

**Audit of Agreement MV412 with
Beer Can Tampa Bay, LLC**

Office of Resilience and Coastal Protection

Report: A-2021DEP-016

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

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The Department of Environmental Protection (Department), Office of Inspector General (OIG) conducted an audit of Agreement MV412 (Agreement) between the Department's Office of Resilience and Coastal Protection (ORCP) and Beer Can Tampa Bay, LLC (Grantee) for the purchase of a pumpout vessel, maintenance and repair.

Scope and Objectives

The scope of this audit included Agreement deliverables, invoices, and ORCP management activities associated with the Agreement. The objectives were to:

- determine whether approved payments for Agreement expenditures were supported by documentation demonstrating deliverable completion and Grantee payment of required match
- evaluate ORCP oversight and the Grantee's compliance with the Agreement

Methodology

This audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing*, published by the Institute of Internal Auditors, and under the authority of Section 20.055, Florida Statutes (F.S.). Our procedures included a review of statutory and Agreement requirements, authoritative documentation, financial records, Agreement activity documentation, and interviews with ORCP and the Grantee.

Background

In 1992, the Clean Vessel Act (CVA) was signed into law to reduce water pollution by prohibiting vessels from discharging raw sewage into fresh water or coastal saltwater. The act established the Department of Interior (DOI), U.S. Fish and Wildlife Service (USFWS) CVA Grant Program (Program) to provide funding to states, the District of Columbia and insular areas for the construction, renovation, operation, and maintenance of pumpout stations and waste reception facilities for recreational boaters and for educational programs that inform boaters of the importance of proper disposal of their sewage. Requirements for state participation in the Program are established under 50 Code of Federal Regulation (CFR) § 85 and 2 CFR § 200.

Within the Department, the Program is administered under ORCP. Program grants can fund up to 75% of eligible project costs. Grantees are required to provide the remaining 25% of total allowable project costs using matching non-Federal funds.

On June 18, 2021 the Department and the ORCP entered into the Agreement with the Grantee as part of the Department's Program CVA20-030. According to the Agreement Scope of

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Work, the Project funded under the Agreement *is for the purchase of a pumpout vessel and maintenance and repair* (Project). The Agreement expires on July 1, 2022. The Grantee is required to provide 25% in match funding for the Project total. Tasks, deliverables, and funding are as follows:

Task	Description	Deliverables	Grant Amount	Match Amount	Total
1 (Equipment)	Purchase of a pumpout vessel in accordance with the minimum requirements specified in the approved design and permits	Purchase of the authorized equipment, as evidenced by a copy of paid invoice(s), delivery receipt(s) and a completed Property Reporting Form	\$109,161	\$36,387	\$145,548
2 (Maintenance and Repair)	Pumpout vessel motor servicing, bottom cleaning, and bottom painting	List of maintenance or repairs made to the pumpout equipment and copies of paid maintenance/repair receipts	\$6,000	\$2,000	\$8,000
3 (Maintenance and Repair)	Supplies to maintain the pumpout equipment	List of maintenance and repairs supplies purchased for the pumpout equipment and copies of paid receipts	\$7,500	\$2,500	\$10,000
Total			\$122,661	\$40,887	\$163,548

Results

CVA Funding for Pumpout Vessels

The Program as outlined under 50 CFR § 85 does not specify that pumpout station facilities may include vessels. However, the USFWS has issued Clean Vessel Act Pumpout Station and Dump Station Technical Guidelines (Technical Guidelines) for state technical guidance which lists *Portable pumpout unit on vessel* as one of the types of pumpout stations that may be appropriate for construction, renovation, operation, or maintenance. ORCP's CVA Grant Application (Application) includes a listing of the types of facilities to include Marina, Boatyard, Yacht/Boat Club, Dockominium, Boat Ramp and Mooring Fields. Pumpout vessel is not listed as a facility. As such, the Grantee did not designate a type of facility for the Project on the Application.

Approved Payments for Agreement Expenditures

According to section 8.d of the Standard Terms and Conditions (Attachment 1) of the Agreement, *The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form.* According to the Grant Work Plan, Task 1, the Deliverables included *Purchase of the authorized equipment, as evidenced by a copy of paid invoice(s), delivery receipt(s) and a completed Property Reporting Form (Exhibit B).* Task 1 Performance Standard states, *The Department's*

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Grant Manager will review documentation to verify authorized equipment has been purchased and delivered in accordance with this task and will review the Property Reporting Form for accuracy and completion. Upon review and written acceptance by the Department's Grant Manager of all deliverables under this task, the Grantee may proceed with payment request submittal. At the time of our audit, the Department approved two payments to the Grantee. The first was approved on July 9, 2021, for \$54,580.50 and the second on February 2, 2022, for \$54,580.50. For the first payment, the Grantee's request included the Payment Request Summary Form and invoice for 75% of the Grantee's initial payment to the vendor for the deposit on the pumpout vessel. The approved payment was made without a delivery receipt and property reporting form as required under the Task 1 deliverable. For the second payment, the Grantee's request included the Payment Request Summary Form and invoice for the remaining balance due for the pumpout vessel. Additional documentation provided included a copy of paid invoice, delivery receipt, and completed property reporting form as required under the Task 1 deliverable.

Compliance and Management Oversight

We reviewed the Grantee's Application, Agreement, and activities for compliance with applicable requirements for DOI funded agreements, 50 CFR §85, and the requirements and instructions contained in the Application.

- Contract Provisions for DOI-Funded Agreements: Applicable federal requirements for DOI-funded agreements were included in Attachment 8 of the Agreement. There were no subcontracts executed by the Grantee at the time of our audit.
- Public Access: According to 50 CFR §85.45 *All recreational vessels must have access to pumpout and dump stations funded under this grant program.* On the submitted application, the Grantee did not indicate whether or not public access would be allowed. However, the Agreement requires the Grantee to provide this access.
- Fees: Per 50 CFR § 85.44 *A maximum of a \$5.00 fee may be charged, with no justification, for use of pumpout facilities constructed, operated or maintained with grant funds.* On the submitted CVA application, the Grantee indicated pumpouts would be provided at no charge.
- Project Plan: ORCP's Application instructions requires the Grantee to provide a summary of the Project as part of the application. The Estimated Project Budget in the application

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included funding request for equipment purchase, maintenance, and repair. However, the Grantee's Application summary included a statement that *the pumpout boat will serve the large number of boats that visit the island and Apollo Beach area*. This description did not address the Project as it related specifically to equipment purchase, maintenance, and repair. Based on correspondence, ORCP Program management obtained clarification on the use of funds after the Application was submitted.

- Insurance: Attachment 2 Section 8(a) of the Agreement requires the Grantee to provide *adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees and officers shall be named as an additional insured on any general liability policies*. The Grantee provided a Certificate of Liability Insurance that did not include the Department as additionally insured.
- W-9 Form and Substitute W-9 Filing: ORCP's CVA Grant Requirements and Instructions requires *All applicants (private businesses and government entities) are required to submit a copy of their W-9 form with the grant application and file the facilities substitute W-9 with My Florida Marketplace*. We verified that the Grantee submitted a copy of their W-9 and Substitute W-9 form with the Application form.
- Federal Funding and Accountability and Transparency Act (FFATA) Form: Per 2 CFR § 200.300 (b) *The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA*. ORCP's CVA Grant Requirements and Instructions requires submission of the FFATA Form with the Grant application. We verified that the Grantee submitted the completed FFATA Form as required.
- Reimbursement: According to 50 CFR §85.40, the federal cost share shall not exceed 75% of total costs approved in the Agreement. The Agreement requires the Grantee to provide 25% of the total approved Project cost as match funding. Expenditures made prior to the Agreement execution date will not be reimbursed. The Agreement was executed by the Department on June 18, 2021. The Grantee submitted a request for reimbursement for a deposit payment made to the vendor providing the pumpout vessel

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on June 24, 2021. The request for reimbursement totaled 75% of the amount paid to the vendor.

- Quarterly Reporting: The Agreement requires the Grantee to submit Quarterly Progress Reports every three months beginning the quarter following the Agreement's execution and continuing until the pumpout project has been completed and/or the final payment submission is received. We verified that the Grantee submitted Quarterly Progress Reports as required.
- Signage: Per 50 CFR § 85.43 (a) *Facilities must display appropriate information signs at pumpout and portable toilet dump stations.* With the second invoice, the Grantee provided photos demonstrating that the vessel contained the required Program signage.
- Pumpout Station Operation Plan: Section 8 of the Program Specific Requirements in the Agreement requires that Grantee to submit a *Pumpout Station Operation Plan that specifies hours of operation, maintenance principles, methods in determining volume of material pumped including the use of flow meters as may be necessary, informational/educational materials on pumpout operation and assurances that the pumpout facility, pumpout vessel, or dump station will be used solely for the collection of recreational boat sewage.* With the second reimbursement request, the Grantee provided a Pumpout Vessel Operational Plan which included the hours of operation, maintenance plans. However, it did not include the methods in determining volume of material pumped, information/educational materials on pumpout operation, nor assurances that the pumpout vessel will be used solely for the collection of recreational boat sewage.

Task 1: Equipment Purchase

According to the Agreement, the Grantee may award on a competitive basis, fixed price subcontracts for work described in the Grant Work Plan. ORCP's CVA Grant Requirements and Instructions requires the Grantee to *submit two written quotes, from two different vendors, for any equipment or service costs that exceeds \$2,500. The lowest quote should be chosen, and all quotes should be submitted with the application package.* The Grantee submitted two written quotes for vessels with substantially different specifications. The winning quote did not list the type of pumpout system to be installed.

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Design and Plans for the Project

ORCP's CVA Grant Requirements and Instructions requires the Grantee to *provide a drawing of the Project with the proposed pumpout equipment, sanctions/connections, and sewer connections marked. It can be an aerial photo or drawing from your survey or can be hand drawn.* With the submitted CVA application, the Grantee included a labeled aerial photo of Pine Key but did not include plans or drawings of the vessel's proposed pumpout equipment, sanctions/connections, and sewer connections marked.

Conclusions

Based on our audit, the approved payment for a portion of Task 1 was not supported by documented deliverable completion. We also noted weaknesses in Program management oversight of the Grant.

Findings and Recommendations

Finding 1: Verification of Deliverables

According to section 8.d of the Standard Terms and Conditions (Attachment 1), of the Agreement, *The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form.* According to the Grant Work Plan, Task 1, the deliverables included *Purchase of the authorized equipment, as evidenced by a copy of paid invoice(s), delivery receipt(s) and a completed Property Reporting Form (Exhibit B).* Task 1 Performance Standard states, *The Department's Grant Manager will review documentation to verify authorized equipment has been purchased and delivered in accordance with this task and will review the Property Reporting Form for accuracy and completion. Upon review and written acceptance by the Department's Grant Manager of all deliverables under this task, the Grantee may proceed with payment request submittal.*

The Department approved one payment to the Grantee on July 9, 2021, for \$54,580.50. The Grantee's request included the Payment Request Summary Form and invoice for 75% of the Grantee's initial payment to the vendor for the deposit on the pumpout vessel. The approved payment was made without a delivery receipt and property reporting form as required under the

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Task 1 deliverable. The Grant Manager did not verify that the authorized equipment was purchased and delivered as required under the Task 1 Performance Standard. Based on our discussion with Program management, this was a common practice.

Recommendation:

We recommend ORCP work with Program management to ensure all Grant Work Plan Task deliverables are received and verified as required under Program agreements prior to approval of payment.

Finding 2: Insurance Requirement

Attachment 2 Section 8(a) of the Agreement requires the Grantee to provide *adequate commercial general liability insurance coverage and hold such liability insurance at all times during the Agreement. The Department, its employees and officers shall be named as an additional insured on any general liability policies.* We verified that the Grantee provided a Certificate of Liability Insurance. However, the Department is not included as additionally insured on the Certificate of Insurance. Based on discussions with Program management, this appeared to be an oversight.

Recommendation

We recommend that ORCP work with the Program to ensure the Grantee provides the required insurance document which includes the Department, its employees and officers as additionally insured.

Finding 3: Pumpout Vessel Requirement Inconsistencies

During our audit, we noted a lack of Program clarity with respect to funding for pumpout vessels. According to 50 CFR § 85, eligible grant activities *include the construction, renovation, operation and maintenance of pumpout and dump stations, including floating restrooms in the water, not connected to land or structures connected to the land, used solely by boaters. Eligible grant activities also include any activity necessary to hold and transport sewage to sewage treatment plants, such as holding tanks, piping, haulage costs, and any activity necessary to get sewage treatment plants to accept sewage, such as installing bleed-in facilities.* A Pumpout station is defined as *A facility that pumps or receives sewage from a type III marine sanitation device (holding tank) installed on board vessels.* A facility is defined as *a pumpout station or*

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dump station. The Program as outlined under 50 CFR § 85 does not specify that pumpout station facilities may include vessels.

The USFWS Technical Guidelines lists *Portable pumpout unit on vessel* as one of the types of pumpout stations that may be appropriate for construction, renovation, operation, or maintenance. Based on our inquiry, the USFWS's Program Manager acknowledged that mobile vessels were not specifically recognized as a pumpout facility under 50 CFR § 85 but indicated that the law needed clarification.

ORCP's CVA Grant Requirements and Instructions requires the Grantee to *provide a drawing of the Project with the proposed pumpout equipment, sanctions/connections, and sewer connections marked. It can be an aerial photo or drawing from your survey or can be hand drawn*. With the submitted CVA application, the Grantee included a labeled aerial photo of Pine Key but did not include plans or drawings of the vessel's proposed pumpout equipment, sanctions/connections, and sewer connections marked.

Under Grant Work Plan Task 1 of the Agreement, *Authorized equipment includes a pumpout vessel in accordance with the minimum requirements specified in the approved design and permits*. Based on our discussions, Program management indicated that designs and permits were not necessary because a vessel was being purchased, not constructed. Vessel specifications were included in the submitted quotes.

ORCP's CVA Grant Requirements and Instructions requires the Grantee to *submit two written quotes, from two different vendors, for any equipment or service costs that exceeds \$2,500. The lowest quote should be chosen, and all quotes should be submitted with the application package*. The Grantee submitted two written quotes obtained for pumpout vessels and selected the vendor with the lowest quote. The USFWS Technical Guidelines identifies five types of pumps that are used for pumpout systems. The vessel specifications in the more expensive quote included one of the identified pumpout systems listed in the USFWS Technical Guidelines. The specifications in the less expensive quote listed the waste pump as *To Be Determined*. Program management was not aware of the lack of pumpout system description in the quote. The USFWS Technical Guidelines also provides guidance for determination of pumpout station needs and holding tank sizes based on estimated use. During the application process, the Grantee advised the Grant Manager that the facility estimated to service between 30

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to 40 vessels per day. For this range, the USFWS Technical Guidelines recommends a 600-gallon holding tank. The more expensive quote included a 650-gallon holding tank. The selected quote included a 500-gallon holding tank. The more expensive quote included two twin 250-horsepower outboard motors, while the selected quote included one 250-horsepower outboard motor.

By accepting quotes from the Grantee without comparable specifications and allowing the selection of equipment either inconsistent with the USFWS Technical Guidelines or lacking specifications of the type of pumpout system being purchased, the Program's procurement process does not reflect a reliable and justifiable competitive process. Upon execution of the Agreement, the Program had no assurance that the equipment being purchased met the USFWS Technical Guidelines.

Recommendation:

Going forward, we recommend ORCP work with the Program to ensure application and agreement requirements include information which is relevant and applicable to authorized facilities and activities. Additionally, prior to executing an agreement, ORCP should ensure the Program obtains the designs or specifications for the proposed pumpout equipment as well as estimated needs of the facility from grant applicants. This information should be reviewed to ensure that equipment being funded by the Department is consistent with the USFWS Technical Guidelines. Further, ORCP should clarify that required quotes for equipment include comparable specifications in order to justify the competitive award.

Finding 4: Pumpout Station Operational Plan

Section 8 of the Program Specific Requirements (Attachment 6) in the Agreement requires the Grantee to submit a *Pumpout Station Operation Plan that specifies hours of operation, maintenance principles, methods in determining volume of material pumped including the use of flow meters as may be necessary, informational/educational materials on pumpout operation and assurances that the pumpout facility, pumpout vessel, or dump station will be used solely for the collection of recreational boat sewage*. With the second reimbursement request, the Grantee provided a Pumpout Vessel Operational Plan which included the hours of operation and maintenance plans. However, it did not include the methods in determining volume of material

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pumped, information/educational materials on pumpout operation, nor assurances that the pumpout vessel will be used solely for the collection of recreational boat sewage.

Sample documents included under Exhibit 1 of the Program Specific Requirements in the Agreement include a sample Pumpout Station Operation Plan which includes hours of operation, equipment maintenance schedule, phone numbers, emergency phone numbers, pumpout operation directions, cleaning instructions, and VHF channels monitored. The Grantee's Pumpout Vessel Operational Plan mirrored the sample provided which also lacked methods to be used in determining volume of material pumped, information/educational materials on pumpout operation, and assurances that the pumpout vessel will be used solely for the collection of recreational boat sewage.

According to receipt documentation in the second request for payment, the vessel was delivered on December 29, 2021. Task 1 in the Grant Work Plan of the Agreement states that, *The vessel will be moored at Apollo Beach Marina when not in use.* However, based on photographs provided, the vessel appeared to be docked at a private residence. According to the site visit report conducted on January 12, 2022 by ORCP staff, the vessel was being kept down the road from Apollo Beach Marina on a lift. From a follow up site visit conducted on March 3, 2022 by ORCP staff, the vessel was still being kept down the road from Apollo Beach Marina.

There is inconsistent direction within the Agreement and the sample Pumpout Station Operation Plan provided to grantees. In addition, there are indications that the pumpout vessel may not be maintained consistently at the Apollo Beach Marina when not in use. Given these conditions, ORCP lacks assurance of the Grantee's compliance with Agreement requirements and use of the pumpout vessel.

Recommendation

We recommend ORCP increase the level of oversight of the Grantee's activities to monitor the Grantee's compliance with the Agreement. ORCP should work with the Program to ensure Program Agreements contain consistent direction and ensure sample Pumpout Station Operational Plans made available to Grantees contain information required in accordance with the Program Specific Requirements of the Agreement.

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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 Cindy Newsome 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.

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March 22, 2022

Valerie Peacock
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Audit Director

RE: Audit of Agreement MV412 with Beer Can Tampa Bay, LLC Office of Resilience and Coastal Protection Report: A-2021DEP-016

The Clean Vessel Act Program (CVA) is in receipt of the preliminary audit report.

Florida Statute 327.53 provides regulations for marine sanitation disposal within state waters. The CVA Program provides grants to marinas across the state to install pumpout facilities and to purchase pumpout vessels.

In order to address the findings of the preliminary report, CVA will do a comprehensive review and edit of the website, application, instructions, and other materials. This process has already started. CVA will ensure all contractual agreements are in compliance with state standards. In addition, each audit finding will be addressed as follows:

Finding 1: Verification of Deliverables

Going forward CVA will ensure no partial payments are made unless the contract states so and not without the stated required deliverables.

Finding 2: Insurance Requirement

Going forward all grants will have the DEP listed as additional insured and not just certificate holder.

Finding 3: Pumpout Vessel Requirement Inconsistencies

CVA will revise the grant application to clarify and support the language from USFWS on pumpouts being facilities. We will revise and ensure the grantee has the proper interpretation of both types of facilities and to ensure the CVA language matches the USFWS guidance language. CVA will provide in the application materials and on the website additional guidance to applicants on the USFWS Technical Guidelines to ensure the specifications are met in the vendor quotes.

USFWS has indicated it will update CVA rule 50 CFR 85 and has hired a part time staff for this effort. FL CVA will update its application materials and website as soon as new rule language is approved.

Finding 4: Pumpout Station Operational Plan

Going forward, all CVA projects will require grantees to provide any updates to their drawings and will ensure they are complete.

CVA will revise the Sample Station Operational Plan to include more detail as it applies to pumpout vessels.

CVA will increase monitoring activity on this and other similar projects. The SW Coord has plans to accompany the MV412 grantee on the vessel to observe pumpout activity.

CVA will ensure all operational plans submitted and funded activities meet the recommendations.

Please let us know if you have any questions.

Regards,



Alex Reed
Director, Office of Resilience and Coastal Protection
Florida Department of Environmental Protection