



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

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MEMORANDUM

TO: Petroleum Restoration Program Contractors
 Petroleum Restoration Program Staff
 Contracted Petroleum Local Programs
 Interested Parties

FROM: Valerie K. Huegel
 Program Administrator, Petroleum Restoration Program

SUBJECT: Petroleum Restoration Program Contractor Qualification Pursuant to Rule 62-772.300, F.A.C.

DATE: June 19, 2014

This memorandum is provided to give notice to affected parties of the contractor qualification requirements for the Petroleum Restoration Program (PRP) in Rule 62-772.300, Florida Administrative Code (F.A.C.), in order for them to take appropriate actions to comply with this rule. This new rule was ratified by the Legislature and approved by the Governor on June 13, 2014

Rule 62-772.300, F.A.C., establishes minimum qualifications for all contractors performing site assessment and remediation services at State-funded sites. These qualification criteria are very similar to those previously established in s. 376.30711(2)(c), Florida Statutes (F.S.), and Department guidance for the former Preapproval Program with a few exceptions outlined below. Failure to comply with the revised requirements by July 1, 2014 will result in the loss of qualified contractor status in the PRP.

I. Professional Business Licenses and Professional Liability Insurance

Subsection (1)(a) of Rule 62-772.300 requires qualified contractors to possess and maintain or contract with firms which possess and maintain: a valid certificate of authorization (firm) to practice Professional Geology from the Florida Department of Business and Professional Regulation (DBPR) pursuant to Section 492.111, F.S.; and a valid certificate of authorization (firm) to practice Professional Engineering from the Florida Board of Professional Engineers (FBPE) pursuant to Sections 471.023, F.S.

This requirement is different than the old criteria outlined in Section 2.2 of the Preapproval SOP which had been followed by the Department prior to the new rule that required one, but not both,

of the referenced professional business licenses and did not authorize contracting with another entity to satisfy the one required license.

Notwithstanding all other requirements in Rule 62-772.300, F.A.C., as of June 13, 2014, the effective date of this rule, all existing qualified contractors and all new contractors seeking qualified status that have not previously provided copies of valid certificates of authorization for their firm to practice both Professional Geology and Professional Engineering will be required to provide such documentation to the DEP.

In the event the contractor does not possess one or more of these professional licenses, they must provide a copy of an executed contract for petroleum restoration services with another firm or firms that do possess the required professional business license(s). In addition, they must provide a valid professional liability insurance certificate for the firm(s) with which they have subcontracted to satisfy the professional geology or professional engineering certificate of authorization requirement in the same amounts required of the qualified contractor (at least \$1 million per occurrence and \$1 million annual aggregate).

It is permissible for sensitive information unrelated to the certification requirements such as liability, insurance and supervision to be redacted in the copy of the executed contract(s) referenced above. In addition, any provision related to the insurance, liability, or supervision of work requirements that the contractor believes meets the definition of a trade secret, pursuant to Section 403.73, F.S., must be specifically highlighted in the contract, the contractor must submit a request to keep the information confidential simultaneously or before submitting the document to the DEP, and inform the DEP of the basis for the claim of a trade secret.

This contractual documentation is solely for the purpose contractor qualification and shall not change any of the requirements or responsibilities of the qualified contractor that may be included in any agency contract with that contractor, including the requirement for approval to use specific subcontractors.

II. Contractor Certification to the DEP

Subsection (1)(b) of Rule 62-772.300, F.A.C., requires new contractors seeking qualified status to provide a written certification to the Department with five key elements, including compliance with applicable OSHA regulations, minimum insurance requirements and the capacity to perform or oversee the majority of work at a site. This certification is similar to that previously required by s. 376.30711(2)(c), F.S., except that there is no longer a requirement to submit a sworn statement under s. 287.133(3)(a), F.S., on public entity crimes because that requirement is addressed in all agency contracts. Existing qualified contractor that have previously submitted the certification under s. 376.30711(2)(c), F.S., will satisfy the rule requirement and it is not necessary for them to submit a new certification. However, if a previously qualified contractor has allowed their

qualified status to lapse after June 13, 2014, they must submit a new PRP Contractor Qualification Form that includes all required certifications.

III. Workers' Compensation Insurance

There is no change in the pre-existing requirement for qualified contractors to maintain workers' compensation insurance for all employees as required by Florida Workers' Compensation Law. However, the DEP will require those contractors claiming to be exempt from this requirement to provide documentation that their firm is not subject to the workers' compensation coverage requirements of Chapter 440, F.S., including, if applicable, a copy of the current Certificate of Election to be Exempt from the Department of Financial Services (DFS) for individual corporate officers. Information pertaining to Workers' Compensation can be obtained from the DFS Division of Worker's Compensation web site @ <http://www.myfloridacfo.com/division/WC>.