

**Audit of Contract GC927 with Lee County
for Compliance Inspections**

Division of Waste Management

Report: A-1819DEP-017

Office of Inspector General

Internal Audit Section

Florida Department of Environmental Protection

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<https://floridadep.gov/>





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Report: A-1819DEP-017

Table of Contents

Scope and Objectives	1
Methodology	1
Background	1
Results	3
Conclusions.....	8
Findings and Recommendations.....	8
Division Response.....	11

Audit of Contract GC927 with Lee County
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Report: A-1819DEP-017

The Office of Inspector General (OIG) conducted an audit of Contract GC927 (Contract) for Storage Tank System Compliance Inspections between the Department of Environmental Protection (Department), Division of Waste Management (Division) Permitting and Compliance Assurance Program (Program) and the Lee County Division of Natural Resources (County). This audit was initiated as a result of the Fiscal Year (FY) 2018-2019 Annual Audit Plan.

Scope and Objectives

The scope of this audit included Task Assignment 1 for the period of July 1, 2017, through June 30, 2018. Compliance inspection services under the Contract were performed in Lee, DeSoto and Charlotte Counties. The objectives were to:

- Determine whether payments were supported as required under Task Assignment 1
- Evaluate the County's compliance and Department's oversight of the Contract, Task Assignment 1 and inspections performed

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 review of Task Assignment documentation and interviews with Division, South District (District), and County staff.

Background

According to Section 376.3073(1), F.S., *the Department shall, to the greatest extent possible and cost-effective, contract with local governments to provide for the administration of*

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

its Departmental responsibilities through locally administered programs. Section 376.3073(3), F.S., indicated that eligible local governments, through written contract with the Department, shall receive funds for the implementation of a compliance verification program for the Inland Protection Trust Fund (IPTF).

The Department entered into the Contract with the County for a 10-year period beginning July 1, 2017. In 2018, the Division amended the Contract to remove guidance documents and increase compensation for services from \$2,715,983.00 to \$5,424,709.00. Under the Contract, the County is paid based on the number and type of inspections performed.

Task Assignment 1 included 436 assigned annual compliance inspections and allowable payments for estimated variable inspections. The County performs annual compliance inspections from the facility listings provided in each Task Assignment. The County performed variable inspections in response to non-routine events such as complaints, discharges, violation follow-ups, installations, and tank closures. All inspection activities are to be recorded in the Florida Inspection Reporting of Storage Tanks (FIRST) database¹.

Title XV, Section B of the Energy Policy Act of 2005 requires that underground storage tanks (UST) regulated under Subtitle I be inspected at least once every three years. Division management considers the type of tanks, date of last inspection, and conflicts of interest facilities to identify the priority facilities for annual compliance inspections. The Division Contract Manager provides the list of facilities for inspection to the District and County. The District Task

¹ FIRST is the database application utilized by inspectors in the field to input data on the conditions of inspected facilities statewide.

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

Manager monitors the County’s monthly performance and provides technical advice to the Division Contract Manager and County. In the event of facility inspection changes, the County notifies the Division about facility replacement. The Division identifies the replacement facility and notifies the County and District. The District Task Manager monitors County performance and conducts the Storage Tank System Compliance Verification Program Review.

In accordance with Paragraph 21 of the Contract, *the Department reserves the right to establish the amount and application of retainage on the Compliance Routine Inspection (CRI) Work to a maximum of 10%*. During the task period, the Department withheld 10% retainage of the monthly invoice for a total of \$22,428.88 in Task Assignment 1. Initial funding, change orders and final compensation for Task Assignment 1 was as follows.

Lee County Contract GC927— July 1, 2017 through June 30, 2018 Task Assignment 1				
	Routine Inspections Assigned	Date Issued	Description	Amount
Task Assignment 1	436	07/01/17	Original task amount	\$278,168.00
Change Order 1	436	08/02/17	Increased cost of routine inspections	\$2,779.50
Change Order 2	436	04/30/18	Reduced variable inspection funding	(\$27,000)
Total Task Amount				\$253,947.50
Total Compensated to County (including retainage returned)				\$220,281.88

Results

Task Assignment Payments

To determine whether payments were supported as required under Task Assignment 1, we verified activities reported and included with monthly invoice packages during FY 2017-2018. As required, the County submitted monthly invoices that contained a Contractual Service Invoice, Verified Payment Calculation Sheet, FIRST Reports with compliance activity by date,

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

and reported cumulative routine inspections completed. All monthly invoices were submitted by the 15th day of the prior month's activity.

According to the Scope of Work, (Attachment A) Section 5 of the Contract, the County shall assess performance levels monthly to determine its progress towards completion of each Task Assignment. Under the Task Assignment performance measures, the County was required to complete 33% of inspections after four months, 66% of inspections after eight months and 100% after twelve months of the fiscal year. The County's performance was as follows.

Task Assignment 1 Inspections by Required Periods as a percentage of Total Inspections								
Assigned Facilities	October		February		June		Inspections	
	Routine Inspections Completed	Percentage	Routine Inspections Completed	Percentage	Routine Inspections Completed	Percentage	Variable Inspections	Total
436	170	39%	339	78%	436	100%	57	493

For Task Assignment 1, these performance measures were met at the end of the task period. According to the Task Assignment, at the end of the task period, the return of half of the retainage was subject to the County's performance for the average days cited violations returned to compliance. Return of the remaining half was subject to the average rate facilities with violations returned to compliance. The County's average number of days to return cited violations to compliance for Task Assignment 1 was 120.89, resulting in a 0% retainage return.

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

The County’s average return to compliance rate was 69.23, also resulting in a 0% retainage return.

GC927 Task Assignment 1 Retainage and County Reimbursement, FY 2017-2018					
Total 10% Retainage Withheld	Average Days return to compliance	Retainage Returned	Average Return to Compliance Rate	Retainage Returned	Total Retainage Returned
\$22,428.88	0%	\$0	0%	\$0	\$0

We verified the Division correctly calculated retainage return for both compliance rates under Task Assignment 1.

County Compliance

The County was assigned 436 routine inspections in Task Assignment 1. We verified the County conducted the inspections assigned or approved as exchanges. The County requested and was approved for three facility exchanges due to recent inspection completions. We verified that no routine compliance inspections were performed prior to the execution of the Task Assignment.

According to Task Assignment 1, the County was required to conduct routine inspections in order as listed on the task exhibit. Based on our review of the monthly invoice activity reports, the County did not conduct the inspections in the order of the exhibit. However, all assigned inspections for UST facilities listed in the exhibit were completed within three years, as required under Title XV, Section B of the Energy Policy Act.

To determine whether compliance inspections were performed as required by the Contract’s Scope of Work and Guidance Document B, we reviewed a sample of 20 inspections

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

from Task Assignment 1. These facilities were listed in the monthly invoice activity reports for the months of September 2017 and March 2018.

Of the 20 inspections reviewed, the County had not documented scheduling correspondence with facility owner/operators for 19. All 20 inspection reports were completed within 14 calendar days as required.

Of the 20 inspections, 10 were cited out of compliance. We verified that the County notified the facilities with violations within 72 hours and sent Compliance Assistance Offer letters (CAO) within 14 calendar days consistent with the required Level of Effort Guidance Document F. However, several of the inspection reports and FIRST entries for the sampled inspections were missing corrective action documentation. According to the Scope of Work Section 3(d), all inspection activities shall be documented using FIRST in accordance with the minimum standards referenced in the FIRST User Guide (Guidance Document B). Based on our review, the County did not document inspections as required by the Contract's Scope of Work and Guidance Document B.

We reviewed the County's efforts in resolving violations within the 90-calendar day time frame and District referrals. As of June 30, 2018, a total of 29 open violations remained unresolved and had not been referred to the District. Through monthly invoice review memos, the District notified the County each month about open violations exceeding the Level of Effort and lack of referrals for enforcement.

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

Department Oversight

According to the Scope of Work, the Department is required to perform a Program Review at least once annually and provide the Program Review findings to the County. We verified the District completed the FY 2017-2018 Program Review and provided it to the County on September 27, 2018. The County received a score of 75 out of 100 for Task Assignment 1. We verified the District's Program Review results for a sample of three facilities. The County did not provide a written response to findings noted in the Program Review within 45 days as required under the Contract Scope of Work.

Section 17.A. of the Contract states, *No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within thirty (30) days of being notified of the unsatisfactory deliverable.* During Task Assignment 1, the District provided the County monthly invoice review memos which cited concerns regarding inspection report documentation and oversight of violations. The Contract Manager also received a copy of these review memos. The County did not provide a response, and no payments were withheld by the Division.

According to Section 8. of the Contract Scope of Work, *If there is any indication that other required inspections or activities are not being performed, the Department Task Manager may request the submission of a CAP [Corrective Action Plan] and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the*

Report: A-1819DEP-017

satisfaction of the Department Task Manager. Based on correspondence with the District and Division, there had been no request for submission of a CAP. Subsequent to our inquiry, the Division and District met with the County regarding performance concerns and needed improvement, but did not request the submission of a CAP.

Conclusions

Based on our review, approved payments were supported by required invoice documents. The County completed inspections as assigned under Task Assignment 1. However, inspections were not scheduled in order and inspection activities were not always documented in FIRST as required. The District provided feedback to the County regarding performance concerns through the annual Program Review and monthly review memos. The County did not respond to either correspondence from the District.

Findings and Recommendations

Finding 1: Order of Inspection

According to Task Assignment 1, the County was required to conduct routine inspections in order from the exhibit of 436 facilities. Based on our review of monthly invoice activity reports, the County did not conduct inspections in the listed order. While none of the County's assigned facilities with USTs exceeded the three-year inspection requirement under Title XV, Section B of the Energy Policy Act of 2005, the order in which inspections should be conducted is a requirement under the Task Assignment for consistency with the Division's ongoing schedule and annual assignment of facility inspections.

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

Recommendation:

We recommend the Division work with the County to ensure routine compliance inspections are being conducted in the order listed on the exhibit as required under the Task Assignments.

Finding 2: Department Oversight of County Compliance

According to the Scope of Work Section 32, *the County shall provide a written response within 45 days to the Program Review findings and at a minimum, provide details on any corrective actions that will be implemented.* In the FY 2017-2018 Program Review, the District provided the County comments and findings regarding the County's performance. However, the County did not respond to the findings as required.

According to Section 3.B. of the Contract, *the Contractor shall perform the services in a proper and satisfactory manner as determined by the Department.* Section 17.A. of the Contract states, *No payment will be made for deliverables deemed unsatisfactory by the Department. In the event that a deliverable is deemed unsatisfactory by the Department, the Contractor shall re-perform the services needed for submittal of a satisfactory deliverable, at no additional cost to the Department, within thirty (30) days of being notified of the unsatisfactory deliverable.* The District provided the County monthly invoice review memos which cited concerns with inspection report documentation and oversight of violations. The County did not respond to the District's comments. According to Section 8 of the Contract's Scope of Work, *If there is any indication that other required inspections or activities are not being performed, the Department*

Audit of Contract GC927 with Lee County
for Compliance Inspections
Division of Waste Management

Report: A-1819DEP-017

Task Manager may request the submission of a CAP and may recommend to the Department Contract Manager to hold invoices until such actions are being performed to the satisfaction of the Department Task Manager. Based on correspondence from the District and Division, efforts were being made to address concerns with the County's performance. However, there had been no request for submission of a CAP, nor had invoices been withheld for unsatisfactory deliverables.

Recommendation:

We recommend the Division ensure that the County documents inspection activities and demonstrates performance as required under the Contract. If there is an indication that inspection activities are not being documented or performed as required, the Division should request that a CAP be submitted by the County and withhold invoices until such actions are demonstrated to the satisfaction of the District's Task Manager.

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 Linda Powell 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,
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Memorandum

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

FROM: Tim Bahr, P.G., Director ^B
Division of Waste Management

SUBJECT: Response to Audit Report A-1819DEP-017
Audit of Contract GC927 with Lee County

DATE: May 10, 2019

The following is in response to the review of Contract GC927 with Lee County conducted by the Office of Inspector General (OIG).

FINDING AND RECOMMENDATIONS

Finding 1: Order of Inspection

Recommendation:

We recommend the Division work with the County to ensure routine compliance inspections are being conducted in the order listed on the exhibits as required under the Task Assignments.

Division Response:

Corrective Action Plan: The Division will revise Task Assignment to replace the words "in order" with the words "the facilities". This action reflects the Division's intent to allow contractors to make the most efficient use of their resources when scheduling inspections to minimize travel costs and time. Future exhibits will contain information about priority of inspections as needed. These efforts will also help ensure underground storage tank facilities are inspected within the time period required under Title XV, Section B of the federal Energy Policy Act of 2005.

Finding 2: Department Oversight of County Compliance

Recommendation:

We recommend the Division ensure that the County documents inspection activities and demonstrates performance as required under the Contract. If there is an indication that

inspection activities are not being documented or performed as required, the Division should request that a Corrective Action Plan (CAP) be submitted by the County and withhold invoices until such actions are demonstrated to the satisfaction of the District's Task Manager.

Division Response:

Corrective Actions Taken: The Division worked with the District to identify steps forward to address the concerns about poor communication and need for a CAP. The process was agreed upon and implemented. The District met with the County staff to discuss concerns. The District Director contacted the Division about the results of their discussions with the County and directed staff to conduct a conference call with the District Task Manager, the Department's Contract Manager, the District Director, and the Division's Program Administrator to review the materials the District Task Manager had sent to the County for consideration and discuss steps forward. The conference call was completed and steps forward identified. The Division met with the District Task Manager and new County personnel to discuss corrective actions to be taken by the County to address previous performance. The County provided assurances of improved performance, communication, and response to District Task Manager. County was advised CAP would be forthcoming and invoices may be withheld if current practice continues and performance is not improved.

Corrective Action Plan: The commitment by the County and District Task Manager to hold monthly meetings and review of district findings will improve county's ability to meet performance expectations in the future.