



Department of Environmental Protection Office of Inspector General

January 30, 2023

Report A-2122DEP-021

Audit of Petroleum Restoration Program Agency Term Contract Purchase Order B7B263 for Operation and Maintenance Activities with Earth Systems, Inc.

INTRODUCTION

The Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of the Petroleum Restoration Program (PRP) Agency Term Contract GC848 (ATC) and Purchase Order B7B263 (Purchase Order) for Operation and Maintenance (O&M) with Earth Systems, Inc. (Contractor). The purpose of this engagement was to assess management oversight of the Purchase Order, Facility (8501611), and Contractor. This audit was initiated as a result of the Fiscal Year (FY) 2021-2022 Annual Audit Plan.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit included the Purchase Order issued to the Contractor for Facility 8501611 (Pierre's Auto Repair Service Inc.) managed by Broward County. The scope included activities and financial records associated with the Purchase Order for remediation activities at Pierre's Auto Repair Service Inc.

The objectives were to:

- Determine whether approved payments were supported by documentation as required for the Schedule of Pay Items and deliverable completion.
- Determine whether the Contractor complied with the requirements of the Purchase Order and Contract GC848.
- Evaluate management oversight of the Purchase Order, Facility, and Contractor.

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, and internal operating procedures.
- Reviewing procurement activities for Department contracts and purchase order.
- Interviewing appropriate Department staff and management regarding the processes and controls used in the procurement and contracting process.

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. The 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 PRP through Agency Term Contractors and other contracted professional services.

PRP oversees environmental remediation cleanup activities for State-funded facilities under several cleanup programs and initiatives. These facilities are assigned Site Managers to manage all aspects of oversight for work performed. The Division utilizes Site Manager Standard Operating Procedure (SOP) guides to assist Site Managers and other Program staff with navigating the PRP sites through the cleanup and closure process. According to the November 2022 PRP Monthly Dashboard Update report, the PRP manages 5,653 discharges which are eligible for funding under Section 376.3071, F.S.

In May 2001, a petroleum discharge was reported to the Department for Facility 8501611. Since the Facility was not eligible for any Petroleum Cleanup Program under Section 376.3071, F.S., the Department issued a Consent Order to cover remediation costs due to the potential impacts to drinking water wells and the owner's inability to pay.

Based on historic assessment activities conducted for this Facility, Site Assessment began in November 2003 and a Remediation Action Plan (RAP) was received in September 2005. According to the RAP, the recommended remediation included in-situ air sparging through injection wells, extraction of impacted soil vapor, and treatment of extracted soil vapor and recovered groundwater. It was estimated to require three years of O&M to achieve dissolved hydrocarbon levels 70% of the Natural Attenuation Defaults Source Concentrations. The total estimated cost for three years of O&M, including installation and utilities, was \$950,000.00. A RAP Modification was completed on May 28, 2015, to include bioremediation product to expedite remediation in the remaining areas of dissolved hydrocarbon impacts. It was estimated to require six months of bioremediation treatment, for an additional estimated cost of \$18,282.00.

The Purchase Order was issued on September 2, 2020, to the Contractor for \$161,997.39 through direct assignment for continuing scope. The Scope of Work consisted of five tasks that included updating the Health and Safety Plan, collecting O&M system readings for four quarters, performing four quarterly groundwater samplings, preparing three Quarterly O&M Reports, and preparing one Annual O&M Report. No change orders were issued for the Purchase Order.

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The Purchase Order was completed on September 9, 2021. The actual costs of the completed work were comprised of five payments as follows:

Payment	Paid Date	Amount
1	January 12, 2021	\$ 36,792.07
2	March 30, 2021	\$ 36,792.07
3	July 8, 2021	\$ 36,792.07
4	October 9, 2021	\$ 39,909.25
5	October 15, 2021	\$ 7,909.76
Total		\$ 158,195.22

RESULTS OF AUDIT

Based on our review, we noted the following:

Invoices

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 item prices. SPI negotiated prices are based on the fixed rate schedule in Attachment D of the ATC and are updated throughout the course of the ATC.

We reviewed Amendment 9 of the ATC, which includes the Contractor's Rate Schedule effective at the time of the Purchase Order's issuance, to determine whether the contracted rates were equal to the SPI rates. Based on our review, all rates in the Purchase Order's SPI were consistent with the ATC rates.

For each invoiced pay item, the Contractor is required to submit specific support documentation as detailed in the SPI. The documentation provided for each invoiced item was compared to the SPI required documentation under the ATC. Based on our review, we verified that the required documents were submitted for all invoiced SPIs prior to the Site Manager's approval of each invoice.

The Purchase Order's Scope of Work established a retainage amount of 5%, which is withheld from each invoice payment until the completion and approval of all tasks. The Contractor submitted five invoices for payment under the Purchase Order. We verified that 5% retainage was withheld from the first four approved payments to the Contractor. The Contractor submitted a Release of Claims, as required by the ATC Paragraph 10, as a condition for the payment of retainage prior to the approval of the last invoice payment.

Retainage 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. Payment of retainage will be reduced by the amount of any assessed financial consequences.

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Subcontracted Work

Under the Purchase Order, two subcontractors provided services/commodities for the O&M Activities and were reported on both the Revised Subcontractor Utilization Report Form for Commodities/Services Subcontractor Utilization Report and the ATC Payment of Subcontractors Summary Form. One subcontractor was listed on the approved subcontractor listing and the other was not. The subcontractor not listed had a quote in the MyFloridaMarketPlace, therefore was authorized for the effort.

Oversight

We reviewed the deliverables associated with each task under the Purchase Order. The due dates were listed in the Scope of Work and the dates submitted were on the site manager's approval letters. The PRP Site Manager Guide Section 14.4 includes the turnaround time requirements for site manager deliverable reviews. 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)	Deliverable Review Date
1	<i>Health and Safety Plan</i>	9/25/20	8/10/20	5	8/11/20
2	<i>Quarterly Operation & Maintenance Report</i>	12/11/20	12/9/20	30	1/4/21
3	<i>Quarterly Operation & Maintenance Report</i>	3/12/21	3/9/21	30	3/22/21
4	<i>Quarterly Operation & Maintenance Report</i>	6/11/21	6/10/21	30	6/28/21
5	<i>Annual Operation & Maintenance Report</i>	9/13/21	9/9/21	30	9/30/21

Based on our review of the deliverable submission and review dates, we verified all five deliverables were submitted prior to their due dates and were reviewed by the Site Manager within the required timeframe.

Contractor Evaluation

In accordance with Chapter 62-772.300(6), Florida Administrative Code (F.A.C.), Contractor performance on state-funded petroleum cleanup projects shall be evaluated, monitored, and documented after each task assignment or purchase order. The Contractor Performance Evaluation (CPE) must be completed by the Site Manager after the final invoice has been submitted for each Work Order or Purchase Order.

According to Section 19.1 of the PRP SOP Site Manager Guide, Contractor Performance Evaluations should be completed within 30 days of the final Purchase Order invoice payment. The final invoice for the Purchase Order was paid on October 15, 2021. We verified the Site Manager completed the CPE on November 2, 2021, which was within the required completion timeframe. 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 the facility. However, we found no documentation that the owner/operator was given the opportunity to comment on the contractor performance, as required (see Finding 1, page 6).

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Site Visits

According to PRP SOP 12, O&M Inspections involve all aspects of remedial systems including system startup and routine operation and maintenance. The O&M Inspector documents operational status of remedial systems including system parameters and operating efficiencies. Based on our review, 25 inspections were completed. All 25 inspections included an O&M Inspection Form documenting purpose of the inspection, observations made at the site, and system performance checks.

Utility Payments

According to PRP SOP 15, utility accounts are required to provide service for the operation of remediation systems. For utilities paid directly by the Department, the Site Manager should establish the account at the time a Remedial Action Construction Purchase Order is issued by sending a Utility Account Establishment Authorization Letter. We verified the authorization letter was provided on January 29, 2007.

For utility account payments, the Site Manager must review the utility information monthly to verify that the amount being charged is within the range expected for the remedial system. We reviewed Department databases for documentation supporting the utility payments for the Facility for the time period October 8, 2020 through September 9, 2021. The utility charges were as follows:

Statement Period	Amount
<i>10/8/20 – 11/9/20</i>	\$ 3,091.84
<i>11/9/20 – 12/8/20</i>	\$ 2,387.65
<i>12/8/20 – 1/8/21</i>	\$ 3,158.20
<i>1/8/21 – 2/8/21</i>	\$ 3,183.29
<i>2/8/21 – 3/9/21</i>	\$ 2,962.01
<i>3/9/21 – 4/8/21</i>	\$ 3,058.13
<i>4/8/21 – 5/10/21</i>	\$ 3,398.88
<i>5/10/21 – 6/9/21</i>	\$ 3,212.59
<i>6/9/21 – 7/9/21</i>	\$ 3,182.68
<i>7/9/21 – 8/10/21</i>	\$ 3,342.01
<i>8/10/21 – 9/9/21</i>	\$ 2,477.73
Total	\$ 33,455.01

During this period, the remedial system incurred a total of \$33,455.01 in utility charges. Based on our review, supporting documentation was provided for all utility payments within this period. In addition, we did not identify any utility charges included with other payments. Our analysis found that after excluding the two lowest bills, the system amount was between plus or minus 7 percent of the average. Further, a comparison of the lowest two months to the the O&M inspections reports comment that the system was not running.

CONCLUSION

Based on our review of documentation and discussions with PRP staff, the activities and financial records associate with the Purchase Order for remediation activities at Pierre's Auto Repair Service, Inc. (Facility 8501611) demonstrated management oversight of the Purchase Order, Facility, and Contractor. However, our review noted one area where controls could be strengthened. Our finding and recommendation are listed below.

FINDINGS AND RECOMMENDATIONS

Finding 1: Contractor Performance Evaluation (CPE) – The CPE was performed timely; however, did not include input from the owner/responsible party as required.

In accordance with the ATC, Paragraph 45 Contractor Performance Review [page 25 of 28], the *Department shall evaluate, with input from the responsible party and/or site owner, Contractor's performance, at least after completion of each Work Assignment under this Restated Contract pursuant to Chapter 62-772, F.A.C. Contractor performance shall be considered prior to Work Assignment, renewal of this Contract, and release of retainage.*

Additionally, PRP Guidance, CPE paragraph 5 states in part, *Once the PO or WO is complete, including receipt and approval of the final deliverable, the Site Manager shall solicit input for the O/RP using the Site Owner/Responsible Party Contractor Performance Survey Form. Such requests may be conducted by e-mail, telephone, in person or mail and must be documented in a Communication Log at the completion of each PO and WO. The O/RP should be given up to 10 calendar days for their response to be received, should they choose to provide input. In the event a response is not received by the deadline, the CPE may be completed with their input and the O/RP portion of the CPE rating is excluded from consideration. If no response has been received for the Owner/RP, then a Communication Log should be completed and routed per the Communication Plan to demonstrate that the Site Manager attempted the survey.*

The CPE was performed at the end of the purchase order, within the days allowed, documented with one exception, and up-loaded to both OCULUS and STCM databases. The exception was that there was no documented support for contacting the responsible party/owner for input on the evaluation. When asked, the site manager indicated that the input was not necessary because the Purchase Order was issued under a consent order.

Recommendation:

We recommend the Division work with PRP to provide training to the Site Managers regarding the requirements of the CPE. Specifically, the requirement to document that the owner/operator was given the opportunity to comment on the contractor's performance.

Management's Response:

Per the OIG's recommendation, PRP discussed the CPE in the January 12, 2023, Program Teleconference. Specifically, training on the owner's/responsible party's opportunity to complete Section 7 of the CPE for all state funded work, including owners/responsible parties where the work is funded under a consent order.

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 § 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 Susan Cureton.

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