 78% for the Task Assignment.

We sampled 60 completed inspections documented in the FIRST database. Of the 60 completed inspections, 56 were either signed by facility representatives or the report included a comment referring to a problem with the electronic device used to document inspection activity in FIRST which prevented the signature from being obtained. The remaining four inspections contained other indications⁵ that the inspection occurred and the results were communicated to the facility representative. In addition, we sampled 103 inspections performed in October 2016 to confirm with the owner/operator that the inspections occurred. Of those sampled, 95 owners/operators responded that the inspection occurred and 94 indicated that they had received a copy of the inspection report. One owner/operator could not confirm receipt of the inspection report. The facility inspection report noted that the report was e-mailed to the owner/operator.

According to Section 7(b) of the Contract, the County is required 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 the fourth and twelfth months of Task Assignment 10.

³ The CAV filed in OCULUS for Facility 8517403 was for Facility 9808310 (corrected during audit).

⁴ OCULUS is the Department's web-based document management system.

⁵ Other indicators were pictures and statement on the reports' transmittal.

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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	Percentages	Inspections Completed	Percentages	Inspections Completed	Percentages	Variables	Totals
10	1,355	445	33%	877	65%	1,355	100%	581	1,935

On March 22, 2016, the Division notified Orange County that payment for April invoice would be withheld until the County achieved 66% of tasked facilities inspected. The percentage of completed inspections was achieved the first week of April.

We also reviewed 581 variable inspections performed and compared the listed inspections to FIRST database. From this list, two inspections were invoiced and paid twice. Facility 9813762 was invoiced in September and December for a discharge inspection, and Facility 9814955 was invoiced March and June for an installation inspection. In both, the inspection report was closed, but was reopened to update the report. When the reopened report was closed the new closed date replaced the previous closed date. The County Contract manager indicated that the duplicate inspection invoice was an oversight.

According to Guidance Document A in the Contract, Storage Tank System Program Violation List, violations designated type “I” violations require the inspector to conduct a follow-up re-inspection to determine owner/operator’s return to compliance. In Task Assignment 10, the County invoiced for 175 non-compliance inspections⁶.

⁶ Non-Compliance inspection is a re-inspection of a violation.

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We reviewed the variable inspection reports and selected a sample of 39 non-compliance inspections. Of these, 37 facilities included violations that required re-inspection. The two facilities (8732399 and 9802724) not requiring re-inspection were not invoiced.

Guidance Document F of the Contract 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 10, the inspection compliance rate was 78% (300/1,355). Of the 300 Non-Compliance Letters issued, 265 (88%) were issued within 10 working days.

Working Days before Non-Compliance Letters (NCLs) were Issued									
Task Assignment	Annual Compliance Inspections	Inspections with NCLs	Working Days		Working Days > 10 days				
			=<10	>10	11-19	20-29	30-39	40-49	>50
10	1,355	300	265	35	14	16	1	2	2

Additionally, Guidance Document F of the Contract states, *if after 180 days a minor violation remains unresolved, the local program shall contact the District Task Manager to discuss. Once local program and District decide on the appropriate course of action needed, the local program will have met the level of effort requirement.* The Violation Reports recorded 94 facilities with 239 open violations. Of these, 23 facilities with 66 open violations were referred to the District. Of the 173 open violations managed by the County, 143 were minor and 30 were significant non-compliance violations. As of July 1, 2016, 20 minor violations had exceeded 180 days and seven significant non-compliance violations had exceeded 90 days without documented follow-up in FIRST.

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Section 47 of the Contract requires the County to submit invoices no later than the fifteenth day of the following month. During Task Assignment 10, eight invoices were submitted by the fifteenth of the following month to the District for approvals. Because of corrections required by the District Task Manager, four invoices were submitted after the 15th.

Department Oversight

The County submits monthly invoices to the District. The District Task Manager compares routine compliance inspections on the County’s monthly invoice payment calculation sheet to the Task Assignment Exhibit. The District Task Manager also confirms that variable inspections were performed and documented in FIRST.

The District Task Manager also conducted two Quality Assurance/Quality Control inspections during the Task Assignment and conducts electronic file reviews in FIRST and OCULUS databases to support the Program Review. The Program Review completed for FY 2015-2016 stated, *Orange County provided excellent customer service and work is conducted professionally with customers and DEP staff.* The Program Review included similar comments regarding deficiencies in follow-up non-compliance correspondence; however, the Program Review completed for FY 2015-2016 could not be obtained from the County and was not uploaded to the OCULUS database. We obtained it from the District Task Manager, but were unable to verify that it had been provided to the County and noted that it was not dated. The County received a Program Review score of 92.4 out of 100 for Task Assignment 10.

Department Oversight			
Task Assignment	Fiscal Year	Quality Assurance/ Quality Control Inspections	Program Review Score
10	2015-2016	2	92.4

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Subsequent Compliance Inspection Contracts

To encourage local program performance improvements regarding compliance rates, the new tank compliance inspection contracts, effective July 1, 2017, include compensation incentives. Compensation for routine compliance inspection has been increased 10% from \$464.00 to \$510.40. This added amount will be withheld during the task as retainage. At the end of the year, 50% of the withheld retainage will be released if the County maintains a compliance rate of 95% for the routine inspections conducted during the task. The remaining 50% retainage will be released if the County's average for returning facilities to compliance is no more than 45 days for the routine inspections conducted during the task. The percent of retainage released for both of these performance criteria is decreased if lower performance is achieved.

According to Division management, this financial incentive was added to the contract mainly to encourage local programs to resolve minor non-compliance violations in a timely manner. In the new contract task assignment form, this performance criteria is stated, *1. Number of days to return to compliance for facilities receiving routine inspections, 2. Percent of facilities returned to compliance for facilities receiving routine inspections.* According to the task assignment form, the Department *will determine levels of performance based on routine inspections completed before May 1 for the sixty day return to compliance rate to be determined before July 1.* Financial consequences included in the contracts are based on submission of unsatisfactory deliverables.

Conclusion

Based on our review, the County performed the required compliance and variable inspections as specified in Task Assignments 10 and 11. In addition, the Department provided

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oversight of the compliance inspection contract and inspections performed. However, the County did not consistently meet the required Level of Effort guidance regarding non-compliance letters and follow-up of open violations and we were unable to verify the Program Review was provided to the County. Our findings and recommendations are contained in the remainder of this report.

Findings and Recommendations

Finding 1: Contract Compliance

Guidance Document F of the Contract 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 300 Non-Compliance letters issued, 35 (12%) were issued over 10 working days after discovery.

According to Guidance Document F of the Contract regarding Significant Non-Compliance B (SNC-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.* Of the seven SNC-B violations identified without documented resolution or follow-up as of June 30, 2016, five remained without documented follow-up activity in FIRST as of March 14, 2017.

According to Guidance Document F regarding minor violations, *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*

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needed, the local program will have met the level of effort requirement. Of the 20 minor violations identified without documented follow-up as of June 30, 2016, seven remained without documented follow-up activity in FIRST as of March 14, 2017.

According to the 2015-2016 Program Review, the District noted similar issues. However, the County received a 92.4 out of 100 total points. Under the current Contract payment structure, required activities under Guidance Document F, such as major non-compliance and open violation follow-up, have not been linked to performance incentives or financial consequences. While the Program Review included similar concerns regarding follow-up activities, we could not determine the extent that these results were used to address corrective steps.

The new contracts provide financial incentives for increased compliance rates and timely resolution of violations cited during tasked routine inspections. These incentives will encourage follow-up activities for cited violations in which resolution can reasonably be expected during the task period. It is anticipated that these incentives will have a positive impact on increased compliance rates and timely resolution of primarily minor violations. However, these incentives have less effect for performance of activities required under Guidance Document F, such follow-up activities of significant or on-going open violations.

Contract financial consequences do not address these required activities, but are based on submission of unsatisfactory deliverables. Deliverables specified in the contract include the accurate and timely submission of inspections listed in the monthly Payment Calculation Sheet.

Recommendation:

We recommend the Division work with the County to ensure follow-up activities required under Guidance Document F are conducted, documented, and sufficiently tracked. As

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provided under the Contract, Performance Reviews should be used as mechanism to address deficiencies and follow up on corrective action to resolution.

Finding 2: Compliance Inspection Activities Performed Prior to Task Assignment

Execution

Annual Task Assignments include an Exhibit of the facilities to be inspected during the task. Inspections are invoiced in the month the inspections are closed. Paragraph 43 of the Contract states, *in accordance with Section 287.058(2), F.S., the Contractor shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract and the execution of a Task Assignment.* The July invoice included five facility⁷ inspections where the on-site inspection activities and upload of related facility pictures occurred in June 2015, prior execution of Task Assignment 10.

While the inspections conducted prior to the execution of Task Assignment 10 would be considered ineligible for reimbursement, separate Program errors with the original Task Assignment Exhibit resulted in the number of assigned facilities exceeding the number authorized for payment during the task period.

The facilities assigned in the Task Assignment 10 Exhibit contained facility duplicate and errors that lead to the revision and reissue of the Exhibit list in November 2015⁸. In total, the County inspected 1,382 assigned facilities, but was paid for 1,355.

⁷ Facilities 9808423, 9810445, 9810447, 9812742, and 9813774

⁸ Since the audit period, the Division has established additional management controls for facilities assignments, as addressed in prior audit A-1516DEP-041.

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The new contracts include the same requirement and further clarify that work will not commence prior to execution of the contract or task assignment. Per Paragraph 2.B. of the new Contract GC925, the *Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until the Contract, and any necessary Amendments or Change Orders, have been fully executed by both Department and Contractor. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until either 1) a TA/TACO has been fully executed, by both Department and Contractor, or 2) a PO or PO Change Order(CO) has been issued.*

Recommendation

We recommend the Division ensure that all approved reimbursements are made for work commenced as of the task execution date. This should be clarified with the Contractor to avoid misinterpretations in the submission of reimbursement requests.

Finding 3: Payments for Duplicate Facility Inspections

The Contract compensates the County on a fee schedule for specific inspections completed and included on invoices monthly. The County supports the invoice with a FIRST listing of inspections closed during the month.

The County invoiced and was paid for inspections at two facilities twice. During Task Assignment 10, the County invoiced for a Discharge inspection (\$190.11) at Facility 9813762 in September and again in December 2015. The County also invoiced for an installation inspection (\$570.34) at Facility 9814955 in both March and June 2016. The County inspectors requested that the closed inspections be opened to correct inspection information. Division technical staff

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opened the closed inspections to allow the inspector to correct the documentation. After the inspector re-closed the inspections, the County Contract Manager mistakenly invoiced for the inspections for the second time.

Recommendation:

We recommend the Division increase efforts to sufficiently track re-opened inspections throughout the task period to avoid duplicate payments. In addition, the Division should request from the County reimbursement of \$760.45 for the inspections billed and paid twice.

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*



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Rick Scott
Governor

Carlos Lopez-Cantera
Lt. Governor

Noah Valenstein
Secretary

Memorandum

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

FROM: F. Joseph Ullo, Jr., P.E., Director 
Division of Waste Management

SUBJECT: Response to Preliminary Audit Report A-1617DEP-025
Orange County Compliance Contract GC 702

DATE: August 31, 2017

The Division of Waste Management has reviewed the Audit of the Orange County Compliance Contract GC702, Report A-1617DEP-025. The Division concurs with the Findings and Recommendations presented in the preliminary report regarding the storage tank compliance verification program operated by Orange County.

Office of Inspector General Findings and Recommendations:

Finding 1: Contract Compliance

Guidance Document F of the Contract 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 300 Non-Compliance letters issued, 35 (12%) were issued over 10 working days after discovery.

According to Guidance Document F of the Contract regarding Significant Non-Compliance B (SNC-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.* Of the seven SNC-B violations identified without documented resolution or follow-up as of June 30, 2016, five remained without documented follow-up activity in FIRST as of March 14, 2017.

According to Guidance Document F regarding minor violations, *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.* Of the 20 minor violations identified without documented follow-up as of June 30, 2016, seven remained without documented follow-up activity in FIRST as of March 14, 2017.

Recommendation:

We recommend the Division work with the County to ensure follow-up activities required under Guidance Document F are conducted, documented, and sufficiently tracked. As provided under the Contract, Performance Reviews should be used as a mechanism to address deficiencies and follow up on corrective action to resolution.

Division Response:

The Division's Contract Manager is working with the District Task Managers to complete this year's Program Reviews. The Northeast and South Districts have completed their program reviews. The other districts are in the process of completing them. The Central District has been working with Orange County since April 2017 on specific data concerns, arranged for Pinellas County to provide training for Orange County inspectors, and is working towards completing the review by mid-September. District Task Managers will work with Contractors and Division staff to develop Corrective Action Plans addressing the areas of concern identified during Performance Reviews. District Task Managers will provide oversight on Contractor efforts to address Corrective Action actions and work with Division's Contract Manager on matters affecting payment requests and invoices to ensure Corrective Action Plan deliverables are met and program guidance followed by Contractors.

Finding 2: Compliance Inspection Activities Performed Prior to Task Assignment Execution

Annual Task Assignments include an Exhibit of the facilities to be inspected during the task. Inspections are invoiced in the month the inspections are closed. Paragraph 43 of the Contract states, *in accordance with Section 287.058(2), F.S., the Contractor shall not be eligible for reimbursement for services rendered prior to the execution date of this Contract and the execution of a Task Assignment.* The July invoice included five facility inspections where the on-site inspection activities and upload of related facility pictures occurred in June 2015, prior to execution of Task Assignment 10.

While the inspections conducted prior to the execution of Task Assignment 10 would be considered ineligible for reimbursement, separate Program errors with the original Task Assignment Exhibit resulted in the number of assigned facilities exceeding the number authorized for payment during the task period.

The facilities assigned in the Task Assignment 10 Exhibit contained facility duplicate and errors that lead to the revision and reissue of the Exhibit list in November 2015. In total, the County inspected 1,382 assigned facilities, but was paid for 1,355.

The new contracts include the same requirement and further clarify that work will not commence prior to execution of the contract or task assignment. Per Paragraph 2.B. of the new Contract GC925, the *Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until the Contract, and any necessary Amendments or Change Orders, have been fully executed by both Department and Contractor. Contractor, or its subcontractors if authorized under this Contract, shall not commence Work until either 1) a TA/TACO has been fully executed, by both Department and Contractor, or 2) a PO or PO Change Order(CO) has been issued.*

Recommendation:

We Recommend the Division ensure that all approved reimbursements are made for work commenced as of the task execution date. This should be clarified with the Contractor to avoid misinterpretations in the submission of reimbursement requests.

Division Response:

The Districts and Counties will be reminded during the upcoming webinars and teleconferences of their obligations under Chapter 287, Florida Statutes.

Finding 3: Payments for Duplicate Facility Inspections:

The Contract compensates the County on a fee schedule for specific inspections completed and included on invoices monthly. The County supports the invoice with a FIRST listing of inspections closed during the month.

The County invoiced and was paid for inspections at two facilities twice. During Task Assignment 10, the County invoiced for a Discharge inspection (\$190.11) at Facility 9813762 in September and again in December 2015. The County also invoiced for an installation inspection (\$570.34) at Facility 9814955 in both March and June 2016. The County inspectors requested that the closed inspections be opened to correct inspection information. Division technical staff opened the closed inspections to allow the inspector to correct the documentation. After the inspector re-closed the inspections, the County Contract Manager mistakenly invoiced for the inspections for the second time.

Recommendation:

We recommend the Division increase efforts to sufficiently track re-opened inspections throughout the task period to avoid duplicate payments. In addition, the Division should request from the County reimbursement of \$760.45 for the inspections billed and paid twice.

Division Response:

The Division has requested that FIRST Support notify us of "re-opened inspections" to avoid recurrences of this issue. The Division will instruct Orange County to reimburse the Department in the amount of \$760.45 for the duplicate payment. The Division's Contract Manager will review future contract invoices and compare to the tasking list to ensure that this event does not reoccur.