



Department of Environmental Protection Office of Inspector General

July 12, 2022

Report A-2122DEP-011

Review of Petroleum Restoration Program Agency Term Contract Purchase Order B7AFC4 for Source Removal Activities with Trident Treatment & Dewatering LLC/dba MAS Environmental, LLC

INTRODUCTION

The Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted a review of the Division of Waste Management Petroleum Restoration Program (PRP) Agency Term Contract GC827 (Contract) Purchase Order B7AFC4 for Source Removal with Trident Treatment & Dewatering, LLC/dba MAS Environmental, LLC (Contractor). This review was initiated as a result of, the Fiscal Year (FY) 2021-2022 Annual Audit Plan.

BACKGROUND

The Inland Protection Trust Fund (IPTF) was created under Section 376.3071, Florida Statutes (F.S.), to provide funding for the Department to respond to incidents of inland contamination related to the storage of petroleum and petroleum products. PRP manages activities necessary to prioritize, assess, and clean up facilities contaminated by discharges of petroleum and petroleum-based products from stationary petroleum storage systems. In accordance with Section 376.3071, F.S., the Department has implemented rules and procedures to administer the activities necessary to prioritize, assess, and clean up facilities contaminated by discharges of petroleum and petroleum-based products from stationary petroleum storage systems.

The PRP oversees Agency Term Contractors (ATC) and other contracted professional services to cleanup state funded facilities under several cleanup programs and initiatives. These facilities are assigned Site Managers to manage all aspects of oversight for work performed. To assist Site Managers and other program staff with navigating a facility through the cleanup and closure process, PRP utilizes Site Manager Standard Operating Procedure (SOP) guides.

On February 20, 1991, a Discharge Notification Form (DNF) was submitted to the Department for Facility 9100685. In 2013, a Low Scored-Site Initiative (LSSI) report was completed and documented that concentrations of petroleum compounds exceeded Groundwater Cleanup Target Levels (GCTL). When funding became available in 2016, a Purchase Order for site assessment was assigned to a Contractor through the PRP Contractor Selection Formula. Based on the results of

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the site assessment, PRP funded a Remedial Action Plan (RAP) to address the contaminated soil and ground water present beneath the site. The RAP was provided to the Department on June 29, 2018, which recommended source removal by excavating the contaminated area with the disposal of approximately 1,107 tons of contaminated soil. The estimated cost to implement the remedial activities was \$277,000. A RAP Modification was completed on December 31, 2019, which recommended the disposal of approximately 1,031 tons of contaminated soil. The estimated cost remained unchanged. The site currently has a priority discharge score of 27 and is being cleaned up under the Abandon Tank Restoration Program.

As of November 18, 2021, the IPTF has funded \$462,443.98 in cleanup costs. The responsible party deductible has been paid.

Facility 9100685 is managed by the PRP's contracted Team 6. Purchase Order B7AFC4 was issued to the Contractor on July 23, 2020, for source removal. The Scope of Work (SOW) included four Tasks as follows:

Task	Description	Total
1	Health and Safety Plan	\$0.00
2	Pre-construction meeting, mobilization, meeting notes, conclusions, and recommendations. A second mobilization, collect backfill samples, abandon wells, and preparation of a Well Abandonment Report.	\$15,559.28
3	Perform Large Diameter Auger (LDA) source removal activities, install flowable fill and resurface.	\$291,203.70
4	Conduct a pre-drilling site meeting. Submit teleconference notes with a summary of conclusions and recommendations. Install monitoring wells and conduct groundwater sampling. Prepare Remedial Action Interim Report with summary of all activities.	\$22,069.23
Total		\$328,832.21

The following Change Orders were issued after the original Purchase Order:

Change Order	Date	Task	Description	Amount
1	August 3, 2020	4	Add additional mobilization and professional hours.	\$825.80
2	September 23, 2020	3	Changes in LDA diameter, and casing, sodding, and increase surface area. No net cost change. Additional costs funded by contingent funding for Task 4.	\$0.00
3	September 30, 2020	3	Add transportation and disposal of impacted soil and remove Task 4 mobilization. Additional costs funded by contingent funding from Task 4.	(\$257.29)
Total				\$568.51

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The Purchase Order final cost estimate was \$329,400.72. The Purchase Order was completed on March 12, 2021 with a final cost of \$314,271.96. The actual costs were comprised of three payments as follows:

Payments	Date	Amount
1	September 16, 2020	\$13,280.30
2	November 24, 2020	\$272,674.20
3	March 12, 2021	\$28,317.46
	Total	\$314,271.96

RESULTS OF REVIEW

eQuote

Chapter 62-772.400(3), Florida Administrative Code (F.A.C.), states in part, *In order to seek additional value and be consistent with subsection 60A-1.043(2), F.A.C., (6-21-04) <http://www.flrules.org/Gateway/reference.asp?No=Ref-03575>, hereby adopted and incorporated by reference, the Department will specify in all agency term contracts a dollar threshold based on the categories in Section 287.017, F.S., above which the Department will request quotes from agency term contractors for a phase of site rehabilitation.*

The PRP does not seek competitive quotes from contractors for a phase of site rehabilitation unless the estimated amount exceeds the category outlined in Section 287.017, F.S., which is referenced in the PRP ATC Selection Process as Category Five (\$325,000). According to PRP SOP 24, *In accordance with the Contractor Assignment Process, eQuotes are required when the purchase order (PO) cost for the next SOW is \$325,000 or greater (not including the contingent funding allowance).* The Purchase Order was issued for \$328,832.21, with a contingent funding allowance of \$7,000. While the total funding for the Purchase Order is above the threshold for requiring an eQuote, the exclusion of \$7,000 in contingent funds reduced the Purchase Order amount to \$321,832.21, which is below the threshold. Therefore, an eQuote was not obtained for the Purchase Order. The PRP's decision to exclude purchase orders in excess of Category Five from being subject to a request for quote is inconsistent with requirements under Chapter 62-772.400(3), F.A.C. The rule does not contain a provision for the exclusion of the portion of purchase order funding designated as contingent funding¹.

PRP Standard Operating Procedure - 24. eQuote

An eQuote is a sourcing application tool which utilizes MyFloridaMarketPlace (MFMP) to solicit quotes from selected vendors to complete a scope of work (SOW) at the best value to the State.

In the Petroleum Restoration Program, eQuotes are typically used when remedial action construction or source removal projects are anticipated to cost \$325,000 or more. However, pursuant to the Agency Term Contract, the Department may assign any work funded by the IPTF in any of the ways and options provided in Chapter 287, F.S., which includes requesting quotes (eQuotes).

In accordance with the Contractor Assignment Process, eQuotes are required with the purchase order (PO) cost for the next SOW is \$325,000 or greater (not including the contingent funding allowance).

¹ This circumstance was previously addressed in the Contract Procurement Audit (A-2122DEP-004).

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Change Orders

Three Change Orders were approved during the course of the Purchase Order. Under Change Order 3, \$2,583.36 was added for transportation and disposal of impacted soil. However, there was a net decrease in the funding amount because the balance of contingent funding was used, as well as elimination of a mobilization and substitute reporting. Based on our review of field notes, the Change Order was signed after work was completed.

Change Orders PRP Request for Change (RFC) Guidance

PRP RFC guidance states under Field RFC, *The FRFC (Field RFC) process is only used while the contractor is working in the Field. Field RFCs can only be authorized if sufficient contingent funding is available in the SPI to offset the change amount to a net zero change. FRFC cannot result in a net cost increase and cannot include reductions to pay items other than Pay Item 23-1 Contingent Funding.*

Invoice Testing

Schedule of Pay Items (SPI) and allowed amounts According to the Contract, the Contractor's Scope of Work is supported by a detailed SPI that includes the project specific pay items, number of units, and negotiated pay item prices. We reviewed paid invoices for each task to identify the SPI and amounts paid. We compared the amounts paid to the negotiated item price from Amendment No. 9 of the Contract to determine whether the amounts paid were allowable. Based on our review, all SPI amounts within the Purchase Order were consistent with the Contract rates.

Required Documentation for SPI Invoicing For each invoiced pay item, the Contractor is required to submit specific support documentation. We compared each invoiced item to the SPI required documents under the Contract. Based on this review, we identified several SPI's not supported by the required documentation for invoicing.

Retainage The Purchase Order's Description defines the amount of retainage held from each invoice payment until the completion and approval of all tasks as 5%. The Contractor submitted three invoices for payment under the Purchase Order. We verified that 5% retainage was withheld from the first two approved payments to the Contractor. The Contractor submitted a Release of Claim as required by the Contract with the final invoice and was paid for the retainage withheld.

Oversight of Deliverables

We reviewed the deliverables for each task as identified in the Purchase Order's SOW. The deliverables and due dates were compared to the dates submitted. The dates submitted were compared to the dates the Site Manager reviewed and approved using the PRP Staff Deliverable Review Turnaround Time (TAT) table.

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Task	Deliverable	Due Date	Date Deliverable Received	Required Review TAT (days)	Date Deliverable Reviewed by Site Manager
1	Health & Safety Plan	September 1, 2020	July 30, 2020	5	August 4, 2020
2	Well Abandonment Report	November 2, 2020	September 4, 2020	15	September 11, 2020
3	Source Removal Report	January 4, 2021	October 30, 2020	30	November 19, 2020
4	Interim Report	March 5, 2021	February 26, 2021	15	March 11, 2021

Based on our review, all deliverables were submitted and received before the due dates and were reviewed and approved within the required timeframe. Finally, the tasks were invoiced by the Contractor within 30 days of receipt of approval letter/e-mail.

Subcontracted Work

Under the Purchase Order, six subcontractors provided services/commodities for source removal and were reported on the *Revised Subcontractor Utilization Report Form for Commodities/Services Subcontractor Utilization Report*). Based on our review of the PRP ATC Authorized Subcontractor List, three of the subcontractors identified in the Purchase Order were authorized subcontractors of the Contractor. The other three subcontractors were not listed as approved subcontractors for the Contractor. In addition, there was no documentation provided showing the Contractor had requested to add the three subcontractors to the PRP ATC Authorized Subcontractor List or that the Contractor had obtained and submitted quotes for either of the three subcontractors.

Amended and Restated Agency Term Contract GC827 paragraphs 19.A.2., and 19.A.6.

19.A.2. states, Contractor may request to add or remove a subcontractor(s) by submitting the name of the proposed subcontractor change (and identifying the FEIN) in writing (by email or otherwise) to the Department's ATC Contract Manager and copy PRP.Contracts@dep.state.fl.us. Such a request shall specify whether the proposed subcontractor change involves a related party (as that term is defined by the Financial Accounting Standards Board), and/or whether the Contractor proposes to add, as a subcontractor, an ATC contractor that is authorized to perform petroleum contamination site response action services in the same region as the affected ATC Requests must be submitted by an officer of the Contractor, on its letterhead.

19.A.6. states, With regard to Work Assignments supported by quotes – subcontractors listed in such quotes will not be automatically added to the Authorized Subcontractor List (in paragraph 19.A.2). Upon issuance of any Work Assignment based on such quote, all proposed subcontractors which have not previously been added to the Authorized Subcontractor List shall be provisionally authorized to work on the subject Work Assignment. Contractor shall require all such subcontractors to comply with requirements in paragraph 19 B. and 2.H.

Contractor Evaluation

The Contractor Performance Evaluation must be completed by the Site Manager after the final invoice has been submitted for each Purchase Order. The Contractor is also required to complete a Contractor Performance Evaluation per Paragraph 45 of the ATC Contract.

Contractor Evaluation Guidance

SOP Chapter 11 states in part, Contractor performance on state-funded petroleum cleanup projects shall be evaluated, monitored, and documented after each Work Order (WO) or Purchase Order (PO) with input from the Property Owner (Owner)/Responsible Party (RP).

We reviewed the Contractor Performance Evaluation report completed on April 23, 2021. The Site Manager documented the Contractor's performance as top performer.

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The Site Manager documented requesting input for the evaluation from the responsible party. No input was received.

Site Visits

During the Purchase Order scope, two field inspections were conducted. The associated reports for the Facility covered the period September 21 through September 24, 2020. The presence of the inspectors during these days was supported by the Contractor's field notes. Further, the field notes mentioned the inspectors being on site other days in September 2020, as well as, January 2021. These site visits were not documented by site inspection reports.

Site Visit Guidance

SOP Chapter 12 states in part, *Site Managers shall complete a Site Inspection Form for every site visit they make. A new Site Inspection Form is required to be filled out even if there are several site visits for the same site.*

CONCLUSION

Based on our documentation reviews and discussions with PRP staff, the activities and financial records associated with Purchase Order B7AFC4 for remediation activities at the Stop and Shop (Facility 9100685) generally demonstrate management oversight of the Purchase Order, Facility, and Contractor. Our findings and recommendations are contained in the remainder of this report.

FINDINGS AND RECOMMENDATIONS

Finding 1: Change Order Approval

Under Change Order 3, \$2,583.36 was added for transportation and disposal of impacted soil. However, there was a net decrease in the funding amount because the balance of contingent funding was used, as well as elimination of a mobilization and substitute reporting. Based on our review of field notes, the Change Order was signed after work was completed. Paragraph 2.A.iii of the Contract states that the *Contractor and its subcontractors shall not commence any Work Assignment until either 1) a [Task Assignment/Task Assignment Change Order Form] TA/TACO has been fully executed by both Department and Contractor, or 2) a PO or PO Change ("POC") has been issued.* Based on our inquiry, the contracted site management provided a memorandum with the subject of *Transportation and Disposal of Additional Soil*, dated September 13, 2017, to justify the approval of Change Order 3 after work was completed. The memorandum stated in part, *it is understood that there are situations when overages may not be discernable until receipt of weight tickets. Therefore, it is the policy of the Petroleum Restoration Program that a request for approval of payment for additional Transportation and disposal of soil identified via weight tickets is timely and may be authorized via [Request for Change] RFC provided that the following criteria is met:*

1. *The RFC must be received by the site manager within two working days of the date additional soil (overage) was transported from the site.*

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2. *The volume of soil requested in the RFC soil does not exceed 20% of the total volume authorized in the Purchase Order.*

Based on our review, the RFC was received by the Site Manager within two workdays and was less than 20% of the total volume authorized in the Purchase Order.

Paragraph 2.H. of the Contract states in part, *The terms and conditions of the DEP Agency Term Contract (ATC) apply to and control all work assigned, awarded or authorized to Contractor thereunder. DEP will not accept, agree to, or incorporate any terms and conditions, proposed, contained or referenced in any document or instrument which are not within the ATC.* The memorandum was documented as being from the PRP Program Administrator. However, an internal memorandum does not serve as an amendment to the ATC.

Recommendation

We recommend the PRP discontinue the use of the memorandum which conflicts with the current Contract requirements and take steps to rectify work being completed without proper authorization.

Management Response

Per OIG's recommendation, PRP is amending the Agency Term Contracts to include the relevant language from the memorandum and has discontinued the use of the memorandum as guidance.

Finding 2: Documentation for SPI

Attachment B SPI-209100685 lists the pay items and the required documentation for invoicing. Based on our comparison of the pay item requirements and the deliverables submitted, payments were approved for several pay items without adequate documentation. Specifically:

- Task 2 SPI pay item 21-1 *Professional Engineer (Key)* requires, *Field notes and work performed in accordance with scope*. Based on discussions with the Site Manager and Supervisor, field notes were provided for the Pre-Drill/ Pre-Construction meeting. However, the field notes did not indicate that the key Professional Engineer was present at the meeting.
- Task 4 SPI pay item 1-4 *Permit Fees* requires, *a copy of permit and receipt*. Neither documents were found in the deliverable. According to the Site Manager, the receipt and copy of the permit were not included in the report and should not have been paid.
- The permit fee is a reimbursable item. The contractor is allowed a 6% handling fee for reimbursable items. As attributable to the permit fee, the associated payment of 6% handling fee for the reimbursable items should not have been paid.

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The combined questioned costs are as follows.

Questioned Schedule of Pay Items					
Task	Pay Item	Pay Item Description	Required Documents	Units	Total Amounts
2	21-1	<i>Professional Engineer</i>	<i>Field Notes and work performed in accordance with scope</i>	2	\$267.36
4	1-4	<i>Permit Fees</i>	<i>Copy of Permit and Receipt</i>	60	\$ 60.00
4	1-7	<i>6% Handling Fee</i>	<i>Approval of Payment</i>	60	\$ 3.60
				Total	\$330.96

As required by the Contract, proper documentation is required to justify the payment of invoiced costs while assuring that the work is performed.

Recommendation

We recommend the Division work with PRP and the Site Manager to request reimbursement for the SPI costs where required documentation was not provided. Going forward, PRP should work with Team 6 management to ensure that costs for SPI items are supported by the required documentation prior to approval of payment.

Management Response

Per OIG’s recommendation, on June 20, 2022, PRP requested reimbursement for the SPI costs where required documentation was not provided in the purchase order deliverables and received notice from the ATC on June 23, 2022, that a reimbursement payment was processed for submittal to DEP. During the program video conference held on June 23, 2022, PRP trained all teams including local programs on the requirements for site managers to review the Required Documents tab of the SPI to confirm the required documentation has been submitted for payment prior to approving the deliverable for invoicing. In addition, PRP spoke directly with Team 6 management on June 20, 2022, regarding the requirement for site managers to perform this review prior to approving deliverables and to reinforce this requirement.

Finding 3: Subcontractor Reporting

The Subcontractor Utilization Report, submitted with the ATC’s invoices should list the subcontractor paid directly by the Contractor. The subcontractors should be listed on the Contractor’s approved subcontractor listing. The Amended and Restated Contract allows exceptions in paragraphs 11 and 19; but require the items to be paid as reimbursable items and/or require quotes. The Subcontractor Utilization Report listed three subcontractors that were not on the Contractor’s approved subcontractor listing.

The site manager and supervisor considered the subcontractors as approved because one of the approved subcontractors was an ATC contractor and the two subcontractors were on that ATC’s approved subcontractor listing. The third subcontractor was a

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governmental agency (soil disposal site) and considered a franchised service. The subcontractor costs were not paid as reimbursable items and a review of MFMP found no quotes were submitted.

Recommendation

We recommend the Division work with PRP to train Agency Term Contractors and PRP staff on subcontracting requirements and procedures.

Management Response

Per OIG's recommendation, the PRP trained all teams including local programs on the requirements for all subcontractors to be listed on the ATCs approved subcontractor list or included on the subcontractor quote form in the program video conference held on May 26, 2022. In addition, PRP provided a written reminder to ATCs on June 27, 2022 via the PRP Post.

Finding 4: Site Inspections

Chapter 12 of the SOP states in part, *Site Managers shall complete a Site Inspection Form for every site visit they make. A new Site Inspection Form is required to be filled out even if there are several site visits for the same site.*

Two Site Inspection Reports were completed which covered the period September 21-22 and 23-24, 2020. The presence of the inspectors was supported by entries in the field notes. Based on our review of field notes, inspectors were on site eight additional days. No inspection reports were on file to cover the other days the inspectors were on site. Specifically, Task 3 field notes document that inspectors were on site six additional days in September (e.g., September 14, 15, 17, 19, 20, and 25, 2020). Task 4 field notes documented that inspectors were on site two days in January (e.g., January 11 and 12, 2021). The field inspection reports provided documentation of site conditions and the field work performed by the inspectors.

Recommendation

We recommend the Division work with PRP to ensure all inspectors complete a Site Inspection Form for each site visit made as required in the SOP. If the inspectors are monitoring work that covers multiple days, then the report could cover the entire time-period the inspectors were on site.

Management Response

Per the OIG's recommendation, during the program video conference held on June 23, 2022, PRP trained all teams including local programs on the requirements for inspectors to complete site visit forms covering each day at which they are on site. In addition, PRP spoke directly with management for Team 5 and Team 6 on June 21, 2022 and June 22, 2022 respectively regarding the requirement for inspectors to complete and insert site inspection forms covering each day at which they are on site.

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APPENDIX A - PURPOSE, SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the review included activities and financial records associated with the Purchase Order for source removal at the Facility. The scope also included related Purchase Order activities for this Facility.

The objective was to assess management oversight of the Purchase Order, Facility, and Contractor.

To achieve our audit objectives, our methodology included:

- Reviewing invoices and documentation of remediation work at the Facility
- Reviewing the Contract and the PRP procedures for Contractor oversight
- Interviewing appropriate PRP staff and management regarding the processes and controls used for oversight

STATEMENT OF ACCORDANCE

Statement of Accordance

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Randal C. Stewart and supervised by Valerie J. Peacock.

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