

# **Review of Contract Laboratory Services for the Bureau of Laboratories**

**Division of Environmental Assessment and Restoration**

**Report: A-1718DEP-004**

**Office of Inspector General**

**Internal Audit Section**

**Florida Department of Environmental Protection**

**March 30, 2018**

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The Office of Inspector General (OIG) conducted a review of contract laboratory services by the Division of Environmental Assessment and Restoration (Division) Bureau of Laboratories (Bureau). This review was initiated as a result of the Fiscal Year (FY) 2017-2018 Annual Audit Plan.

## **Scope and Objectives**

The scope of this review included funded activities related to five of the Bureau's laboratory service contracts during FY 2016-2017. The objectives were to:

- Evaluate the use of funds for contracted services
- Determine level of management oversight of the laboratory service contracts and deliverables

## **Methodology**

This review was conducted under the authority of Section 20.055, Florida Statutes (F.S.), and in conformance with the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors. For the selected contracts, we reviewed documents related to the requirements under contracts and amendments, as well as task assignments, deliverables, and payments. We interviewed Bureau staff and obtained related information as necessary from contractors.

## **Background**

The Bureau provides chemical and biological analytical support to Department of Environmental Protection (Department) programs, district operations, water management districts, and local and state entities. Performance of these services must conform with the Bureau's Laboratory Quality Manual. To meet required microbiological holding times and

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support various program goals and environmental investigations, the Bureau also contracts with environmental laboratory service providers.

During FY 2016-2017, the Bureau had executed contracts with ten service providers. The five contracts in scope of this review included the primary service providers used by the Bureau. The following table outlines the selected contracts, as well as the scope of testing services and annual funding for each. According to contracts LAB028 and LAB029, service requests are made on a task assignment basis. Contracts LAB032, LAB035, and LAB037 do not specify service requests to be made per task assignment. According to the Scope of Services under these contracts, service is to be provided on an as-needed basis when the Department staff deliver samples and associated field forms to the provider's laboratory. As such, payments are made either monthly or as necessary.

<b>Contract Laboratory Services Fiscal Year 2016-2017</b>					
Contract	Contractor	Scope of Testing Services	Basis for Service	Number of Tasks/Invoices	Total Payment
LAB028	TestAmerica, Inc.	Radiological and Chemical	Task Assignment	155	\$88,770.54 <sup>1</sup>
LAB029	Water and Air Research, Inc.	Microinvertebrate Taxonomy	Task Assignment	1	\$1,211.07
LAB032	University of West Florida	Microbiology	As-needed	12	\$9,075.00
LAB035	Flowers Chemical Laboratories, Inc.	Microbiology	As-needed	2	\$490.00
LAB037	ALS Group USA, Corp.	Microbiology	As-needed	6	\$15,600.00
Total					\$115,146.61

In order to uphold Department quality standards, laboratory service contracts include quality requirements for the testing services provided. All laboratory service contracts include accreditation requirements from the National Environmental Laboratory Accreditation Program

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<sup>1</sup> The majority of service requests from the Bureau are for radiological and chemical testing services.

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(NELAP). They also include quality control standard requirements associated with the type of testing service, as well as conformance with Chapter 62-160, Florida Administrative Code (F.A.C.). Contractors must maintain safety and hazardous waste management plans, as well as general liability and worker's compensation insurance. Two of the contracts, LAB028 and LAB029, require that providers document quality protocols in a Quality Manual. Laboratory service contracts set standard turnaround times for reports, Bureau data approval, and payments.

## **Results and Conclusions**

### **Laboratory Contract Service Funding**

#### Contract Rates

For contracts LAB028 and LAB029, we reviewed 20 payments made under a sample of 19 task assignments. Of these, 16 included invoiced rates consistent with contract rate schedules, and four used alternate rates. Alternate rates are allowed under Section 5.E. of the contracts Attachment C when those rates are specified in the task assignment notification. Each of the four were supported by the task assignment, and the two included an approved quote by the contractor for testing services not listed in Attachment C, *Fee Schedule* of the contracts. For the remaining two, alternate rates were allowed under circumstances where the Bureau canceled the requested test after work had begun to reflect the contractor's preparation costs. For contracts LAB032, LAB035, and LAB037, we reviewed 20 payments. The invoiced rates included in each of these payments were consistent with contract rate schedules.

#### Trust Funds

For the contract payments included in our review, the Bureau used available expense funds provided under the Inland Protection Trust Fund (IPTF) and the Water Quality Assessment

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Trust Fund (WQATF). Per Section 376.3071(4), F.S., funds under IPTF are designated for activities related to the storage of petroleum or petroleum products. The Department is allowed to obligate IPTF funds to provide for payment of *reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.* Per Section 376.307(1), F.S., the WQATF serves as a *broad-based fund for use in responding to incidents of contamination that pose a serious danger to the quality of groundwater and surface water resources or otherwise pose a serious danger to the public health, safety, or welfare.* The 40 contract payments included in our review were funded as follows.

<b>Funding Source of Sampled Payments</b>				
<b>Contract</b>	<b>IPTF</b>		<b>WQATF</b>	
	Payments	Cost	Payments	Cost
LAB028	9	\$5,879.26	10	\$8,035.50
LAB029	1	\$1,211.07	0	
LAB032	12	\$9,075.00	0	
LAB035	2	\$490.00	0	
LAB037	4	\$1,536.00	2	\$14,064.00
<b>Total</b>	<b>28</b>	<b>\$18,191.33</b>	<b>12</b>	<b>\$22,099.50</b>

Of the total, 12 were funded through the WQATF, and 28 were funded through the IPTF. For the payments of testing services using funds from WQATF, each involved activities related to groundwater and surface water quality. For the payments of testing services using funds from IPTF, one included activities related to incidents involving petroleum storage or petroleum products. The rest were testing activities related to either microbiological analyses,

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microinvertebrates, or testing in areas unrelated to petroleum contamination. Based on discussions with the Bureau's contract manager, funding restrictions were not considered. Payments for testing services were typically made with the funding available.

### Contract Service Requests

Section 215.985(14)(a)6, F.S., requires state entities to upload records of *Total compensation to be paid or received under the contract* to the Florida Accountability Contract Tracking Systems (FACTS). For contracts LAB028 and LAB029, none of the task assignments had been uploaded to FACTS. Based on discussions with Bureau contract management, this appeared to be an oversight. Payments under LAB032, LAB035, and LAB037 were made based on requests per laboratory sample deliveries by the Department to the contractors, rather than task assignment or purchase order. As a result, there were no clear tasks that outlined expectations for each requested event.

### **Oversite of Quality Assurance and Contract Deliverables**

#### Contract Requirements for Insurance, Safety, Quality Assurance and Certification

The five contracts included in our review contained similar requirements for NELAP certification, and insurance, as well as requirements for safety and hazardous waste management plans. Based on our request, all contractors provided documentation of the required insurance and safety and hazardous waste management plans. Other aspects of quality assurance and testing standards vary according to the type of service provided.

LAB028 and LAB029 require the contractors maintain a Quality Manual. Attachment B *Scope of Services*, of the contracts state, *analytical sensitivity, precision, accuracy, consistency and comparability are crucial to the success of projects. It will be incumbent upon the contractor*

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*to fully understand analytical quality expectations associated with assigned projects and to adequately anticipate and respond to those needs. The contractor's quality philosophy must be reflected in their Quality Manual, their response to the RFP (2007025C0), and through references from clients requiring similar services. The Contractor must have a documented program for performing data quality assessments and product usability assessments as well as mechanisms for performing corrective actions, reporting non-conformances and for handling complaints. Clear documentation of those protocols must be provided by the contractor.* To determine oversight of contract quality assurance, we requested copies of the contractors' Quality Manuals from the Bureau. The contract manager was unable to provide these manuals. Subsequently, we obtained the most recent Quality Manuals from both contractors, which were updated in 2017. The contractors' protocols and testing standards were outlined in these manuals.

According to Section 4.14 of the Bureau of Laboratories Quality Manual, system audits of contract laboratories are conducted following the pattern of the Bureau's internal system audits. In addition to requirements for contractors to maintain NELAP certifications, Attachment B *Scope of Services* of LAB028 and LAB029 require contractors to *participate in any DEP sponsored round robin exercises*<sup>2</sup>. *Failure to maintain NELAP accreditation or satisfactory on round robin exercises may result in contract termination.* The contract manager indicated that system audits and round robin exercises were conducted for the Department's internal laboratory services. For contract laboratories, the Bureau relies on the assessments required for the contractors' NELAP certification. We verified that NELAP certifications were current for four

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<sup>2</sup> Round robin exercises are a component of the Bureau's Quality System Management Review

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of the five contractors; however, the Bureau did not maintain documentation of the contractors' NELAP assessments. We subsequently obtained the most recent NELAP accreditation assessments performed by the Florida Department of Health (FDOH) during 2016 and 2017 for four of the contractors. Each contained summaries of minor deficiencies. Under LAB029, the contractor did not possess NELAP certification as required under the contract. The contract manager indicated the specific service provided under LAB029 involved microinvertebrate testing, which was not a component of NELAP. Therefore, the certification was not applicable.

Contract Deliverables and Chain of Custody

All contracts contain specific requirements for custody, analysis and methodologies specific to required standards for type of testing services provided. Bureau staff review the data submitted to determine whether the results are consistent with the expected range of results applicable to the relevant testing method. For the 40 contract payments included in our review, the Bureau staff had signed certification forms indicating the data was reportable to Bureau's standards. For the requirements of deliverable and invoice turnaround times related to the 19 payments under LAB028, all testing results were submitted and invoices were approved within the required timeframes.

For the payment under LAB029, testing results were submitted three days beyond the 60-day requirement. Under the Scope of Services, reports submitted between one and five days late are subject to a liquidated damage assessment of 5% of the total charge. The data and invoice was approved by the Bureau within the required timeframe; however, there was no deduction for liquidated damages or justification for the late submission.

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LAB032, LAB035, and LAB037 are contracts for microbiological testing services which include requirements for sample holding times under Chapter 40 Code of Federal Regulations (CFR) Part 136<sup>3</sup>. LAB035 and LAB037 contain turnaround time requirements for samples tested in meeting these standards. Of the eight payments made under LAB035 and LAB037, testing results were submitted within specified time frames for each. While LAB032 contains the same requirements for conformance with Chapter 40 CFR Part 136, the contract did not include the turnaround time requirements for tested samples. Based on discussion with the contract manager, the cause of the omission was unclear. Despite the contract's lack of clarity, the testing results were submitted within timeframes consistent with those required under LAB035 and LAB037. All invoices were approved by the Bureau within five days and payments were made within 30 days as required under the contracts.

## **Conclusion**

Based on our review, the Bureau's contracted laboratory service providers generally complied with the contract requirements. However, several areas of the Bureau's contract management did not demonstrate effective oversight of these requirements. In addition, the Bureau's funding for services, financial tracking and agreement language lacked proper oversight for the services provided. Our findings and recommendations are contained in the remainder of this report.

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<sup>3</sup> Chapter 40 CFR Part 136 is established under the United States Environmental Protection Agency (EPA) to provide guidelines establishing test procedures for the analysis of pollutants under the Clean Water Act.

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## **Findings and Recommendations**

### **Finding 1: Funding for Contracted Services**

Based on our review, IPTF funds were used for payment of laboratory testing services with no documented association to activities authorized under section 376.3071(4), F.S. for the majority of IPTF funded payments. Funding from IPTF is allocated annually to the Bureau for a portion of laboratory service costs that support the Department's efforts related to petroleum contamination activities as authorized under section 376.3071, F.S. However, based on discussions with the contract manager, contract payments were made for laboratory testing services using funds from available sources without consideration of specific trust fund use restrictions.

### **Recommendation**

While it is understood that some of the testing services provided through the Bureau support the Department's efforts related to petroleum contamination activities, we recommend the Division take necessary steps to ensure that approved payments for laboratory testing services have documented applicability of activities authorized under section 376.3071, F.S.

### **Finding 2: Contract Task Assignments and Service Requests**

According to section 215.985(14)(a)6, F.S., the Department is required to upload all records of compensation to be paid under the contracts to FACTS. This includes contract task assignments. For contracts LAB028 and LAB029, none of the task assignments had been uploaded to FACTS. Payments under LAB032, LAB035, and LAB037 were made based on requests per laboratory sample deliveries by the Department to the contractors rather than task

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assignment or purchase order. As a result, there was no clear documentation of contract service requests uploaded to FACTS that outlined tasks for each requested activity.

**Recommendation**

We recommend the Bureau put processes in place to ensure all documents associated with compensation to be paid under the contracts are uploaded to FACTS as required.

**Finding 3: Oversight of Quality Assurance and Contract Deliverables**

Of the five contracts included in our review, only LAB028 and LAB029 contained a requirement that the contractor maintain a Quality Manual. These contracts required that documentation of quality protocols be provided by the contractor. Per the Bureau's Quality Manual, system audits of contract laboratories are conducted following the pattern of the Bureau's internal system audits. Under LAB028 and LAB029, contractors were required to participate in Department sponsored round robin exercises.

Based on our review, the Bureau had not obtained the contractors' Quality Manuals documenting quality protocols for the two contractors for which it was required. In addition, the Bureau had not conducted round robin exercises or audits on any of the contract laboratory service providers. Assessments are conducted for the contractors by FDOH as part of the required NELAP certification. The results of these assessments had not been obtained by the Bureau; however, we subsequently obtained the most recent assessments for four of the contractors. Each contained summaries of minor deficiencies. Although NELAP certification was a requirement under LAB029, the contractor did not possess this certification, as it was not applicable to the type of testing service provided.

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### **Recommendation**

We recommend the Bureau put processes in place to verify that testing services provided externally through contracted service providers meet the quality standards consistent with the Department. Bureau contracts should consistently reflect the required quality standards applicable to the services outlined in the contract scope. In addition, if the Bureau determines that assessments conducted externally on contracted service providers will result in the same assurance as Department audits and quality exercises, these assessments should be obtained and monitored periodically by the Bureau.

### **Finding 4: Contract Deliverables and Financial Consequences**

All contracts contain specific requirements for custody, analysis and methodologies specific to required standards for type of testing services provided. For the payment under LAB029, testing results were submitted three days beyond the 60-day requirement. Under the Scope of Services, reports submitted between one and five days late are subject to a liquidated damage assessment of 5% of the total charge. The payment was approved without a deduction for liquidated damages or justification for the late submission.

LAB032, LAB035, and LAB037 are contracts for microbiological testing services which include requirements for sample holding times under Chapter 40 CFR Part 136. However, only LAB035 and LAB037 contain turnaround time requirements for samples tested in meeting these standards.

### **Recommendation**

We recommend the Bureau ensure all contracts contain requirements for expected levels of services and financial consequences consistent with the required methodologies of

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the services provided. In addition, if the level of required service is not met, the Bureau should apply financial consequences as applicable to the contract or sufficiently document justification for the exception.

*To promote accountability, integrity, and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our review 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 review was conducted by Tyler Bradford 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

# Florida Department of Environmental Protection

TO: Valerie Peacock, Audit Director  
Office of Inspector General

FROM: Thomas Frick, Director  
Division of Environmental Assessment and Restoration

DATE: March 27, 2018

SUBJECT: Response to Preliminary Report for the Review of Contract Services for the  
Bureau of Laboratories, Report #A-1718DEP-004

The Division of Environmental Assessment and Restoration (DEAR) appreciates your time and thorough review of our analytical overflow contract services. DEAR is committed to providing the department and our sister agencies with the highest quality data, in a fiscally responsible manner. Your recent audit has identified several areas where we can improve the tracking of some of our analytical overflow service and better allocate our expenses to the appropriate trust funds. As with all our laboratory audits, we appreciate the input and will implement the appropriate corrective measures. If you have any questions about the responses, below, please do not hesitate to contact me.

## **Finding 1: Funding for Contracted Services**

Based on our review, IPTF funds were used for payment of laboratory testing services with no documented association to activities authorized under section 376.3071(4), F.S. for the majority of IPTF funded payments. Funding from IPTF is allocated annually to the Bureau for a portion of laboratory service costs that support the Department's efforts related to petroleum contamination activities as authorized under section 376.3071, F.S. However, based on discussions with the contract manager, contract payments were made for laboratory testing services using funds from available sources without consideration of specific trust fund use restrictions.

### **Recommendation:**

While it is understood that some of the testing services provided through the Bureau support the Department's efforts related to petroleum contamination activities, we recommend the Division take necessary steps to ensure that approved payments for laboratory testing services have documented applicability of activities authorized under section 376.3071, F.S.

### **Response:**

The division will take the necessary steps to move to an appropriate trust fund any payments that did not have documented applicability of activities authorized under

section 376.3071, F.S.. The Division will also take the necessary steps to move the budget appropriation in the Inland Protection Trust Fund for future contracted services during the next budget amendment or legislative budget request process, as appropriate

## **Finding 2: Contract Task Assignments and Service Requests**

According to section 215.985(14)(a)6, F.S., the Department is required to upload all records of compensation to be paid under the contracts to FACTS. This includes contract task assignments. For contracts LAB028 and LAB029, none of the task assignments had been uploaded to FACTS. Payments under LAB032, LAB035, and LAB037 were made based on requests per laboratory sample deliveries by the Department to the contractors rather than task assignment or purchase order. As a result, there was no clear documentation of contract service requests uploaded to FACTS that outlined tasks for each requested activity.

### **Recommendation**

We recommend the Bureau put processes in place to ensure all documents associated with compensation to be paid under the contracts are uploaded to FACTS as required.

### **Response:**

All new records of compensation paid under any existing or new laboratory service contracts will be entered in FACTS. We are working with procurement to identify and upload the appropriate documentation.

## **Finding 3: Oversight of Quality Assurance and Contract Deliverables**

Of the five contracts included in our review, only LAB028 and LAB029 contained a requirement that the contractor maintain a Quality Manual. These contracts required that documentation of quality protocols be provided by the contractor. Per the Bureau's Quality Manual, system audits of contract laboratories are conducted following the pattern of the Bureau's internal system audits. Under LAB028 and LAB029, contractors were required to participate in Department sponsored round robin exercises. Based on our review, the Bureau had not obtained the contractors' Quality Manuals documenting quality protocols for the two contractors for which it was required. In addition, the Bureau had not conducted round robin exercises or audits on any of the contract laboratory service providers. Assessments are conducted for the contractors by FDOH as part of the required NELAP certification. The results of these assessments had not been obtained by the Bureau; however, we subsequently obtained the most recent assessments for four of the contractors. Each contained summaries of minor deficiencies. Although NELAP certification was a requirement under LAB029, the contractor did not possess this certification, as it was not applicable to the type of testing service provided.

### **Recommendation:**

We recommend the Bureau put processes in place to verify that testing services provided externally through contracted service providers meet the quality standards consistent with the Department. Bureau contracts should consistently reflect the required quality standards applicable to the services outlined in the contract scope. In addition, if the Bureau determines that assessments conducted externally on contracted service providers will result in the same

assurance as Department audits and quality exercises, these assessments should be obtained and monitored periodically by the Bureau.

**Response:**

Department-sponsored round robin exercises were discontinued during the contract period; however, the contractual language was not removed at that time. Moving forward, the division will remove any contractual requirements that are no longer applicable and document why the changes occurred when amending agreements.

Regarding the contact laboratory's Quality Assurance (QA) Manual and accreditation audit reports, DEAR agrees that annual review of each contract laboratory's most current QA Manual and audit report should be performed as a part of the contact oversight.

DEAR's Laboratory's Quality Assurance Officer will perform these annual reviews from this date forward.

**Finding 4: Contract Deliverables and Financial Consequences**

All contracts contain specific requirements for custody, analysis and methodologies specific to required standards for type of testing services provided. For the payment under LAB029, testing results were submitted three days beyond the 60-day requirement. Under the Scope of Services, reports submitted between one and five days late are subject to a liquidated damage assessment of 5% of the total charge. The payment was approved without a deduction for liquidated damages or justification for the late submission. LAB032, LAB035, and LAB037 are contracts for microbiological testing services which include requirements for sample holding times under Chapter 40 CFR Part 136. However, only LAB035 and LAB037 contain turnaround time requirements for samples tested in meeting these standards.

**Recommendation:**

We recommend the Bureau ensure all contracts contain requirements for expected levels of services and financial consequences consistent with the required methodologies of the services provided. In addition, if the level of required service is not met, the Bureau should apply financial consequences as applicable to the contract or sufficiently document justification for the exception.

**Response:**

A financial penalty was not required for the specific incident noted for contract LAB029. The contract lab had provided results to DEAR within the appropriate turnaround time. The delay in receiving the final sample results was a result of a time lag created by communications back and forth between the contract lab and department staff as how to resolve a quality assurance issue. DEAR should have provided documentation to this effect and will do so for any future cases where a financial penalty is not assessed. In addition, all new contracts will include turnaround time language.