

**Review of Petroleum Restoration Program
Agency Term Contract Purchase Order B471B1
for Source Removal Activities
with WES Environmental, LLC**

Division of Waste Management

Report: A-2021DEP-003

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

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3900 Commonwealth Boulevard, MS 40
Tallahassee, Florida 32399-3000

<https://floridadep.gov/>





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The Office of Inspector General (OIG) conducted a review of Petroleum Restoration Program (PRP) Agency Term Contract (ATC) Purchase Order B471B1 for source removal activities with WES Environmental, LLC (Contractor). This review was initiated as a result of the Fiscal Year (FY) 2020-2021 Annual Audit Plan.

Scope and Objectives

The scope of this review included activities and financial records associated with Purchase Order B471B1 for source removal at the Sunrise Food Mart #105 (Facility 8510269). The objective was to assess management oversight of the Purchase Order, Facility, and Contractor.

Methodology

This audit was conducted under the authority of Section 20.055, Florida Statutes (F.S.), and in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*. Our procedures included a review of Section 376.3071, F.S., Section 287, F.S., Chapter 62-772, Florida Administrative Code (F.A.C.), PRP Standard Operating Procedures (SOP), Facility history, Agency Term Contract GC832 (Contract), the Purchase Order, and related deliverables and invoices. We also interviewed and obtained information from PRP Contract management and the Site Manager.

Background

The Inland Protection Trust Fund (IPTF) was created under Section 376.3071, 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,

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assess, and cleanup 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 PRP through Agency Term Contractors and other contracted professional services. According to the March 2021 PRP Monthly Dashboard Update report, PRP manages 4,325 discharges which are eligible for funding under Section 376.3071, F.S.

Section 376.3071(10)(b), F.S., established the Early Detection Incentive (EDI) program to provide funding for *all sites involving incidents of contamination from petroleum storage systems initially reported to the department at any time from June 30, 1986 to December 31, 1988*. The Department approved Facility 8510269 for funding under the EDI program on November 9, 1987.

Facility 8510269 has a funding priority score of 30. Funding for Facilities with a priority score of 30 became available in 2005. Based on historic assessment activities conducted for this Facility, PRP funded a Limited Scope Remediation Action



Sunrise Food Mart #105 Facility 8510269

Source: Florida Department of Environmental Protection Contamination Locator Map

Plan (LSRAP) in November 2018 for source removal. According to the LSRAP, source removal was recommended as a remediation strategy by excavating the contaminated area with the disposal of approximately 3,651 tons of contaminated soil. The estimated cost to excavate the source area using standard ATC Contract rates was \$709,000.

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In accordance with Section 287.057, F.S., and PRP SOP 24, PRP requests competitive quotes by eQuote¹ through MyFloridaMarketPlace² (MFMP) for source removal projects which are anticipated to cost \$325,000 or more. Through this process, Purchase Order B471B1 was awarded to the Contractor on January 22, 2019, and included the following Tasks.

Task	Description	Cost
1	Health and Safety Plan	\$50.00
2	Remedial Action Preliminary Activities	\$10,333.00
3	Remedial Action Plan (RAP) Modification	\$550.00
4	Source Removal Activities	\$421,945.81
	Total	\$432,878.81

Nine Change Orders were approved between February 1, 2019 and June 5, 2019, increasing the final Purchase Order cost by \$111,281.13. As of August 2019, the Department had authorized payments totaling \$536,709.56 under Purchase Order B471B1.

Results

Deliverables

We reviewed the deliverables associated with each Task under the Purchase Order. The submission of required documents and Site Manager deliverable reviews were verified as follows:

Task	Deliverable	Due Date	Date Deliverable Submitted	Required Review Turnaround Time (days)	Date Deliverable Reviewed by Site Manager
1	Health and Safety Plan	2/18/2019	1/23/2019	5	1/24/2019
2	Remedial Action Interim Report	3/1/2019	3/1/2019	15	3/15/2019
3	Level 2 RAP Modification Plan	3/15/2019	3/15/2019	30	3/20/2019
4	Source Removal Report	6/28/2019	6/17/2019	30	6/26/2019

¹ An eQuote is a sourcing application tool which utilizes MyFloridaMarketPlace to solicit quotes from selected vendors.

² MyFloridaMarketPlace is the State online procurement processing system for Florida.

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All deliverables were submitted timely by the Contractor in accordance with the required due dates on the Purchase Order Scope of Work. Turnaround times for Site Manager deliverable reviews are stated in Section 14.4 of the PRP Site Manager Guide. We verified that the Site Manager reviewed and approved deliverables timely in accordance with PRP guidance.

Schedule of Pay Items

According to the Contract, the Contractor's Scope of Work is supported by a detailed Schedule of Pay Items (SPI) that includes the project specific pay items, number of units, and negotiated pay item prices. We compared the SPI billed to the SPI in the Purchase Order to determine whether invoiced amounts were consistent with the specific pay items, rates and number of units approved in the Purchase Order and subsequent Change Orders. Based on our review, all invoiced amounts were consistent with the negotiated items, quantities, and rates included in the revised SPI document as of the final Change Order.

For each invoiced pay item, the Contractor is required to submit specific support documentation. We compared each invoiced item and quantity to the SPI required documents under the Contract. Based on this review, we verified that the required documents were submitted for all invoiced pay items prior to the Site Manager's approval of the invoice.

Subcontractors

According to Section 19 of the Contract, *the Contractor shall not subcontract work under this contract, with the exception of the subcontractors identified on page 1 of this contract, without prior written consent of the Department's Contract Manager.* Fourteen subcontractors were used for source removal activities under the Purchase Order. We verified that all 14 subcontractors had been authorized by PRP Contract management.

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Section 7 of the Contract requires the Contractor to submit the Subcontractor Utilization Report Form with each invoice. Based on our review, Subcontractor Utilization Report Forms were submitted with each invoice as required.

According to Section 9 of the Contract and Section 376.3071(6), F.S., the Contractor is required to pay subcontractors and vendors within 30 working days from the date of receipt of payment from the Department. We reviewed 16 subcontractor/vendor payments under the Purchase Order and verified that all were paid within the required timeframe.

Retainage

As identified within the Purchase Order Scope of Work, *Retainage shall be withheld in the amount of 5%, unless otherwise noted in the SPI, from each payment by the FDEP/LP until completion and approval of all Tasks. The Contractor shall submit a Release of Claims and request for retainage payment with the final invoice.* The Contractor submitted five invoices for payment under the Purchase Order. We verified that 5% retainage was withheld from each approved payment to the Contractor. The Contractor submitted the required Release of Claims and request for retainage with the final invoice as required.

EQuote

According to the PRP SOP 24, eQuotes are obtained when remedial action construction or source removal projects are anticipated to cost \$325,000 or more. From the LSRAP submitted under the prior Purchase Order by a previous contractor, source removal was recommended as a remedial strategy by excavating the vadose zone³ soils using

³ According to the PRP Site Manager Assessment Guide, the vadose zone is the area between the land surface and the water table.

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conventional⁴ as well as Large Diameter Auger (LDA) excavation techniques. Conventional excavation was recommended down to six feet below grade along the entire area of the soil contamination and LDA excavation to varying depths within the excavated pit. The cost was estimated to be \$708,469. As such, the Purchase Order for source removal was issued through eQuote.

The Purchase Order was issued on January 22, 2019. Subsequently, nine Change Orders were approved between February 1, 2019 and June 5, 2019, increasing the cost by \$111,281.13 as follows:

Purchase/Change Order	Description		Date	Amount
Original Purchase Order	Task	Deliverable	1/22/2019	\$432,878.81
	1	Health and Safety Plan		
	2	Remedial Action Interim Report		
	3	Level 2 RAP Modification Plan		
	4	Source Removal Report		
1	Additional laboratory surcharge authorized for one-day turnaround.		2/1/2019	\$2,160.00
2	Additional mobilization and drilling based on initial investigation. Costs offset from Purchase Order contingent funding.		2/13/2019	\$0
3	Additional well sampling, well abandonment, mobilization, and equipment costs.		3/5/2019	\$3,447.64
4	Fill material necessary to prevent contaminated soil from entering roadway. Costs offset from Purchase Order contingent funding.		4/1/2019	\$0
5	Added and extended LDA borings		4/11/2019	\$65,270.73
6	Additional excavation and fill needed to address debris.		5/8/2019	\$21,977.26
7	Change in surface casings. Costs were offset. No change in funding.		5/15/2019	\$0
8	Added transportation needed for additional impacted soil.		5/31/2019	\$15,909.47
9	Added transportation needed for additional impacted soil.		6/5/2019	\$2,516.03
	Total Funding			\$544,159.94

PRP SOP 24 states that *only change orders for conditions which could not be anticipated will be approved*. The first Change Order was issued the week after execution of the Purchase

⁴ According to the PRP Site Manager Remediation Guide, conventional excavation involves the use of an excavator or backhoe. Shoring and or dewatering of the area to be excavated may be required depending on the soil types, depth to water, adjacent buildings or roads, and depth of excavation.

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Order to add funding which accounts for additional laboratory charges for one-day turnaround of lab results. According to the Site Manager, this shortened time frame was needed due to pending development of the Facility and was anticipated. However, the SPI template did not include a line item for the surcharge.

PRP SOP 24 also states that, *due to the nature of eQuotes, change orders are not anticipated and thus highly scrutinized to avoid the perception of scope changes after the purchase order is issued. Scope changes are specifically not allowed for eQuotes as eQuotes are solicited and awarded based on costs for the specific scope.* For scope development, PRP SOP 24 states that *a level 2 RAP Modification (RAP MOD) is added to the first task to allow the awarded contractor to become the engineer of record.*

Task 2 required a Remedial Action Interim Report due to the determined need for additional soil investigation for contamination. The Level 2 RAP Modification Plan was required under Task 3. Based on results of the additional tasked site investigation, subsequent Change Orders were issued to address additional contamination.

Performance Evaluation

According to Section 45 of the Contract, the Contractor's performance is evaluated *at least after completion of each task assignment, using the Interim Contractor Performance Evaluation form, and annually, based on the work performed under this Contract during the state fiscal year, using the Annual Contractor Performance Evaluation form.* Contractor performance is to be considered prior to assignment of task assignments, renewal of the Contract, and release of retainage from work performed. According to Section 19.1 of the Site Manager Guide, Contractor Performance Evaluations should be completed within 30 days of payment of

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the final Purchase Order invoice. The final invoice under the Purchase Order was paid on August 13, 2019. We verified the Site Manager completed the Contractor's Performance Evaluation on August 22, 2019, which was within the required completion date. The Site Manager documented the Contractor's performance as a Top Performer. As a result, the Contractor was assigned an additional Purchase Order for subsequent remediation activities for Facility 8510269.

Conclusions

Based on our review, the PRP Site Manager ensured the Contractor met Contract and Purchase Order requirements regarding deliverables, SPI documented support, and retainage. The Site Manager also completed a Contractor Performance Evaluation as required. We further verified the Contractor paid subcontractors used under the Purchase Order timely as required. However, we noted control weaknesses regarding PRP's use of Change Orders.

Finding and Recommendation

Finding 1: Change Orders

According to the PRP SOP 24, eQuotes are obtained when remedial action construction or source removal projects are anticipated to cost \$325,000 or more. The cost for source removal was estimated to be \$708,469. As such, the Purchase Order for source removal was awarded on January 22, 2019, through eQuote. Subsequently, nine Change Orders were approved between February 1, 2019 and June 5, 2019, increasing the cost by \$111,281.13.

PRP SOP 24 states that *only change orders for conditions which could not be anticipated will be approved*. The first Change Order was issued the week after execution of the Purchase Order to add funding which accounts for additional laboratory charges for one-day turnaround of

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lab results. According to the Site Manager, this shortened time frame was needed due to pending development of the Facility and was anticipated. However, the SPI template did not include a line item for the surcharge.

PRP SOP 24 also states that, *due to the nature of eQuotes, change orders are not anticipated and thus highly scrutinized to avoid the perception of scope changes after the purchase order is issued. Scope changes are specifically not allowed for eQuotes as eQuotes are solicited and awarded based on costs for the specific scope.* For scope development, PRP SOP 24 states that *a level 2 RAP Modification (RAP MOD) is added to the first task to allow the awarded contractor to become the engineer of record.*

Task 2 required a Remedial Action Interim Report due to the determined need for additional soil investigation for contamination. The Level 2 RAP Modification Plan was required under Task 3. Based on results of the additional tasked site investigation, subsequent Change Orders were issued to address additional contamination. By including Tasks that require additional site investigation along with source removal activities, the potential for needed Change Orders under the eQuote Purchase Order was increased.

We reviewed twelve additional Purchase Orders awarded through eQuote beginning in FY 2018-2019⁵. Of these, seven Purchase Orders included five or more Change Orders. While it is understood that Change Orders are necessary for conditions which could not have been anticipated, these circumstances should not be a common occurrence for Purchase Orders awarded through eQuote.

⁵ Purchase Order B471B1 was issued January 22, 2019.

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Recommendation:

We recommend the Division work with PRP to discontinue including Tasks that require additional site investigation under Purchases Orders awarded through eQuote. Additional site investigation increases the potential for scope changes. Consistent with PRP SOP 24, scope changes should not be allowed for eQuotes as eQuotes are solicited and awarded based on costs for a specific scope. In addition, PRP should avoid issuing Change Orders for conditions which can be anticipated. Going forward, Change Orders for Purchase Orders awarded through eQuote should be highly scrutinized to avoid the perception of scope changes after the Purchase Order is issued.

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 Sarah Beal 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*



FLORIDA DEPARTMENT OF Environmental Protection

Bob Martinez Center
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Noah Valenstein
Secretary

Memorandum

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

FROM: Tim Bahr, Director *TJ Bahr*
Division of Waste Management

SUBJECT: Response to Audit Report A-2021DEP-003
Review of Purchase Order B471B1

DATE: May 11, 2021

The following is in response to the Review of Petroleum Restoration Program (PRP) Purchase Order B471B1, conducted by the Office of Inspector General (OIG).

Finding 1: Change Orders

Recommendation:

We recommend the Division work with PRP to discontinue including Tasks that require additional site investigation under Purchase Orders awarded through eQuote. Additional site investigation increases the potential for scope changes. Consistent with PRP SOP 24, scope changes should not be allowed for eQuotes as eQuotes are solicited and awarded based on costs for a specific scope. In addition, PRP should avoid issuing Change Orders for conditions which can be anticipated. Going forward, Change Orders for Purchase Orders awarded through eQuote should be highly scrutinized to avoid the perception of scope changes after the Purchase Order is issued.

Petroleum Restoration Program (PRP) Response:

PRP agrees that when additional site assessment is needed to define the remedial scope, the additional site assessment should be performed prior to the scope being created and offered under the eQuote process. The program also agrees that anticipated items should be included in the eQuote and that change orders for anticipated items avoided. The eQuote Team met on May 10th, 2021 to remind all involved that assessments must be completed to define the scope for offer under eQuotes prior to eQuoting a project, that all items anticipated should be included in the eQuote, and change orders for anticipated items should be avoided. All purchase orders and change orders issued under an eQuote, except for time extensions, will require review and approval by a member of the eQuote Team to assure these processes are followed. The eQuote section of the program's online Standard Operating Procedures was updated on May 11, 2021 to clarify these requirements.