

**Review of Agency Term Contractor
FRS Environmental Remediation, Inc.**

Division of Waste Management

Report: A-1617DEP-019

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

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The Office of Inspector General (OIG) conducted a Review of Agency Term Contracts¹ (Contract) GC808, GC753, and GC859 between FRS Environmental Remediation, Inc. (Contractor) and the Florida Department of Environmental Protection (Department) Division of Waste Management (Division) Petroleum Restoration Program (PRP). This review was part of the Fiscal Year (FY) 2016-2017 Annual Audit Plan.

Scope and Objectives

The scope of this review included Contract activities between July 1, 2015, through June 30, 2016. The objectives were to:

- evaluate the Contractor performance evaluation, and management oversight in accordance with the Contract
- determine whether approved Purchase Order invoices were allowable and supported in accordance with the Contract and required Purchase Order activities

Methodology

This review was conducted under the authority of Section 20.055, Florida Statutes (F.S.), and in conformance with the current *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. Our procedures included review of Contracts, Purchase Orders and Contractor documentation, and interviews and PRP staff.

¹ Agency Term Contracts GC808, GC753, and GC859 differ by geographical Regions: North, Central, and South.

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Background

PRP manages activities necessary to prioritize, assess, and cleanup sites contaminated by discharges of petroleum and petroleum products from stationary petroleum storage systems. In accordance with Section 376.3071, F.S., the Department has implemented rules and procedures to administer the program through contracted professional services.

Competitive procurement of professional services for site rehabilitation activities is specified in Chapter 287, F.S. Under the former Petroleum Cleanup Preapproval Program prior to 2013, Department contractors were designated for Department funded site remediation services primarily by site owners/responsible parties. In 2013, PRP entered into Agency Term Contracts and began transitioning to competitive processes for assigning sites to Agency Term Contractors. For efficiency and cost effectiveness through this transition, PRP allowed Agency Term Contractors to retain sites that had been previously assigned and were undergoing remediation activities.

Chapter 62-772.401, Florida Administrative Code (F.A.C.) *Alternative Contractor Selection and Assignment*, provides circumstances where site owners/responsible parties may continue to designate or recommend an Agency Term Contractor. These include participants in the Low Score Site Initiative (LSSI), Advance Cleanup agreements, and Conditional Closure agreements.

For sites considered for competitive assignment, PRP initially applied a Relative Capacity Index (RCI) formula that ranked Agency Term Contractors. The RCI incorporated factors including financial guarantees, encumbrances, pay schedule rankings, and initial Agency Term Contractor evaluations. Assignment using the RCI was used until January 2016. In January

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2016, PRP began transitioning to a Contractor Selection Formula to improve competitive assignment and incorporate Contractor performance as a component in the assignment process. While not fully implemented at the time of this review, the Contractor Selection Formula factors incorporate performance, site owner/responsible party recommendation, and pay schedule or rate quotes.

Agency Term Contractors are currently awarded sites through the Contractor Selection Formula unless they were already designated and under a continuing scope of work or if one of the Alternative Contractor Selection and Assignment circumstances defined under Chapter 62-772.401, F.A.C. applies. According to the Contractor Assignment Run Report for FY 2015-2016, 2,421 sites were assigned to 72 Agency Term Contractors as follows.

PRP Sites Assigned during FY 2015-2016	
Assignment Type	Number of Sites
Advanced Clean-up (Performance Based Clean-up Bundle Sites)	42
Advanced Clean-up (Cost Share)	124
Direct Assign for Continuing Scope	1,411
Contractor Selection Formula	766
Assignment through E-Quote	8
Other ²	70
Total	2,421

Competitive assignment processes were used in the assignment of 774³ (32%) sites. Of the total, 1,577⁴ (65%) sites were assigned through former or current provisions for site owner/responsible party designation.

² Site assignment included replacement for previous assignment changes, and Homeland or Transportation Security site assignments.

³ Sites assigned through Contractor Selection Formula and E-Quote.

⁴ Sites assigned through Advanced Cleanup agreements or Direct Assign for Continuing Scope.

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Chapter 62-772.300, F.A.C. *Contractor Qualification and Performance Reviews*, revised April 2016, provides for Contractor performance evaluation after each task assignment or Purchase Order. Contractor performance is to be considered prior to assignment of rehabilitation tasks, authorizing Contract renewals, and determining retainage. The PRP Contractor Performance Evaluation Form includes rating in the categories of *Project Timeliness, Invoicing, Reports, Communication, Cost Control, Quality and Technical Competence* as well as Owner/Responsible Party Input. An overall score is calculated, ranging between 0 and 2, with an overall score of 1.5 and above being a Top Performer.

The Department entered into Contracts GC803, GC753, and GC859 with the Contractor on February 19, 2014, for a five-year period. An amended and restated Contract was issued September 30, 2015. During FY 2015-2016, the Contractor was assigned 108 sites. Of these, 73 (68%) were assigned through former or current provisions for site owner or responsible party designation per the table below.

Contractor Sites Assigned during FY 2015-2016	
Assignment Type	Number of Sites
Advanced Clean-up (Cost Share)	14
Direct Assign for Continuing Scope	59
Contractor Selection Formula	13
Other	22
Total	108

During this period, 153 Purchase Orders⁵ were issued to the Contractor for the assigned sites. Contractor payments totaled \$5,551,744.25.

⁵ The number of assigned sites differs from Purchase Orders due to sites with multiple Purchase Orders, sites without open Purchase Orders, or previously assigned sites with open Purchase Orders.

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Results and Conclusions

Contractor Performance and Evaluation

To incorporate the use of the Contractor Performance Evaluation Forms, we reviewed sites assigned to the Contractor with completed and invoiced Purchase Orders after April 2016. Of the 153 Purchase Orders issued during FY 2015-2016, 21 were completed and invoiced in or after April 2016. At the time of our review, performance evaluations were not uploaded to Storage Tank Contamination Monitoring (STCM)⁶ database for 10 of the 21 Purchase Orders. After discussion with PRP staff, all but two evaluations were uploaded.

From the 21 Purchase Orders completed after April 2016, we reviewed a sample of 11 Contractor performance evaluations. The overall performance evaluation scores of the sample ranged from 1.68 to 2, ranking the Contractor as a Top Performer. We reviewed category evaluation scores given in comparison to site documentation and interviews with Site Managers.

Invoice Timeliness

According to Section 7.D. of the Contract, the *Contractor shall submit invoices to Department within thirty (30) days after the date of Department's written approval of each interim deliverable or the final deliverable specified in each Work Assignment. Contractor's failure to submit interim invoices within this timeframe may result in forfeiture of retainage and its failure to submit the final invoice within the timeframe may result in automatic cancellation, termination or suspension of the Work Assignment and Contractor's forfeiture of any unpaid balance for such deliverables.* Of the 39 invoices submitted in the sample of Purchase Orders, 37

⁶ The Storage Tank Contamination Monitoring (STCM) is the Division's application for management of all storage tank activities.

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(95%) were submitted on time. The two late invoices were for different Purchase Orders. One of the invoices was one day late and the other invoice was four days late. Both performance evaluations for the Purchase Orders with the two late invoices reflected a score of 2 on the invoice timeliness⁷ portion of the evaluation. Approval for invoice time extensions was not documented in the Petroleum OCULUS database (OCULUS)⁸. The Site Managers that completed the evaluations for both Purchase Orders were assigned management responsibility after much of the Purchase Order activities had occurred. Evaluations were completed based on limited personal experience with the Contractor, rather than the Contractor's overall performance under the Purchase Order. As a result, these evaluations represented only a portion of the Contractor's performance.

Deliverable Timeliness

According to Section 8.J. iii a. of the Contract, *for deliverables (reports and response to comments) submitted one (1) to seven (7) calendar days past the required due date, retainage will be forfeited on the amount of the deliverable (report) pay item.* According to Section 15 of the Contract, *if a satisfactory deliverable is not submitted within the specific timeframe, the Department may, in its sole discretion, either: 1) terminate the Work Assignment for failure to perform, or 2) request that a proposed Corrective Action Plan (CAP) be submitted by the Contractor to the Department.* For the 39 invoices submitted in the sample of Purchase Orders, we reviewed deliverable timeliness by comparing the Scope of Work due date to the documented date received. All the 39 invoices included deliverables that were submitted on time.

⁷ According to the Contractor Performance Evaluation Form, Invoicing category, a score of "2" = *Consistently*, "1" = *Within < 2 weeks*, and "0" = *Within >= 2 weeks*.

⁸ OCULUS is the Department's web-based document management system.

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Quality Assurance, Quality Control, and Contractor Qualifications

According to Attachment A, section IV of the Contract, the *Contractor is required to process and submit the Automated Data Processing Tool (ADaPT) Electronic Data Deliverables (EDD) for laboratory, error logs and field data.* The Contract requires all sampling and analyses performed to conform to the requirements set forth in Chapter 62-160 F.A.C. The Field EDD is the deliverable submitted to the Site Manager, and the Lab EDD is the laboratory tests that are sent with the deliverable. The Error Log includes any errors found when the Site Manager submits the deliverable. If an error is found, the Site Manager is notified of the needed correction. Upon receipt of a correct ADaPT submission, the file of results is uploaded to OCULUS, and the Contractor can invoice for payment. The Contractor Evaluation Form Reporting section includes a rating category to address whether *the contractor correctly submitted required ADaPT laboratory and field data QA reports in accordance with program guidance.*

We selected a separate sample of ten Purchase Orders⁹ completed after April 2016 for review of ADaPT documentation accuracy. For these Purchase Orders, we requested ADaPT documentation of errors encountered. Of the ten Purchase Orders, three included a deliverable with noted errors in the initial ADaPT upload. The documents were corrected and uploaded to OCULUS prior to payment. For the three Purchase Orders with the initial ADaPT errors, the Contractor was given a performance evaluation score of 2¹⁰ in the Reports category specifying

⁹ The sample included completed Purchase Orders with available information through ADaPT.

¹⁰ According to the Contractor Performance Evaluation Form, Submitting ADaPT and field data reports, “Consistently = 2, Limited ADaPT errors or delays resolved = 1, Repeated ADaPT errors or delays impacted invoicing or site rehabilitating progress = 0”.

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ADaPT data submission. The Site Manager for one of these was assigned management of the site subsequent to the ADaPT error. The evaluation was completed based on personal experience; therefore, reflected only a portion of the Contractor's performance. For the other two Purchase Orders, the Site Managers were unaware of the ADaPT errors during the evaluation. Since deliverables are uploaded to OCULUS after correction of errors, documentation of ADaPT error and resolution may be dependent on the Site Manager files.

As part of this review, we also verified the Contractor met certifications and license requirements under Section 376.3071, F.S. The Contractor's insurance and OSHA certifications were on file and up to date.

Purchase Order Invoice Accuracy

From the 153 Purchase Orders opened during FY 2015-2016, we reviewed 15 for invoice accuracy. For the sampled Purchase Orders, one was directly assigned by PRP management and five were designated by the site owner/responsible party prior to 2013. Of the nine sites assigned since 2013, two were assigned through the e-quote process, two were assigned through the former RCI Formula, three were designated through Advance Cleanup Program agreements, and two were designated through Performance Based Advance Cleanup Program agreements. PRP management indicated that in some instances, varying inputs and circumstances may necessitate direct assignment by management.

For Purchase Orders AB6CF3 and ACFE96, site assignments were included in with a bundle of between 22 and 26 sites under a Performance Based Advance Cleanup Cost Share Agreement. For Purchase Orders AAFB18, AAC975, and ABB8F9, site assignment was made through a Preapproved Advanced Cleanup Program Agreement for cost sharing.

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Contractor Assignment				
Purchase Order	Facility ID	Purchase Order Date	Site Assigned	Assignment
AE948E	8520034	3/15/2016	5/11/2005	Contractor Designation Form/ Continuing Scope
AC7F4E	8502946	4/30/2015	4/1/2009	Contractor Designation Form/ Continuing Scope
AB9083	9202821	11/24/2014	2/11/2010	PRP Direct Assign
AD743C	8507636	10/2/2015	4/27/2011	Contractor Designation Form/ Continuing Scope
AC420F	9201331	4/15/2015	6/4/2012	Contractor Designation Form/ Continuing Scope
AB6CF3	8502987	11/10/2014	10/16/2014	Performance Based Advanced Cleanup Program Agreement
AAFB18	8508940	9/11/2014	1/15/2013	Preapproved Advance Cleanup Program Agreement
AD7DFE	8514904	9/14/2015	1/18/2013	Contractor Designation Form/ Continuing Scope
AAC975	8731687	7/31/2014	1/15/2013	Preapproved Advanced Cleanup Program Agreement
AC398D	8515705	4/20/2015	3/11/2014	(Former) RCI Formula Selection
AAEE5B	8513321	8/20/2015	8/11/2014	(Former) RCI Formula Selection
ADFF1D	8509816	12/9/2015	11/20/2014	E-Quote
ACFE96	8510842	6/19/2015	12/23/2014	Performance Based Advanced Cleanup Program Agreement
ABA6C9	8733702	12/10/2014	12/01/2014	E-Quote
ABB8F9	8512495	12/24/2014	12/12/2014	Preapproved Advance Cleanup Program Agreement

Each Purchase Order scope of work specifies the Department's required timeframes for deliverable review, comment, and approval. For each deliverable, a review letter is provided to the Contractor from the Site Manager. In the 15 Purchase Orders listed above, 62 deliverables were submitted to the Department. Review letters were sent to the Contractor within the required deliverable timeframes for 53 (85%). For the nine Review Letters sent past the required timeframe, eight deliverables were submitted on time by the Contractor.

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Work Order Completion

Documented deliverables, review letters, and invoices supported the work performed and invoiced for 11 of the 15 Purchase Orders.

For Purchase Order AAC975, the invoice Mobilization Pay Item 3-6 *Work Trailer - > 100 miles each way* at a cost of \$300 and the Mobilization Pay Item 3-18 *Mini Excavator/Loader (Bobcat™) Mobilization - > 100 miles each way* at a cost of \$200 for a total of \$500 was not supported by field notes as required. In addition, Pay Item 4-1 *Per Diem* at a cost of \$960 was not supported by the required travel vouchers. As a result, both the mobilization and the per diem were paid without required documentation. The current Site Manager was unable to provide the requested support documentation.

For Purchase Order AAEE5B, invoice Pay Item 1-2 *Site Health and Safety Plan* at a cost of \$365.00 was not supported by a Health and Safety Plan as required prior to payment. The plan was submitted in a subsequent Purchase Order. However, payment for the Health and Safety Plan was made without the required supporting documentation.

For Purchase Order AC7F4E, Pay Item 22-3 *Transfer Pump Repair K.C.W. Electric Co* was invoiced for a cost of \$477.20. Pay Item 22-3 was a reimbursable cost, which required the Contractor's receipt. The Contractor provided a receipt that documented the item cost was \$447.20, which was \$30.00 less than the amount submitted. The Site Manager indicated payment for the difference was an oversight.

For Purchase Order AC420F, Pay Item 4-1 *Per Diem* at a cost of \$1,200 was not supported by required travel vouchers. Pay Item 12-5 *Transport and Disposal of Mixed Debris* was not supported by the weight tickets as required for the Pay Item.

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Subcontractor Payment

According to Section 8.A. of the Contract, *reimbursement requests for payments to subcontractors associated with activities not included in Attachment D [Rate Schedule] must be substantiated by copies of invoices with backup documentation identical to that required from the Contractor.* Contractors are required to list the amount paid to each subcontractor in the invoice on the Contract Attachment E *Subcontractor Utilization Report Form for Commodities/Services.* Section 9 of the Contract states the *Contractor shall pay all subcontractors and vendors under this Restated Contract within seven (7) working days from the date of receipt of payment from Department.*

The Contractor had established a Master Subcontract Agreement for four of the five Subcontractors included in our sample. All Subcontractors listed in the Purchase Orders were included in the Contractor's Authorized Subcontractor List. The following table outlines Subcontractor payments included in the sampled Purchase Orders, as well as our verification of Department and Contractor payments.

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Subcontractor Payment				
Purchase Order	Subcontractor¹¹	Subcontractor Invoice Amount	DEP Payment	Check Date¹²
AAC975	ABP Electric, Inc	\$4,500.00	1/29/2015	4/23/2015
	ESD Waste2Water, Inc	\$798.90		5/15/2015
	Advanced Environmental Laboratories, Inc	\$630.00		5/1/2015
AAEE5B	Advanced Environmental Laboratories, Inc	\$1,443.00	4/21/2015	6/5/2015
	Transamerican Drilling and Testing, Inc	\$4,470.00		5/29/2015
AB6CF3	Advanced Environmental Laboratories, Inc	\$600.00	2/11/2015	6/11/2015
	Transamerican Drilling and Testing, Inc	\$1,880.00		6/12/2015
	Transamerican Drilling and Testing, Inc	\$6,825.00		7/2/2015
ABA6C9	Transamerican Drilling and Testing, Inc	\$6,825.00	9/3/2015	11/6/2015
	Advanced Environmental Laboratories, Inc	\$1,137.00		11/6/2015
AC398D	Advanced Environmental Laboratories, Inc	\$2,640.00	9/17/2015	11/12/2015
				10/16/2015
	Transamerican Drilling and Testing, Inc	\$6,045.00		10/30/2015
				11/30/2015
AC7F4E	Advanced Environmental Laboratories	\$480.00	2/9/2016	10/23/2015
	KCW Electric Co	\$477.20 ¹³		2/26/2016
ACFE96	Advanced Environmental Laboratories, Inc	\$500.00	1/20/2016	12/2/2015
				2/12/2016

Of the 14 Subcontractors payments, one was made within seven working days as required at the time of these Purchase Orders.

Sites Included Under Advanced Cleanup Agreements

The following Purchase Orders included in our sample were issued for sites under Advanced Cleanup Program Agreements:

¹¹ Master Subcontract Agreements had been established with ABP Electric, Inc., ESD Waste2Water, Inc., Advanced Environmental Laboratories, Inc., and Transamerican Drilling and Testing, Inc.

¹² We were unable to verify the cleared date for all checks, for consistency of the review we verified the check date.

¹³ The Subcontractor amount on the Subcontractor Utilization Report for KCW Electric Co. differed from the Subcontractor invoice and payment.

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Purchase Orders Under Advanced Cleanup Program Agreements						
Purchase Order	Facility ID	Site	Tasks	Total Purchase Order	Department Payments Made as of March 2017	Site Owner/ Responsible Party Funding Obligation
Preapproved Advanced Cleanup Agreements						
AAC975	8731687	Joy Foods #622	1 to 6	\$86,168.95	\$78,440.68	\$27,703.68
AAFB18	8508940	Sunoco #0813-4272	1 to 4	\$6,602.01	\$6,761.41	\$2,265.84
ABB8F9	8512495	BP Station (C Mart 626)	1 to 5	\$15,416.37	\$14,618.69	\$6,295.03
Performance Based Advanced Cleanup Agreements						
ACFE96	8510842	Marathon #448	1 to 3	\$25,000.00	\$25,000.00	\$2,406.00
AB6CF3	8502987	BP Grove City #446	1 to 8	\$26,600.00	\$26,600.00	\$3,331.00

According to Paragraph 12 of the Preapproved Advanced Cleanup Program Agreement, *the Applicant is prohibited from entering into any agreement with the Designated Contractor which would have the effect of reducing the Applicant's cost share commitment under this Agreement.* In addition, it states, *within 40 days of payment to the Designated Contractor, the Applicant shall provide to the Department proof of such payment, which shall include a copy of the Applicant's paid and canceled check to the Designated Contractor or a certification by the Designated Contractor that the invoice amount specified in the certification was paid and indicating the date such payment from the Applicant was received by the Designated Contractor.*

For Purchase Orders AAFB18, AAC975, and ABB8F9, under Preapproved Advanced Cleanup Program Agreements, a managing member of the responsible party was also a managing member of the Contractor. We obtained invoices of cost share amounts from the Contractor to the responsible party. For proof of payment, the Contractor provided notarized Waiver and Release of Lien Upon Progress Payment documents for the responsible party's cost share amounts. These documents did not provide proof of payment or certification of payment as required under the agreements.

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According to Paragraph 13 of the Performance Based Advanced Cleanup Program Agreement, *the Applicant bid and therefore shall pay or provide a total [percentage] share of all cost performed pursuant to this Agreement. Failure to maintain the Applicant's share will be considered a material breach of this Agreement subject to Paragraphs 22 and 23.* Paragraph 14 states, *upon receipt of an invoice for its cost share, accompanied by a written approval by the Department of the work completed, the Applicant shall pay such invoice within 40 days¹⁴. The Applicant shall provide the Department documentation of such payment, which shall include a copy of the Applicant's paid and canceled check to the Contractor within 30 days of payment to the Contractor. Alternatively, the Applicant can require the Contractor certify that the invoice amount specified in the certification was paid and indicate the date such payment was received by the Contractor from the Applicant. Failure of the Applicant to timely and adequately pay the Contractor shall be considered a material breach of this agreement subject to paragraphs 22 and 23.*

Purchase Orders ACFE96 and AB6CF3 were issued under Performance Based Advanced Cleanup Program Agreements. For proof of payment, we obtained notarized Waiver and Release of Lien Upon Progress Payment documents for the responsible party's cost share amounts. These documents did not provide proof of payment or certification of payment as required under the agreements. The Waiver and Release of Lien Upon Progress Payment documents have been accepted by PRP management.

Our Findings and Recommendations are included in the remainder of this report.

¹⁴ The Performance Based Advanced Cleanup Program Agreement for Purchase Order ACFE96 states that the Applicant shall pay such invoice within 30 days.

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Findings and Recommendations

Finding 1: Performance Evaluation Accuracy

In January 2016, PRP began transitioning the site assignment process by using a Contractor Selection Formula to improve competitive assignment and incorporate Contractor performance as a component in the assignment process. This includes the use of prior performance evaluation scores as a component in assignment of new sites. Based on our review of Purchase Orders, the Contractor had met requirements for invoice and deliverable timeliness, as well as deliverables with no errors in over 90% of all instances. As such, the Contractor was rated overall as a top performer. However, for the few late invoices and deliverables, and errors in ADaPT, some of the associated performance evaluations did not reflect a lower score. By not documenting evaluation criteria scores consistently with the rating description, the effective use of performance evaluations as a measurement of quality in the Contractor Selection Formula is diminished.

Recommendation:

To effectively incorporate Contractor past performance in future site awards, we recommend PRP work with management and site managers to emphasize the accurate and consistent documentation of Contractor performance in each evaluation criteria as specifically defined.

Finding 2: Purchase Order Schedule of Pay Item Support

We reviewed Purchase Order Schedule of Pay Items (SPI) invoices for required support documents. The Scope of Work for Purchase Order AAC975 included remediation system installation and operation and maintenance. During Event 1 of Task 2, the Contractor invoiced for one unit of Pay Item 3-6 (Work Trailer - > 100 miles each way) at a cost of \$300.00 and one

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unit of Pay Item 3-18 (Mini Excavator/Loader (Bobcat™) Mobilization - > 100 miles each way) at a cost of \$200.00 for a total cost of \$500.00. According to the SPI required documents, payment under these two pay items must be supported by field notes documenting vehicle ownership and where it mobilized from. In addition, the Contractor invoiced for 12 units of Pay Item 4-1 (Per Diem) at a cost of \$80.00 per unit for a total of \$960.00. According to the SPI required documents, payment under this pay item must be supported by field notes documenting personnel and travel times to and from the site (with properly completed travel voucher in accordance with Section 112.061, F.S.). The Contractor provided field notes for Event 1 of Task 2; however, the field notes did not document the use of a work trailer or mini excavator/loader. In addition, the Per Diem travel vouchers were not provided.

The Scope of Work for Purchase Order AAEE5B included limited site assessment. During Event 1 of Task 1, the Contractor invoiced for one unit of Pay Item 1-2 (Site Health and Safety Plan) at a cost of \$365.00. According to the Scope of Work, prior to beginning any field work under the Purchase Order, the Contractor is responsible for developing a site-specific Health and Safety Plan as required by state and federal regulations. The Scope of Work also requires under Task 1, that the Contractor must perform a complete file review. The Contractor must also complete and submit a Site Access Agreement, Site Health and Safety Plan, Historical Summary Worksheet and proposal for field work to be performed in Task 2. The Contractor must also provide notice of any permitting requirements. According to the Scope of Work, an invoice for Task 1 may not be submitted until all of the elements are completed. The Contractor submitted the deliverable for Event 1 of Task 1; however, a Health and Safety Plan was not submitted prior to payment.

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The Scope of Work for Purchase Order AC7F4E included remediation system operation and maintenance. During Task 3, the Contractor invoiced \$477.20 for Pay Item 22-3 (Transfer Pump Repair K.C.W. Electric Co). Pay Item 22-3 is a reimbursable pay item. The supporting invoice documented the cost of repair as \$447.20. The Contractor provided receipt documentation showing they paid the vendor \$447.20. The Scope of Work for Purchase Order AC420F included remediation system installation. The Contractor invoiced for the following pay items:

Invoice	Pay Item	Description	Unit	CpU	Total	Required Documents
1	4-1	Per Diem	15	\$80.00	\$1,200.00	Field notes documenting personnel and travel times to and from site (with properly completed travel voucher)
2	12-5	Transport and Disposal of Mixed Debris	8	\$49.00	\$392.00	Field notes, weight tickets and disposal facility documentation or receipt.
Total					\$1,592.00	

The Per Diem travel vouchers to document the 15 units of Pay Item 4-1 in the Task 1 Deliverable were not provided. For Pay Item 12-5, the weight tickets and disposal facility documentation or receipts were also not provided. The Site Manager was not aware of the invoice discrepancy before approving the deliverable and the Contractor could not provide the requested support.

Recommendation:

We recommend PRP clarify these discrepancies with PRP program management and ensure required documentation is reviewed and verified prior to invoice approval and payment.

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For the items in question, PRP program management should recover payments made for unsupported costs as follows:

- Purchase Order AAC975 Task 2.1 Mobilizations: \$500.00 for unsupported mobilizations
- Purchase Order AAC975 Task 2.1 Per Diem: \$960.00 for unsupported per diem
- Purchase Order AC7F4E Task 3.1 Transfer Pump Repair: \$30.00 for overpayment of the transfer pump repair
- Purchase Order AC420F Task 1.1 Per Diem: \$1,200.00 for unsupported per diem
- Purchase Order AC420F Task 2.1 Transportation and Disposal of Mixed Debris: \$392.00 for unsupported transportation and disposal of mixed debris

Finding 3: Subcontractor Payments

According to Section 8.A. of the Contract, *reimbursement requests for payments to subcontractors associated with activities not included in Attachment D [Rate Schedule] must be substantiated by copies of invoices with backup documentation identical to that required from the Contractor.* Contractors are required to list the amount paid to each subcontractor in the invoice on the Contract Attachment E *Subcontractor Utilization Report Form for Commodities/ Services.* Section 9 of the Contract states that the *Contractor shall pay all subcontractors and vendors under this Restated Contract within seven (7) working days from the date of receipt of payment from Department.* Based on review of payment documentation for 14 Subcontractor payments, 13 appeared to be paid past the required time frame.

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Subcontractor Payment				
Purchase Order	Subcontractor¹⁵	Subcontractor Invoice Amount	DEP Payment	Check Date¹⁶
AAC975	ABP Electric, Inc	\$4,500.00	1/29/2015	4/23/2015
	ESD Waste2Water, Inc	\$798.90		5/15/2015
	Advanced Environmental Laboratories, Inc	\$630.00		5/1/2015
AAEE5B	Advanced Environmental Laboratories, Inc	\$1,443.00	4/21/2015	6/5/2015
	Transamerican Drilling and Testing, Inc	\$4,470.00		5/29/2015
AB6CF3	Advanced Environmental Laboratories, Inc	\$600.00	2/11/2015	6/11/2015
	Transamerican Drilling and Testing, Inc	\$1,880.00		6/5/2015
	Transamerican Drilling and Testing, Inc	\$6,825.00		6/12/2015
ABA6C9	Transamerican Drilling and Testing, Inc	\$6,825.00	9/3/2015	7/2/2015
	Advanced Environmental Laboratories, Inc	\$1,137.00		11/6/2015
				11/6/2015
AC398D	Advanced Environmental Laboratories, Inc	\$2,640.00	9/17/2015	11/12/2015
	Transamerican Drilling and Testing, Inc	\$6,045.00		10/16/2015
				10/30/2015
				11/30/2015
AC7F4E	Advanced Environmental Laboratories	\$480.00	2/9/2016	10/23/2015
	KCW Electric Co	\$477.20 ¹⁷		2/26/2016
ACFE96	Advanced Environmental Laboratories, Inc	\$500.00	1/20/2016	12/2/2015
				2/12/2016

The Contractor had established a Master Subcontract Agreement for four of the five Subcontractors included in our sample. Article 3 of the Master Subcontract Agreement states, *upon receipt of payment from FDEP, FRS shall pay in full all undisputed portions of invoices within 30 days.*

Section 2.H. of the Contract states that *any terms and conditions proposed by or agreed to by or between Contractor and any subcontractors or suppliers that supplement, or in conflict with, the ATC, will not amend or modify Contractor and DEP's obligations under the ATC.*

¹⁵ Master Subcontract Agreements had been established with ABP Electric, Inc., ESD Waste2Water, Inc., Advanced Environmental Laboratories, Inc., and Transamerican Drilling and Testing, Inc.

¹⁶ We were unable to verify the cleared date for all checks, for consistency of the review we verified the check date.

¹⁷ The Subcontractor amount on the Subcontractor Utilization Report for KCW Electric Co. differed from the Subcontractor invoice and payment.

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Additionally, Section 376.3071(6)(i), F.S. states, *the exemption under s. 287.0585(2) does not apply to payments associated with an approved contract.*

While it is understood that recent changes to Section 376, F.S. have extended the timeframe for required Subcontractor payments, the payment obligations outlined in the Master Subcontract Agreements were not consistent with the Contract and statutory requirements at the time of these Purchase Orders. Late payments are subject to penalties specified under Section 287.0585(1), F.S.

Recommendation:

We recommend PRP direct the Contractor to make timely payments as required under the Contract. In addition, PRP should obtain sufficient documentation from the Contractor to demonstrate resolution of applicable penalties as specified under Section 287.0585(1), F.S.

Finding 4: Conflict of Interest

Section 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 the Services required hereunder.* Section 30.D. states that *a contractor or a subcontractor is deemed to have had a business relationship with one of the responsible parties for site contamination if it has had a relationship with a parent organization, or subsidiary, a predecessor or a successor of such party, or if it has been engaged by independent legal representative on behalf of such parties.*

Purchase Orders AAFB18, AAC975, and ABB8F9 were issued under separate Preapproved Advanced Cleanup Program Agreements executed in January 2013.

Review of Agency Term Contractor
FRS Environmental Remediation, Inc.
Division of Waste Management

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Purchase Orders Under Advanced Cleanup Program Agreements						
Purchase Order	Facility ID	Site	Tasks	Total Purchase Order	Department Payments Made as of March 2017	Site Owner/ Responsible Party Funding Obligation
Preapproved Advanced Cleanup Agreements						
AAC975	8731687	Joy Foods #622	1 to 6	\$86,168.95	\$78,440.68	\$27,5066.20
AAFB18	8508940	Sunoco #0813-4272	1 to 4	\$6,602.01	\$6,761.41	\$3,076.76
ABB8F9	8512495	BP Station (C Mart 626)	1 to 5	\$15,416.37	\$14,618.69	\$3,342.47

Section 376.30713, F.S., Advanced Cleanup, provides opportunity for site rehabilitation in advance of the site’s priority ranking for a person responsible for site rehabilitation to share the costs associated with managing and conducting advanced cleanup. Such cost sharing will result in more contaminated sites being cleaned up and greater environmental benefits to the State. Per Chapter 62-772.401(2), F.A.C., If the participant or applicant provides 25% or more of the cleanup cost, the participant or applicant may provide a recommendation to the Department regarding the assignment of an existing agency term contractor.¹⁸

For the three Purchase Orders above, the managing member of the responsible party, as listed in the PRP Cost Share Site Contractor Selection Sheet, was also a managing member of the Contractor. The Waiver and Release of Lien Upon Progress Payment documents provided by the Contractor did not provide proof of payment or certification of payment as required under the agreements.

According to PRP management, the arrangement had been addressed and a response was provided to the Contractor by the Division Senior Attorney in April 2013. This response stated

¹⁸ Chapter 62-772.401, F.A.C., effective 04/06/2016. Prior provision of Chapter 62-772.401, F.A.C., effective 01/16/2014 stated, *if the participant or applicant is providing 25% or more of the cleanup cost, or the site will reach a funding cap under Section 376.3072(2)(a)3., or (2)(d)2.c., or d., F.S., then the participant or applicant may select any agency term contractor.*

Review of Agency Term Contractor
FRS Environmental Remediation, Inc.
Division of Waste Management

Report: A-1617DEP-019

the Department is willing to continue with the otherwise responsive P.A.C. Agreements executed January 2013, with EAR, and the Department will honor those P.A.C. Agreements as long as they are effective and the parties are complying with the provisions of the Agreement. It must be emphasized that the Department's acceptance is only tied to the executed P.A.C. Agreements and is specific to those existing EAR arrangements ONLY. However, the Department has concerns with the EAR/Supertest arrangement and wants to make it clear that it neither supports nor recommends this type of arrangement between private parties in the Preapproval Program. The Department strongly cautions these parties, and others, that arrangements similar to the EAR/Supertest's may not be acceptable under new procedures or rules being contemplated by the Department for future Preapproval work, regardless of the date similar private agreements are executed.

In February 2014, the agreements related to Purchase Orders AAFB18 and AAC975 were amended to extend the agreement date to February 2015. The last payment made under Purchase Order AAFB18 was in December 2015. The last payment made under Purchase Order AAC975 was in August 2016. A subsequent Purchase Order AE5D96 for continued monitoring was issued to the Contractor at the site in February 2016. The Purchase Order document included the expired agreement and stated that the work was associated with the cost share agreement. In February 2014, the agreement related to Purchase Order AAB8F9 expired. A new agreement was executed by PRP with the same responsible party in May 2014. Allowing this relationship between parties, for work assigned on a site, conflicts with the Contract and exposes PRP funding and site remediation decisions to risk of influence from parties who share a business interest.

Review of Agency Term Contractor
FRS Environmental Remediation, Inc.
Division of Waste Management

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Recommendation:

We recommend PRP discontinue the execution or extension of agreements and the assignment of remediation work where the Contractor shares a business interest with the site's responsible party.

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 Cassandra Ray 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

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 *F. Joseph Ullo, Jr.*

SUBJECT: Response to Audit Report A-1617DEP-019
Review of Agency Term Contractor FRS Environmental
Remediation, Inc.

DATE: September 5, 2017

The following is in response to the review of Agency Term Contractor FRS Environmental Remediation, Inc. (FRS) conducted by the Office of Inspector General (OIG).

Finding 1: Performance Evaluation Accuracy

Recommendation:

To effectively incorporate Contractor past performance in future site awards, we recommend PRP work with management and site managers to emphasize the accurate and consistent documentation of Contractor performance in each evaluation criteria as specifically defined.

PRP Response:

Correct and accurate completion of Contractor Performance Evaluations (CPEs) is a priority for PRP. CPE reviews were covered during training of various topics in the March 28-30, 2017 PRP Workshop attended by PRP staff, local programs and Teams 5 and 6. Training will continue via the monthly PRP Teleconference.

Finding 2: Purchase Order Schedule of Pay Item Support

Recommendation:

We recommend PRP clarify these discrepancies with PRP program management and ensure required documentation is reviewed and verified prior to invoice approval and payment. For the

items in question, PRP program management should recover payments made for unsupported costs as follows:

- Purchase Order AAC975 Task 2.1 Mobilizations: \$500.00 for unsupported mobilizations
- Purchase Order AAC975 Task 2.1 Per Diem: \$9601.00 for unsupported per diem
- Purchase Order AC7F4E Task 3.1 Transfer Pump Repair: \$30.00 for overpayment of the transfer pump repair
- Purchase Order AC420F Task 1.1 Per Diem: \$1,200.00 for unsupported per diem
- Purchase Order AC420F Task 2.1 Per Diem: \$392.00 for unsupported transportation and disposal of mixed debris.

PRP Response:

The Contractor is being contacted by the assigned site manager regarding these overpayments and is being requested to supply the necessary documentation to support Contractor activity related to the pay item, or to reimburse PRP for the pay item.

Site Managers and Reviewers were reminded during the July 17, 2017 PRP Teleconference of the importance of ensuring that the required documentation is reviewed and verified prior to invoice approval and payment (see Attachment A).

Finding 3: Subcontractor Payments

Recommendation:

We recommend PRP direct the Contractor to make timely payments as required under the Contract. In addition, PRP should obtain sufficient documentation from the Contractor to demonstrate resolution of applicable penalties as specified under Section 287.0585(1), F.S.

PRP Response:

PRP has directed the contractor as recommended via email on August 10, 2017 (see Attachment B).

Finding 4: Conflict of Interest

Recommendation:

We recommend PRP discontinue execution of extension of agreement and the assignment of remediation work where the Contractor shares a business interest with the site's responsible party.

RPP Response:

PRP has analyzed the referenced current projects. This analysis reveals that the best value to the state is served by maintaining the consistency of FRS for these sites. Moving forward PRP will avoid contracting with ATCs where the appearance of conflict may exist.

08.3.2017

Memo

To
Valerie Peacock

From
Robert (Chip) Tolbert, Jr.

Responses from FRS Environmental Remediation, Inc. d/b/a The FGS Group (“FGS”):

Work Order Completion – pg. 10 of 23

CC

Re:
Report A-1617DEP-019

- Purchase Order AAC975 – Joy Food #622 Immokalee
- Preliminary Audit Finding: Pay Item 3-6 *Work Trailer* - > 100 miles each way at a cost of \$300 and the Mobilization Pay Item 3-18 *Mini Excavator/Loader (Bobcat TM) Mobilization* - > 100 miles each way at a cost of \$200 for a total of \$500 was not supported by field notes as required.
- FGS Response: FGS has researched this item and has determined that the \$500 charge was initially not submitted as part of the invoice to the FDEP Site Manager (Patrick Kachnycz) as shown in the attachment entitled **Joy Food #622 Task 2 - Deliverable & SPI**. However, we also discovered that these charges were included in the revised invoice sent to us signed from the Site Manager as shown on the attachment entitled **Joy Food #622 Task 2 - Invoice Rate Sheet-signed**. Based on this finding, we have concluded that the \$500 fee charged was in error due to an oversight by both the FDEP Site Manager and FGS’ PM.
- Preliminary Audit Finding: Pay Item 4-1 *Per Diem* at a cost of \$960 was not supporting by the required travel vouchers.
- FGS Response: FGS has researched the history of the FDEPs’ requirement for the use of travel vouchers and offers the following summary. As indicated in the attachment entitled **Joy Food #622 Task 2 - Invoice Rate Sheet-signed** dated 11/04/2014, FGS invoiced for the \$960.00 Per Diem. However, as provided in the attachment entitled **DEP Announcement**, the official announcement and explanation of the use of travel vouchers to document per diems did not occur until March 29, 2016 (i.e., about 16 months after the date of FGS’ invoice dated 11/04/2014). The use of travel vouchers was not in effect at the time of FGS’ invoice for Task 2 on 11/04/2014. Accordingly, we researched the field notes from the Start-Up Report dated October 30, 2014 (see the attachment entitled Joy Food #622 Start-Up Report). From that review we have determined that a total of 7 days of per diem was documented in the field notes as follows: Aaron Burk and Ray Ginther – 1 day each on September 25, 2014; Quentin Clark- 4 days on October 13-16, 2014; and Donald Price – 1 day on October 16, 2014.

THE FGS GROUP

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Tampa, FL 33603

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Therefore, we believe that 7 days of per diem at \$80.00 per day = \$560.00 was properly documented. **NOTE: FGS can prepare travel vouchers associated with those 7 days, if requested.** The remaining 3 days of per diem invoiced could not be documented and was inadvertently invoiced as an oversight and approved by the FDEP Site Manager, also as an oversight.

- Purchase Order AAEE5B –
- Preliminary Audit Finding: Pay Item 1-2 *Site Health and Safety Plan* at a cost of \$365.00 was not supported by a Health and Safety Plan as required prior to payment. The plan was submitted in a subsequent Purchase Order. However, payment for the Health and Safety Plan was made without the required supporting documentation.
- FGS Response: FGS is under the assumption that since the Health and Safety plan was submitted in the next Purchase Order and that the payment for the Health and Safety Plan was made due to an oversight that this item is not of concern. FGS will endeavor to be more diligent in the future in invoicing at the time of task completion with proper supporting documentation.
- Purchase Order AC420F – Longhorn Pecan Stand
Preliminary Audit Finding: Pay Item 4-1 *Per Diem* at a cost of \$1,200 was not supporting by required travel vouchers.
FGS Response: As documented in the attachment for AC420F entitled **Documentation to support per diem charges form TerraSonic and C&D Material Disposal Charges from Waste Pro on AC420F (Longhorn Pecan Stand)**, FGS (Randy Geehr, P.E.) previously provided a detailed explanation indicating that TerraSonic invoiced FGS for 16 days of per diem at \$100.00 per day (see pg. 6 of 6 of the attachment), although FGS only invoiced the FDEP for 15 days. As indicated in the email correspondence between Randy Geehr and the FDEP Site Manager (Jeff Ray), (see pg. 1, 4, and 5 of 6), subsequent to the work conducted at Longhorn Pecan Stand, TerraSonic closed their Florida office and has ceased operating in Florida. As such, our efforts to obtain travel vouchers to support the invoiced charges proved to be fruitless. Also, as a final note, please understand that at the time of these invoices in May 2015, travel vouchers were

just starting to be implemented with no clear direction provide to ATCs or FDEP Site Managers on their use.

Preliminary Audit Finding: Pay Item 12-5 *Transport and Disposal of Mixed Debris* was not supported by the required weight tickets as required by the Pay Item.

FGS Response: As documented in the attachment for AC420F, FGS received an invoice from Waste Pro for \$606.94 for disposal of one 20 yard roll off. Also, please note that FGS only invoiced for \$490 per our SPI rates (i.e., considerably less than the invoiced amount from Waste Pro). As a final note, the waste disposal subcontractors don't provide weight tickets for concrete or mixed debris and typical invoice by the cubic yard. This inherent problem with units was addressed in the revised SPI rate submittal by ATCs.

Subcontractor Payment – pg. 11-14 of 23

FGS Response: It is widely known that the majority of ATCs were under the assumption that if they had executed MSAs with their respective subcontractors that the terms of payment under those MSAs took precedence (as has been the case historically in the Petroleum Programs). It was not known industry-wide until recently (April 2017), that the language regarding subcontractor payments within the ATC Contracts did not allow the payment terms in the ATCs' MSA contracts with subcontractors to be in effect or prevail. This lack of clear understanding should be taken into effect in determining if only FRS Environmental Remediation, Inc. d/b/a The FGS Group is to be penalized under Section 287.0585(1), F.S. Assuming that the OIG has conducted audits of multiple ATCs this subcontractor payment issue should be seen as common place among ATCs. For this reason, FGS met with the FDEPs' Dep. Secretary (John Truitt) and Waste Division Director (Joe Ullo) along with several legislators during the last legislative session and successfully gained passage of legislation revising Section 376 F.S. to extent the timeframe for required subcontractor payments. Consequently, we strongly recommend that no penalties be enforced until after July 1, 2017 once those changes to Section 376 F.S. have taken effect.

Finding 4: Conflict of Interest – pg. 20-23 of 23

FGS Response: As the report states on page 22 of 23 ***“According to PRP management, the arrangement had been addressed and a response was provided to the Contractor by the Division Senior Attorney in April 2013. This response stated the Department is willing to continue with the otherwise responsive P.A.C. Agreements executed January 2013, with EAR, and the Department will honor those P.A.C. Agreements as long as they are effective and the parties are complying with the provisions of the Agreement. It must be emphasized that the Department’s acceptance is only tied to the executed P.A.C. Agreements and is specific to those existing EAR arrangements ONLY. However, the Department has concerns with the EAR/Supertest arrangement and wants to make it clear that it neither supports nor recommends this type of arrangement between private parties in the Preapproval Program. The Department strongly cautions these parties, and others, that arrangements similar to the EAR/Supertest’s may not be acceptable under new procedures or rules being contemplated by the Department for future Preapproval work, regardless of the date similar private agreements are executed.”***

As the above indicates, FGS asked for and received permission from FDEP to proceed with the PAC Agreements. FGS’ actions were taken to ensure that FDEP was: 1. aware of the relationships between the parties; and 2. understood the financial gain the FDEP was receiving by allowing the PAC Agreements to proceed with the associated +25.0 percent co-pay rather than allow these PAC Agreements to be cancelled on all of the sites. We determined that the cumulative savings to the FDEP on these PAC

Agreements was greater than \$1 million. FGS has successfully proceeded with these Agreements and has diligently made sure that all co-payments by EAR have been made.

All that being said, as of May 31, 2017 the stock of FGS was sold to Montrose Environmental Group, Inc. As such, Robert D. Tolbert, Jr. is no longer President or a Director of FGS. All of the other former Principals and Officers/Directors have resigned from those positions. Please see the attached Corporate Report from Sunbiz.org indicating the new officers of FRS Environmental Remediation, Inc. d/b/a The FGS Group. We maintain, due to these events, the perceived conflict of interest no longer exists. We respectfully request that the OIG reconsider the recommendation to have the PRP discontinue the execution or extension of agreements where the Contractor shares a business interest with the site's responsible party.

Alternatively, if the OIG continues to maintain this recommendation, then EAR/Supertest will terminate the PAC Agreements in question and resubmit the sites as individual or PBC bundle AC application(s) by Supertest as the responsible party with a 25.0 percent minimum cost saving in a future AC application opening period. As a result, EAR would no longer be a party to the AC Agreements.

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OIG Comment Regarding Contractor's Response

The Division's and Contractor's responses included attachments in support of the indicated action taken. The Contractor's response addressed circumstances outlined in Finding 2: Purchase Order Schedule of Pay Item Support, Finding 3: Subcontractor Payments, and Finding 4: Conflict of Interest. The following comments serve to clarify review results in these areas.

Finding 2: Purchase Order Schedule of Pay Item Support

- Purchase Orders AAC975 and AC420F regarding Pay Item 4-1 Per Diem - The Contractor provided a Department Announcement dated March 29, 2016, regarding the necessary use of travel vouchers and indicated that the use of travel vouchers was not in effect at the time of the invoices and there had been no clear direction provided at the time. The requirement for travel vouchers was included in the Contract executed February 2014, as well as in attachments of both Purchase Orders. Per Section 112.061(11)(b), F.S., these vouchers were to be used by all State officers, employees and authorized persons when submitting travel expense statements for approval and payment.
- Purchase Order AC420F regarding Pay Item 12-5 Transport and Disposal of Mixed Debris - The Contractor indicated that waste disposal subcontractors do not provide weight tickets for concrete or mixed debris and typically invoice by the cubic yard. The Contractor also advised that the inherent problem with units was addressed in the revised SPI rate submittal by ATCs. From a review of current Purchase Orders issued under the Contract, weight tickets remain a requirement under Pay Item 12-5 for invoice payment.

Finding 3: Subcontractor Payment

The Contractor provided information regarding past assumptions regarding subcontractor payments under the terms of Master Service Agreements as well as the recent legislative changes to Section 376, F.S. As noted in the report, subcontractor payments in the sampled Purchase Orders were subject to requirements that were in effect at the time under Section 376 and 287.0585(1), F.S.

Finding 4: Conflict of Interest

Per Section 30 of the Contract, the information provided by the Contractor did not change the results of the report.