

**Audit of Subcontractor Activities and Payments
Under Agency Term Contracts with
Advanced Environmental Technologies, LLC**

Division of Waste Management

Report: A-1819DEP-023

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

October 2, 2019

3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000
<https://floridadep.gov>





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Division of Waste Management



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Audit of Subcontractor Activities and Payments Under Agency Term Contracts
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The Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of subcontractor payments under Agency Term Contracts (ATC) GC728, GC785, and GC833 (Contracts) between Advanced Environmental Technologies, LLC (Contractor) and the Division of Waste Management (Division) Petroleum Restoration Program (PRP).

Scope and Objectives

The scope of this audit included subcontracted activities for a sample of nine purchase orders issued under the Contracts since July 1, 2015. The objective was to evaluate subcontractor activities and determine whether the Contractor documented and made subcontractor payments in compliance with the Contracts and with Division and statutory requirements.

Methodology

This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors, and under the authority of Section 20.055, Florida Statutes (F.S.). Our procedures included review of Division, statutory and Contract requirements, as well as purchase orders, invoices, and facility documentation. We also obtained information from the Contractor and subcontractors.

Background

Section 376.3071, F.S., establishes the Inland Protection Trust Fund and specifies contracting requirements. PRP oversees environmental remediation cleanup activities from petroleum-based contamination on State-funded facilities under several cleanup programs and initiatives. Accomplishment of these activities include the use of subcontractors. According to Section 376.3071(6)(h) F.S., the Contractor is required to make prompt payment to

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subcontractors and suppliers for costs pursuant to Section 287.0585, F.S. Payments are to be made within 30 working days after the Contractor's receipt of payment by the Department.

Under paragraph 19 of the Contracts, the Contractor is not allowed to subcontract any work under the Contract, with the exception of those subcontractors authorized by the Department without prior written consent of the Department's Contract Manager.

Section 10 *Subcontractor Procedures*, of the PRP Standard Operation Procedures (SOP) outlines requirements for ATC subcontracting, including fixed costs, procurement, and cost reimbursement activities. According to Section 10 of the PRP SOP, all Contractor invoices must be accompanied by the Subcontractor Utilization Form listing all subcontractors and vendors with included costs, regardless of the payment method (Fixed Cost/Cost Reimbursement). For subcontractor change requests, Section 10 of the PRP SOP also requires that the *subcontractor cannot have a conflict of interest with the ATC or to the project being worked on*. Under the Scope of Services of the Contract, a 6% handling fee is authorized as a separate pay item per task for cost reimbursable items. When requesting final payment under a purchase order, the Contractor must submit a completed MyFloridaMarketPlace (MFMP)¹ Purchase Order Affidavit/Release of Claims Form certifying that work was completed in accordance with the purchase order and all subcontractors and suppliers have been paid in full. According to the Florida Accountability Contract Tracking System (FACTS)², between July 1, 2015 and June 1, 2019, the Division had issued purchase orders totaling \$14,676,319.24 to the Contractor.

¹ MyFloridaMarket Place (MFMP) is the State of Florida's procurement system maintained at the Department of Management Services.

² FACTS is the State of Florida's tracking mechanism for contract and grants.

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Results

To determine whether subcontractor payments were documented and made in compliance with the Contracts and with Division and statutory requirements, we evaluated payments for a sample of nine purchase orders as follows.

Facility	Purchase Order	Beginning Date	City	Amount	Payments to Date
8508383	B26CB2	1/26/2018	Quincy	\$1,027,153.27	\$986,704.52
8503520	AEAE8B	4/13/2016	Lake City	\$395,111.50	\$270,969.30
8508560	AFF803	10/25/2016	Wewahitchka	\$310,257.02	\$216,994.04
9202391	AF8DDA	8/8/2016	Graceville	\$205,357.15	\$188,611.51
9200505	ADA0A8	10/7/2015	Tallahassee	\$206,662.99	\$150,052.74
9047548	AEAA9C	4/13/2016	Sopchoppy	\$287,183.62	\$163,163.73
8942871	B17FBA	7/24/2017	Monticello	\$196,604.28	\$152,613.93
8500311	AD1168	7/21/2015	Gainesville	\$174,887.54	\$123,591.25
8509751	B050A4	1/11/2017	Monticello	\$138,563.62	\$126,413.26
			Total	\$2,941,780.99	\$2,379,114.28

Timely Payment

According to Section 376.3071(6)(h), F.S., the Contractor is required to make prompt payment to subcontractors and suppliers for costs pursuant to Section 287.0585, F.S. Payments are to be made within 30 working days after the Contractor's receipt of payment by the Department. Paragraph 7A of the Contracts states that the *Contractor shall complete and submit Attachment E, Subcontractor Utilization form (Subcontractor Report) with each invoice*. Per the Subcontractor Utilization Form, Contractors are to list the names and addresses of subcontractors utilized during the invoice period.

For the nine purchase orders reviewed, the Contractor submitted 61 invoices which contained Subcontractor Utilization Forms documenting the use of 25 subcontractors at a cost of \$944,799.72. Of the 89 reported subcontractor payments provided by the Contractor, payments

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were made within 30 days as required for 76. From the subcontractor payment information provided by the Contractor, the check dates for 11 payments and the check cleared date for two payments exceeded 30 working days.

Late Payments Per Contractor Documents								
Purchase Order	Contractor Invoice	Vendor	Reported Subcontractor Payment	DEP Payment Date	Check Number ³	Check Date	Check Cleared Date	Amount Paid ⁴
B26CB2	34232	Environmental Testing Laboratories, Inc	\$7,685.60	6/6/2018	52436	8/13/2018	8/31/2018	\$7,060.00
B26CB2	34624	United States Environmental Services, LLC	\$2,231.25	8/14/2018	52445	8/13/2018	10/3/2018	\$2,231.25
B26CB2	35414	United States Environmental Services, LLC	\$1,502.63	11/13/2018	52784	11/11/2018	1/14/2019	\$6,198.00
ADA0A8	31112	Environmental Testing Laboratories, Inc	\$2,025.00	2/7/2017	20956	4/24/2017	4/28/2017	\$10,061.40
ADA0A8	31112	Environmental Testing Laboratories, Inc	\$2,025.00	2/7/2017	50239	5/25/2017	5/30/2017	\$10,109.86
ADA0A8	30549	Betts Environmental Recovery, Inc	\$5,530.00	10/20/2016	20654	1/9/2017	1/18/2017	\$16,420.00
ADA0A8	30549	Environmental Testing Laboratories, Inc	\$1,125.00	10/20/2016	20746	2/15/2017	2/21/2017	\$7,087.61
ADA0A8	30549	Environmental Testing Laboratories, Inc	\$1,125.00	10/20/2016	20499	12/6/2016	12/14/2016	\$7,149.48
AEEA9C	31597	Environmental Testing Laboratories, Inc	\$4,195.12	4/17/2017	50272	6/6/2017	6/9/2017	\$10,375.42
AD1168	29324	Environmental Testing Laboratories, Inc	\$862.10	5/17/2016	20450	11/18/2016	11/22/2016	\$14,094.93
AD1168	29074	Terra Sonic International, LLC	\$18,125.00	2/8/2016	49975	6/13/2016	7/8/2016	\$45,080.00
AD1168	29324	Environmental Testing Laboratories, Inc	\$862.10	5/17/2016	20414	10/27/2016	10/31/2016	\$8,872.52
AD1168	29074	Environmental Testing Laboratories, Inc	\$4,733.00	2/8/2016	20120	6/7/2016	6/9/2016	\$180,349.32

Based on correspondence with the Contractor's Comptroller, some of the late payments were due to common ownership between the Contractor and subcontractors. From a further comparison of invoice documentation obtained from subcontractors to checks provided by the Contractor, we noted that the check dates for an additional three payments and the check cleared date for an additional five payments exceeded 30 working days.

³ The source of check information was provided by the Contractor.

⁴ Amounts reflected on Contractor's checks varied from payment amounts due to the Contractor's accounting for payments to subcontractors on multiple projects.

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Late Payments Per Comparison of Invoice Documentation to Cleared Checks⁵								
Purchase Order	Invoice	Subcontractor	Reported Subcontractor Amount	DEP Payment Date	Check Number	Check Date	Check Cleared Date	Amount Paid
B26CB2	34232	Southern Earth Sciences, Inc.	\$800.00	6/6/2018	052441	8/13/2018	9/5/2018	\$800.00
AF8DDA	33659	Horizon Environmental Services, LLC	\$200.00	2/1/2018	051063	2/19/2018	4/10/2018	\$7,315.00
AF8DDA	33659	Huss Drilling, Inc.	\$1,980.00	2/1/2018	051064	2/19/2018	4/9/2018	\$1,980.00
ADA0A8	31112	Horizon Environmental Services, LLC	\$920.11	2/7/2017	50147	2/6/2017	4/18/2017	\$12,499.26
ADA0A8	29531	Huss Drilling, Inc.	\$7,005.42	6/16/2016	20245	6/20/2016	8/25/2016	\$7,005.42
AD1168	29074	Horizon Environmental Services, LLC	\$3,000.00	2/8/2016	49808	3/10/2016	4/26/2016	\$11,110.00
AD1168	31298	DrillPro LLC dba Groundwater Protection, Inc.	\$6,769.00	3/2/2017	0503327	6/19/2017	8/1/2017	\$6,769.00
AEAA9C	30486	Huss Drilling, Inc	\$3,418.00	10/12/2016	20522	12/5/2016	1/3/2017	\$13,937.36

We requested clarification from the Contractor for any known causes of the delay between check dates and check cleared dates. However, a definite payment date could not be determined beyond the Contractor's check date.

PRP Audit of Subcontractor Payments

Due to control weaknesses regarding subcontracting activities noted in prior OIG reviews, PRP has implemented processes to task contracted accounting staff to audit subcontractor payments on at least one purchase order for each ATC in each region annually. This process involves requests to Contractors for support documentation and is dependent on the information supplied by the Contractor. In December 2018, accounting staff audited one purchase order issued to the Contractor and noted one subcontractor payment where the Contractor's check date was 30 working days past the date the Contractor was paid by the Department. However, there had been no follow-up by PRP accounting staff to ensure late payment penalties were paid as required under Section 287.0585, F.S.

⁵ Invoice documents were provided by subcontractors, check data was provided by the Contractor and the Department payment date was obtained from Department of Financial Services records.

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Subcontractor Utilization Forms

According to Section 10 of the PRP SOP, all Contractor invoices must be accompanied by the Subcontractor Utilization Form listing all subcontractors and vendors with included costs, regardless of the payment method (Fixed Cost/Cost Reimbursement). We contacted subcontractors and reviewed invoice and facility activity documentation during the purchase order service period. We noted 14 additional subcontractors or vendors that provided services under the purchase orders which were not listed on the invoice Subcontractor Utilization Forms. Of these, eight were subcontractors or vendors whose invoices were included in the Contractor's invoices but were not listed on the form. In addition, we obtained invoice documentation directly from four subcontractors or vendors which were not listed or included in any of the Contractor's invoice documents. We also noted two subcontractors which were identified in multiple purchase order activity documents available to Site Managers that had not been listed on the Subcontractor Utilization Form and did not appear in any of the Contractor's invoice documents. When contacted during our inquiry, one subcontractor responded that they had not provided services on any of the facilities, and the other acknowledged providing services for one of the Contractor's subcontractors.

Related Parties

Paragraph 30.A. of the Contract states that the *Contractor covenants that it presently has no interest, and shall not acquire any interest which would conflict in any manner or degree with its performance of this Restated Contract or Services required hereunder.* For subcontractor change requests, Section 10 of the PRP SOP states, *The subcontractor cannot have a conflict of interest with the ATC or to the project being worked on.* In addition, the PRP Subcontractor

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Request Form contains the statement; *On behalf of Contractor, ATC Contract Manager hereby acknowledges and attests to the following: Subcontractors identified in this request are not a related party to the Contractor, as defined by FASB – Financial Accounting Standards Board.*

During our review, we noted three⁶ subcontractors used under the purchase orders that were related parties with the Contractor. These subcontractors were included in the Contractor's submission in the original 2014 Contract solicitation and were on the PRP list of approved subcontractors for the Contractor effective through July 2018. As of July 26, 2018, two of the three are no longer included on the approved subcontractor list.

According to correspondence obtained under the Contract file, the Contractor contacted the Program Administrator regarding concerns with the Subcontractor Request Form. The Contractor indicated that many of the subcontractors listed in their original Contract were also owned by the Contractor. The Program Administrator responded, *if you would like to request any of the companies owned by [owner], as a subcontractor under GC728, GC785, and GC833 who holds ownership in AET (the Company that holds GC728, GC785, and GC833), then please add them to the form with a notation that they are owned by the entity that has ownership in AET.*

This response is not consistent with direction included in the SOP and PRP Subcontractor Request Form and exposes PRP to the risk of paying inflated costs.

Reimbursable Costs

Scope of Work Section V *Technical Specifications*, of the Contract allows the Contractor to purchase goods and services not covered by the fixed price schedule. The Contractor is required to adhere to procurement laws. Paragraph 11 states, *Prices for goods and services not*

⁶ Two of these subcontractors included the same owner or Comptroller as the Contractor based on Department of State Corporate filing. The Contractor's ownership of the other was acknowledged by the Contractor's Comptroller.

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covered by the Contract fixed price schedule shall be established such that the DEP obtains reasonable prices from vendors and subcontractors of demonstrated competence and qualification. Records supporting procurement of these goods and services must contain sufficient detail to demonstrate that the Contractor meets DEP requirements in obtaining price quotations or proposals for said goods and services. For purchases under \$2,500 the Contractor should submit one written quote considered to be fair and reasonable by the Project Manager. According to Paragraph 11.b., if the reimbursable purchase is \$2,500 and above, the Contractor, wherever possible, must obtain a minimum of three (3) responsive quotes or proposals, and select the one that best represents a reasonable price from a vendor of demonstrated competence and qualifications. The solicitation for quotes or proposals should specify the factors that will be used to determine demonstrated competence and qualifications. The Contractor shall also include in their solicitation instructions for the subcontractor or vendor to send a copy of the written quotation or proposal to the DEP Project Manager concurrent with their copy to the Contractor. For the three quotes, Section 10 of the PRP SOP allows that one of the quotes may be from the Contractor (in-house).

Based on our review, five of the sampled purchase orders included nine reimbursable items with cost over \$2,500 which required the submission of three quotes. We noted the following circumstances that occurred with these nine items.

- The Contractor submitted the low quote (in-house) for three.
 - In one item, one of the competing quotes was submitted by a company that is a related party to the Contractor.

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- In a second item, one of the competing quotes was submitted by a company that had filed for corporate status with the Department of State 13 days prior to submitting the quote. Based on the purchase order activity documents, the Manager of the company worked on the site under a different subcontractor.
- One of the nine items was awarded to a related party business to the Contractor. For this item, one of the other bids was submitted by another related party business.
- Several of the quotes for specific services under the nine items did not appear to come from companies with demonstrated qualifications for the activities specified under the scope of work⁷. Based on discussions with Site Managers, as well as review of facility documentation available in MFMP and OCULUS⁸, quotes for services were obtained by PRP Site Managers without documentation of the factors that the Contractor used to determine demonstrated competence and qualifications.
- Per Section 10 of the PRP SOP, multiple quotes for the same item(s) should represent the same scope of work. Several of the quotes submitted under the nine items represented varying differences from the winning quote that may have impacted price.

Conclusion

Within the current PRP contract structure and practices regarding subcontracting activities, numerous control weaknesses exist that promote a lack of transparency and

⁷ Examples included competing quotes for canopy/fuel system removal submitted by an environmental consultant and vacuum truck company. Other examples included competing quotes for vacuum services and clarifying tank rental and delivery services from environmental consultant companies.

⁸ OCULUS is the Department's electronic document management system.

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accountability regarding the use of subcontractors, the costs for remediation activities, and timely subcontractor payment.

Findings and Recommendations

Finding 1: Late Payments and Omission of Reported Subcontractors

According to Section 376.3071(6)(h), F.S., the Contractor is required to make prompt payment to subcontractors and suppliers for costs pursuant to Section. 287.0585, F.S. Paragraph 1 of Amendment 4 of the Contract states, *Contemporaneous with all payments from Department, excluding final payment for a Work Assignment, Contractor shall pay all subcontractors and vendors under this Contract within thirty (30) working days from the date of receipt of payment from Department pursuant to 376.3071(6), F.S.*

For the nine purchase orders reviewed, we noted 14 payments where the Contractor's check date and seven payments where the check cleared dates exceeded 30 working days. The Contractor indicated that some of the late payments were due to common ownership between the Contractor and subcontractors. Since PRP does not require documentation from the Contractor which would demonstrate the date payments were sent, the Department has no assurance of timely payment in circumstances where the check cleared the bank past 30 working days of the Contractor's payment by the Department.

Paragraph 7A of the Contracts states that the *Contractor shall complete and submit Attachment E, Subcontractor Utilization form (Subcontractor Report) with each invoice.* Per the Subcontractor Utilization Form, Contractors are to list the names and addresses of subcontractors utilized during the invoice period. According to Section 10 of the PRP SOP, all Contractor invoices must be accompanied by the Subcontractor Utilization Form listing all subcontractors

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and vendors with included costs, regardless of the payment method (Fixed Cost/Cost Reimbursement). Paragraph 19 of the Contract states that the *Contractor shall not, sell, assign or transfer any of its rights, duties or obligations under this Contract, or under any Work Assignment issued pursuant to this Restated Contract (Rights and Duties), without prior consent of the Department. Contractor shall remain liable for performance of its Rights and Duties, regardless of any assignment to or assumption by any third party, notwithstanding any approval thereof by Department.* It further states, *Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.*

We noted 14 additional subcontractors or vendors that provided services under the purchase orders that were not listed on the invoice Subcontractor Utilization Forms. Of these, we noted the following circumstances.

- Eight were subcontractors or vendors whose invoices were included in the Contractor's invoices but were not listed on the form. The invoices had been approved by Site Managers without ensuring that the Subcontractor Utilization Forms contained a complete listing of all subcontractors used during the service period.
- Four were subcontractors or vendors which were not listed or included in any of the Contractor's invoice documents. Invoices for these vendors were obtained as a result of our direct inquiry.
- Two were subcontractors or vendors which had not been listed on the Subcontractor Utilization Form and did not appear in any of the Contractor's invoice documents but were identified in purchase order activity documents available to Site Managers.

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Recommendation

Due to the noted risk of subcontractor omission and potential for late payment, we recommend the Division work with PRP to put added controls in place to ensure all subcontractors used for funded purchase order activities are documented on the Subcontractor Utilization Forms and paid in a timely manner. Prior to approval for payment, Site Managers should verify that the form includes subcontractors whose invoices are submitted with payment requests as well as subcontractors documented in purchase order reports, correspondence, and other activity documents.

Further, since PRP's process of using contracted administrative staff to audit subcontractor payments covers a minimal number of purchase orders annually with no third-party inquiry or follow-up for corrective action, we recommend the Division discontinue this practice and revise PRP practices of verifying subcontractor payments. This revision should include the requirement for Contractors to supply sufficient subcontractor payment documentation with each purchase order invoice to demonstrate subcontractor payments were made from the previous purchase order invoice payment. If Contractors make payments by check, this should include documented confirmation of the date payment was sent. In addition, for the payments made past 30 working days⁹, as noted in this report, PRP should obtain sufficient documentation from the Contractor to demonstrate resolution of applicable penalties in compliance with Section 287.0585(1), F.S.

⁹ Payments made 30-days past the check date.

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Finding 2: Related Parties and Procurement for Reimbursable Costs

Paragraph 30.A. of the Contract states that the *Contractor covenants that it presently has no interest, and shall not acquire any interest which would conflict in any manner or degree with its performance of this Restated Contract or Services required hereunder.* For subcontractor change requests, Section 10 of the PRP SOP states, *The subcontractor cannot have a conflict of interest with the ATC or to the project being worked on.* For the purchase orders reviewed, we noted the consistent use of three subcontractors which were related parties with the Contractor. These subcontractors were authorized by PRP and listed in the original Contract executed February 27, 2014. Historically, PRP has allowed the use of related party subcontractors. Of the three, two are no longer included on the PRP approved subcontractor list for the Contractor. The allowed use of related party subcontractors is not consistent with SOP requirements and puts additional separation between the Department and PRP participants. As a result, PRP has limited knowledge of the activities, companies and personnel working on state funded remediation projects. This limitation exposes the Department to risk of paying inflated costs, funding work performed by companies of unknown competence or qualification and hinders PRP's ability to enforce the terms of the Contract.

Section V *Technical Specifications* of the Contract Scope of Services allows the Contractor to purchase goods and services not covered by the fixed price schedule. The Contractor is required to adhere to procurement laws. Section V.A.11., of the Scope of Services states, *Prices for goods and services not covered by the Contract fixed price schedule shall be established such that the DEP obtains reasonable prices from vendors and subcontractors of demonstrated competence and qualification. Records supporting procurement of these goods and*

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services must contain sufficient detail to demonstrate that the Contractor meets DEP requirements in obtaining price quotations or proposals for said goods and services. According to Section V.A.11.b., of the Scope of Services, if the reimbursable purchase is \$2,500 and above, the Contractor, wherever possible, must obtain a minimum of three (3) responsive quotes or proposals, and select the one that best represents a reasonable price from a vendor of demonstrated competence and qualifications. Section 10 of the PRP SOP allows that one of the three quotes may be from the Contractor (in-house).

In review of nine reimbursable items with costs over \$2,500, the Contractor submitted the low quote for three. Of the three, a competing quote for one item was submitted by a company that is a related party to the Contractor. A competing quote for a separate reimbursable item was from a company that had filed for corporate status with the Department of State 13 days prior to submitting the quote. The Manager listed for this company was included in purchase order activities on the site under a different subcontracting company.

Of the nine reimbursable items, one was awarded to a business which was a related party to the Contractor. Of the two other quotes submitted for the item, one was a quote from another related party.

Section V.A.11.b., of the Scope of Services states, *The solicitation for quotes or proposals should specify the factors that will be used to determine demonstrated competence and qualifications. The Contractor shall also include in their solicitation instructions for the subcontractor or vendor to send a copy of the written quotation or proposal to the DEP Project Manager concurrent with their copy to the Contractor. Several of the quotes for specific services under the nine items did not appear to come from companies with demonstrated qualifications*

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for the activities specified under the scope of work. Based on discussions with Site Managers, as well as review of facility documentation available in MFMP and OCULUS, quotes for services were obtained by PRP Site Managers without documentation of the factors that the Contractor used to determine demonstrated competence and qualifications.

Per Section 10 of the PRP SOP, multiple quotes for the same item(s) should represent the same scope of work. Several of the quotes submitted under the nine items represented varying differences from the winning quote that may have impacted price. Further, the scope of work outlined in the purchase order or change order did not always provide sufficient detail to support the specific activities listed in the quotes received.

Despite requirements contained in the Contract and the SOP as well as information available to PRP Site Managers, PRP did not provide effective procurement and oversight of purchase order subcontracting activities included in this review.

Recommendation:

Going forward, we recommend the Division work with PRP to prohibit the addition of subcontractors which are related parties to the Contractor. For reimbursable activities, PRP should put controls in place to ensure that all subcontractors who submit quotes are companies which have proven competency and qualification in the area for the services needed and are not related parties to the Contractor. We also recommend the Division work with the PRP to ensure Site Managers obtain Contractor solicitations for quotes or proposals, and verify the solicitation specifies factors that will be used to determine demonstrated competence and qualifications. In reviewing quotes, the PRP should also ensure quotes received represent the same scope of work and are consistent with the services outlined in the purchase order. These added controls should

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include the Site Manager's documented verification, review, and supervisory approval prior to purchase order authorization.

Management Comment

Demolition Agreement

Concurrent with one of the purchase orders included in our audit, the Division executed a separate Demolition Agreement with the property owner which provided funding for removal and reinstallation of the facility canopy and fuel system. This Agreement included Department funding of \$126,232.75 and required property owner match funding of \$54,116.72. While outside the scope of this audit, many of the same pay items listed in the Demolition Agreement were pay items identified in the purchase order. Since the Department's assigned Site Manager for the facility had recently changed, the current Site Manager was unable to provide justification for the duplicate pay items listed in the Demolition Agreement and purchase order. We obtained clarification from the Deputy General Counsel that although the Demolition Agreement listed the same items, they were not duplicative. The Deputy General Counsel provided copies of quotes for pay items funded under the Demolition Agreement which included installation of a new canopy (\$46,351.47), ancillary items (\$25,116.00), and installation of a new fuel system (\$108,921.60). The winning quote for the ancillary items and installation of the new fuel system was received from the Contractor. Of the two competing quotes for these services, one was received from an environmental consultant, and the other from company that had filed for corporate status with the Department of State 13 days prior to submitting the quote. The Division would benefit by incorporating the controls described in this report's findings to all PRP funded Agreements.

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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 Joy James 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 <https://floridadep.gov/oig/internal-audit/content/final-audit-reports>. 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*

Memorandum

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

FROM: Tim J. Bahr, P.G., Director *TJ Bahr*
Division of Waste Management

SUBJECT: Response to Preliminary Audit Report A-1819DEP-023
Audit of Subcontractor Activities and Payments Under Agency Term
Contracts with Advanced Environmental Technologies, LLC

DATE: October 2, 2019

The Division of Waste Management has reviewed the Audit of Subcontractor Activities and Payments Under Agency Term Contracts with Advanced Environmental Technologies, LLC, Report A-1819DEP-023. The following is in response to the referenced audit.

Office of Inspector General Recommendations

Finding 1: Late Payments and Omission of Reported Subcontractors

Recommendation

Due to the noted risk of subcontractor omission and potential for late payment, we recommend the Division work with PRP to put added controls in place to ensure all subcontractors used for funded purchase order activities are documented on the Subcontractor Utilization Forms and paid in a timely manner. Prior to approval for payment, Site Managers should verify that the form includes subcontractors whose invoices are submitted with payment requests as well as subcontractors documented in purchase order reports, correspondence, and other activity documents.

Further, since PRP's process of using contracted administrative staff to audit subcontractor payments covers a minimal number of

purchase orders annually with no third- party inquiry or follow-up for corrective action, we recommend the Division discontinue this practice and revise PRP practices of verifying subcontractor payments. This revision should include the requirement for Contractors to supply sufficient subcontractor payment documentation with each purchase order invoice to demonstrate subcontractor payments were made from the previous purchase order invoice payment. If Contractor's make payments by check, this should include documented confirmation of the date payment was sent. In addition, for the payments made past 30 working days⁹, as noted in this report, PRP should obtain sufficient documentation from the Contractor to demonstrate resolution of applicable penalties in compliance with Section 287.0585(1), F.S.

Division Response

The Department has a contractual relationship with the ATCs. The Department is not party to the contract between the ATC and their subcontractors, and as described in the findings, subcontractor payments are to be made in accordance with Section 376.3071(6)(h), F.S. Also, Section 287.0585, F.S. provides for subcontractors to pursue restitution via the courts. Nevertheless, the Petroleum Restoration Program (Program) has provided a User Guide (located on the Administrative Guidance webpage at <https://floridadep.gov/waste/petroleum-restoration/documents/subcontract-payment-assistance-user-guide>) to assist subcontractors in determining if the Department has made a payment in relation to work the subcontractor has performed on a project funded under Contract from the Program.

Also, although the Program implemented a random audit process for invoices a year ago and updated internal guidance on September 11, 2019, the program will be transitioning to a process for requiring ATCs to submit subcontractor payment documentation at the conclusion of each purchase order.

Site managers are responsible for confirming that the Contractor properly completed the subcontractor utilization form listing all utilized subcontractors. Completion of the form was covered in the Accounting Presentation ATC Training given by the Program to the ATCs on June 27, 2019 and this training is available on the PRP website for ATCs (<https://floridadep.gov/waste/petroleum-restoration/documents/prp-accounting-atc-invoice-training>). The Purchase Order Invoice Processing Checklist (<https://floridadep.gov/waste/petroleum-restoration/documents/purchase-order-invoice-processing-checklist>) defines the site managers' role in reviewing invoices and site managers were trained as to their role during the September 12, 2019 PRP Statewide Teleconference.

Finding 2: Related Parties and Procurement for Reimbursable Costs

Recommendation:

Going forward, we recommend the Division work with PRP to prohibit the addition of subcontractors which are related parties to the Contractor. For reimbursable activities, PRP should put controls in place to ensure that all subcontractors who submit quotes are companies which have proven competency and qualification in the area for the services needed and are not related parties to the Contractor. We also recommend the Division work with the PRP to ensure Site Managers obtain Contractor solicitations for quotes or proposals, and verify the solicitation specifies factors that will be used to determine demonstrated competence and qualifications. In reviewing quotes, the PRP should also ensure quotes received represent the same scope of work and are consistent with the services outlined in the purchase order. These added controls should include the Site Manager's documented verification, review, and supervisory approval prior to purchase order authorization.

Division Response

The Program is currently developing a Standardized Subcontractor Quote Form that will require submittal to site manager when quotes are solicited. The standardized form will ensure quotes represent the same scope of work, that knowledgeable subcontractors are providing quotes, and require a statement regarding conflict of interest. This new form will be available within 60 days and mandatory for use with quotes submitted after January 1, 2020. The design will facilitate the site manager in determining if the quotes submitted meet quoting requirements.

The Invitation to Negotiate and Award allowed related parties to subcontract work. In June 2018, subsequent to the scenario referenced in the audit, the SOP was posted stating that the subcontractor cannot have a conflict of interest with the ATC or the project being worked on. The program agrees with the recommendation to prohibit additional subcontractors which are related parties from being added to the approved subcontractors list and will update the SOP and the subcontractor approval request form to clarify this.

OIG Management Comment

Demolition Agreement

Concurrent with one of the purchase orders included in our audit, the Division executed a separate Demolition Agreement with the property owner which provided funding for removal and reinstallation of the facility canopy and fuel system. This Agreement included Department funding of \$126,232.75 and required property owner match funding of \$54,116.72. While outside the scope of this audit, many of the same pay items listed in the Demolition Agreement were pay items identified in the purchase order. Since the Department's assigned Site Manager for the facility had recently changed, the current

Site Manager was unable to provide justification for the duplicate pay items listed in the Demolition Agreement and purchase order. We obtained clarification from the Deputy General Counsel that although the Demolition Agreement listed the same items, they were not duplicative. The Deputy General Counsel provided copies of quotes for pay items funded under the Demolition Agreement which included installation of a new canopy (\$46,351.47), ancillary items (\$25,116.00), and installation of a new fuel system (\$108,921.60). The winning quote for the ancillary items and installation of the new fuel system was received from the Contractor. Of the two competing quotes for these services, one was received from an environmental consultant, and the other from company that had filed for corporate status with the Department of State 13 days prior to submitting the quote. The Division would benefit by incorporating the controls described in this report's findings to all PRP funded Agreements.

Division Response

Agreed. The quoting process for Demolition Agreements will follow the same requirements as other quoting processes.