

## **Individual Performance Based Cleanup (PBC)**

*Contact the Site Manager if you are interested in Performance Based Cleanup*

**Introduction** (\*Note-the PBC procedures are in transition, please check the Petroleum Restoration Program (PRP) web site for the most recent updates.) The following addresses Individual PBCs, as opposed to the Innovative Technology PBCs (Invitation to Bid) and the Performance Based Advanced Cleanup (PBAC) bundles.

Performance Based Cleanups (PBCs) focus on the completion of milestones on the way to an aggressive, efficient, and successful cleanup of petroleum contaminated facilities. All payments require the successful completion of Tasks/Milestones. The ATC is expected to perform all actions necessary to meet the agreed upon milestones. Completion of milestones prior to the milestone due date will be paid at the time of milestone completion. Line item costs do not apply to an Individual PBC.

The PBC Purchase Order (PO) is the successor to the Pay for Performance (PFP) agreements and Preapproval PBC agreements that have been used in the program to date.

There are two basic categories for an Individual PBC:

1. Cleanups that will cost less than \$325,000
  - a. Competitively Procured based on best value estimate
  - b. Direct Assign provided the ATC originally acquired the site via the RCI or CSFBased on pending legislation (2016) other avenues of direct assign may include; Owner/RP Cost Share of 25% or Owner/RP Agreement to accept a closure with conditions.
2. Cleanups that will cost greater than \$325,000
  - a. Competitively Procured based on best value determination

At this time **only Individual Direct Assign PBC POs less than \$325,000** can be executed.

Some notable considerations include:

- The PBC Committee, Site Manager and their PE will determine if a suggested site meets the criteria for PBC consideration. Do NOT submit documents prior to a request from the Site Manager.
- PBC components, such as, total cost, closure endpoint, milestones, percent milestone payments, time to complete milestones, technology, etc. may be negotiated.
- Acceptance of the PBC Purchase Order replaces the former PBC Agreement.
- The funding for these POs has been modified so that all funds are encumbered when the PO is executed (Milestone Authorization Forms (MAFs) are no longer necessary).
- The Individual PBC PO includes:
  - Signed Site Access Agreement
  - Attachment A - Scope of Work (SOW) Workbook;
    - Milestone Description Worksheet
    - PBC Special Terms and Conditions
    - Milestone Summary Worksheet

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- Attachment B – Schedule of Pay Items (SPI)
  - All costs will be presented as Milestones in Section 22 (without markup)
- Tables and Figures as needed
- No Retainage is withheld.
- The PBC PO is governed by the ATC except where it differs from the PBC Special Terms and Conditions (see below).
- Utilities are paid by the Department outside of the PBC PO, but will however, be charged against any funding CAPs attached to the facility (discharge(s)).

If a facility is considered a good candidate for PBC, the ATC will be asked to submit:

1. Conceptual Plan (replaces the Preapproval PBC Proposal) includes: a summary of relevant facility history, discussion of historical and current contamination, a technology evaluation, discussion of the selected remediation strategy and design, endpoint/closure, expected time to complete the cleanup, and estimated total cost to complete the cleanup.
2. Milestone Summary: This form is part of the Attachment A: Scope of Work Workbook: Some information from the conceptual plan is summarized, individual milestones identified, the percentage of total cost to be paid upon completion of each milestone, wells to be sampled (baseline, key, and perimeter), sampling frequency, contaminants of concern, etc.
3. SPI estimating line item costs which will be used in comparison with negotiated total cost and average cost per region.

### **PBC Special Terms and Conditions**

In accordance with the Amended and Restated Agency Term Contract paragraph 5B, this Performance Based Cleanup (PBC) is a Pay for Performance (PFP) purchase order. Terms and conditions of the PBC/PFP work assignment which conflict with those contained in Agency Term Contract (ATC), as applicable, shall have precedence and control.

#### **1. SCHEDULE OF PAY ITEMS**

All negotiated milestone/task costs associated with this project are provided in the SPI (Attachment B to this Purchase Order (PO)).

#### **2. REQUESTS FOR CHANGE**

All Requests for Change (RFC) must be discussed with the FDEP/LP site manager before submission. Submission of the RFC must be in writing using the RFC form in accordance with paragraphs 2.A and 26 of the ATC and can be found at:

<http://www.dep.state.fl.us/waste/categories/pcp/pages/templates.htm>

#### **3. TOTAL COST**

The Total Cost (Purchase Order Amount) for site rehabilitation activities at the Facility (the property where the source(s) of the contaminated facilities (are) or was (were) located) specified in Attachment A – Milestone Summary. The Department shall not expend more for site rehabilitation at this Facility than the Total Cost except as provided in paragraph 12.

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### 4. STATEMENT OF CONTRACTOR RESPONSIBILITY

The Contractor provided the cost estimate(s) and had a full and fair opportunity to inspect the Department's files and the Facility. Both the Contractor and the Department were full parties to the negotiations and each had professional and competent advisors. No unilateral mistake, error, or omission by the Contractor (including but not limited to those resulting in insufficient site assessment or remedial design) shall excuse its performance, compel or require the Department to renegotiate this Purchase Order (PO).

### 5. REMEDIATION OF ALL PETROLEUM CONTAMINATION

The Contractor will remediate all IPTF eligible petroleum contamination identified as emanating from the Facility including all IPTF eligible petroleum contamination that migrates off the source or Facility property. However, any costs associated with any non-petroleum contamination or petroleum contamination not IPTF eligible will not be compensated by the Department.

### 6. PERFORMANCE BASED MEASURES FOR CLEANUP

The Contractor shall implement proactive and aggressive cleanup activities at the Facility, and the Contractor will achieve the milestones in accordance with the specified time frame for each milestone.

The work shall include a one (1) year warranty from the date of the Department's acceptance of work for all workmanship and equipment provided and installed by the Contractor. The Contractor is responsible for replacing and correcting any defective equipment or failures due to poor workmanship during the one (1) year warranty period. The warranty period shall survive the term of the PO.

### 7. MILESTONE MEASUREMENTS

Baseline Data: The Contractor shall provide updated analytical data, when required by Attachment A – Milestone Summary, and must send this data to the Department prior to proceeding to the next milestone activities. The Department shall use this data as the reference for monitoring Contractor performance and reductions in contaminant concentrations. Contaminant reduction milestone calculations shall be based upon the reduction of all specified contaminant groups in each Key Well (as defined in Attachment A – Milestone Summary). The following formula shall be used for calculating the percent reduction milestones:

$$\% \text{ Reduction (KW}_i\text{)} = \{ 1 - [(C_{mli} - C_{tl}) / (C_{bli} - C_{tl})] \} * 100$$

Where:

KW<sub>i</sub> = key well number i

C<sub>mli</sub> = milestone measurement concentration of contaminant group in key well i

C<sub>tl</sub> = target level concentration for contaminant group. This value is calculated by summing the individual Cleanup Target Levels for each contaminant in the group. For example, if the Target Levels are NADCs, then for the BTEX + MTBE group this value is 1,200 mg/L, and for the Naphthalene group this value is 700 mg/L by summing the individual Cleanup Target Levels for each contaminant in the group.

C<sub>bli</sub> = baseline concentration of contaminant group in key well i

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Please note that the milestone/task for Cleanup Target Level(s) Achievement is for All Media, not Key Wells only.

### **8. REDESIGNATION OF WELLS**

Upon agreement by the FDEP/LP site manager, any changes to Key and Perimeter well designation shall be handled via a request for change (RFC).

### **9. MILESTONE DUE DATE EXTENSION**

The Contractor may submit a request for change for a milestone due date extension with justification. The Department, at its sole discretion, may extend a milestone due date, however, the term of this PO may not exceed the Period of service (POS) end date of the PO.

### **10. DEPARTMENT FUNDING OF MILESTONES**

The Department will encumber State funds on the PO start date. The total cost, to be encumbered on the PO start date for the site rehabilitation activities is specified in Attachment A – Milestone Summary. The Department may, at its sole discretion, authorize funding over the Total Cost, provided that funding CAP(s) determined by eligibility or other PO with the Department is (are) not exceeded, if applicable.

### **11. INVOICING FOR MILESTONES**

The Contractor shall not submit an invoice unless; the Department authorized funding for the Milestone as evidenced by the Contractor's receipt of a PO for that milestone, the Contractor submitted the Milestone Completion Report to the Department (as specified in Attachment A – Milestone Summary and Attachment B – Schedule of Pay Items) indicating the milestone has been achieved, and such report has been approved, in writing by the Department.

### **12. RENEGOTIATION**

The Department may, at its sole discretion, renegotiate the terms contained in Attachment A – Milestone Summary. Renegotiation may be performed under the following conditions:

(A) Contaminant levels increase due to discovery of a new discharge or migration of contamination emanating from the non-source property.

(B) A Force Majeure event rendering existing remedial efforts inoperable or implausible to implement, despite appropriate safety measures being instituted.

(C) Changes in statutes or rules requiring or allowing the establishment of Cleanup Target Levels other than those specified in current rules.

### **13. DEPARTMENT CONFIRMATION AND VERIFICATION**

The Department reserves the right to verify representations made regarding progress, milestones or other conditions, at its sole cost and discretion, at any time. The Department is not under any obligation to notify Contractor of such inspections. Any and all costs incurred by the Contractor for

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participating in an inspection shall not be compensated or reimbursed in any way by the Department. Specific inspection activities may include, but are not limited to the following:

- (A) Sampling existing wells, collecting split samples during the sampling events, or installing additional wells or soil borings.
- (B) Sampling to confirm maintenance of the Target Levels for all contaminants and all media.
- (C) Verifying achievement of the negotiated endpoint milestone shall be conducted and concluded within three months of milestone completion report submitted by the Contractor.
- (D) The Contractor shall provide access to the remedial system and components upon request by the Department. The Department's inspector(s) will not be authorized to make any changes to the operating parameters or status of a system, other than in response to an emergency. The Contractor is responsible for notifying the Department immediately of any specific hazards at a Facility or any necessary precautions to be taken to conduct the inspections.

### **14. TERMINATION**

In addition to other provisions of the Amended and Restated Agency Term Contract, the Department may terminate this PO for failure to perform, defined as, but not limited to the following:

- (A) The agreed upon endpoint as stated in Attachment A – Milestone Summary is not achieved by the end date of the PO, the Department may, at that time, reassign the site(s), in a manner that the Department deems appropriate, however the Contractor will not be selected to continue working at the Facility.
- (B) The Contractor has failed to take appropriate steps to maintain the milestone completion schedule.
- (C) The Contractor has failed to perform pursuant to the PO including attachments.
- (D) The PO has been abandoned prior to Period of Service ("POS") completion.
- (E) The performance of this PO is not in the best interest of the State.
- (F) There has been a material breach of this PO that has not been remedied pursuant to the ATC.

Upon termination due to the Contractor's failure to perform, the Department shall not be responsible for its Cost Share for work performed on any unachieved milestone(s). In addition, the Department may disqualify the ATC (and any successor entity, affiliated entity, or related entity) from future POs under Performance Based Cleanup.