

**Review of Contract HW555  
with GHD Services, Inc.**

**Division of Waste Management**

**Report: A-1920DEP-005**

**Office of Inspector General**

**Internal Audit Section**

**Florida Department of Environmental Protection**

**February 28, 2020**

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Division of Waste Management



Report: A-1920DEP-005

## Table of Contents

<b>Scope and Objectives .....</b>	<b>1</b>
<b>Methodology .....</b>	<b>1</b>
<b>Background .....</b>	<b>1</b>
<b>Results .....</b>	<b>2</b>
<b>Conclusions.....</b>	<b>6</b>
<b>Findings and Recommendations.....</b>	<b>6</b>
<b>Management Comment .....</b>	<b>11</b>
<b>Division Response.....</b>	<b>13</b>
<b>OIG Comment Regarding the Division’s Response.....</b>	<b>15</b>

Report: A-1920DEP-005

The Florida Department of Environmental Protection (Department), Office of Inspector General (OIG) conducted a review of select task assignments for Contract HW555 (Contract) between the Division of Waste Management (Division) and GHD Services, Inc. (Contractor). This review was initiated as a result of the Fiscal Year (FY) 2019-2020 Annual Audit Plan.

## **Scope and Objectives**

The scope of this review included activities and records for services provided during the term of the Contract. The objectives were to evaluate procurement processes under the Contract and the level of management oversight of task assignments.

## **Methodology**

This review 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 requirements, the Contract, task assignments, payments and related activities. We also interviewed and obtained information from Division staff.

## **Background**

The Division's Waste Cleanup Program (Program) is responsible for managing state funded cleanup of sites contaminated by hazardous wastes or other pollutants and for conducting investigations of ground water contamination. On November 30, 2009, the Division issued Solicitation Number 2010016C requesting professional engineering firms to provide support to the Bureau of Waste Cleanup<sup>1</sup>. The Solicitation allowed for the award of up to 12 contracts for

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<sup>1</sup> Currently operates as the Waste Cleanup Program

Report: A-1920DEP-005

support services. The Division executed the Contract on December 10, 2010, as part of this award. The scope of work under these contracts includes assessment and cleanup services for hazardous waste cleanup, dry cleaning solvent sites, site investigations, cleanup of state-owned lands, Comprehensive Environmental Response Compensation and Liability Act (CERCLA) sites and Brownfield sites. Contract tasks are assigned as a combination fee schedule/fixed price/cost reimbursement plus fixed fee basis as specified in each task assignment.

Initial funding under the Contract was \$375,000. Since its execution, the Division has authorized 13 funding increases. As of July 1, 2019, funding under the Contract had been increased to \$14,901,288.07. Through September 2019, the Division had issued 492 task assignments under the Contract totaling \$12,298,823.30 and had disbursed \$10,746,296.30 in payments.

## **Results**

### **Procurement**

As documented in the Florida Accountability Contract Tracking System (FACTS), the Contract was awarded under the Consultants' Competitive Negotiation Act, Section 287.055, F.S. According to Section 287.055(5), F.S., the Department is to negotiate a contract with the most qualified firm for professional services at compensation which the Department determines is fair, competitive, and reasonable. Should the Department be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price determined to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The Department shall then negotiate with the second most qualified firm. Failing accord with the second most qualified firm, the Department must terminate negotiations and undertake

Report: A-1920DEP-005

negotiations with the third most qualified firm. Under the solicitation, the Department did not follow contract negotiations as required under Section 287.055, F.S., in awarding the Contract, but rather planned for and awarded 12 contracts.

Section 287.0595, F.S., directs the Department to adopt administrative rules which include procedures for the award, payment, negotiations, and modifications of pollution response action contracts. In accordance with this statute, the Department has adopted procurement procedures for contracts managed by the Petroleum Restoration Program under Chapter 62-772, Florida Administrative Code (F.A.C.). However, the Department has not adopted administrative rules guiding procurement procedures for Program response action contracts.

### **Oversight of Task Assignments**

Contract services are authorized on a task assignment basis. Although the Program does not have written processes for assigning tasks among the 12 contractors, Program management indicated that tasks are assigned with consideration of contractor performance, workload, Program specialty, and geographic location. Tasks are generally assigned as fixed price. Fixed price tasks are developed using agreed upon rates under the Contract. For labor costs, the following indirect rates are allowed under the Contract:

<b>Indirect Rates</b>		
<b>Category</b>	<b>Multiplier</b>	<b>Applied To</b>
Overhead	113%	Direct Labor Costs
General & Administrative	28%	Direct Labor Costs
Fringe Benefits	25.5%	Direct Labor Costs
Project Management	12.5%	Direct Labor Costs
Other Direct Costs	5%	Direct Labor Costs + Project Management Costs
Completion Fee	10%	Total Labor Costs

Paragraph 10.B. of the Contract requires that all multipliers used (i.e. Fringe Benefits, Overhead, and/or General & Administrative rates) be supported by audit. During our review, the

Review of Contract HW555 with GHD Services, Inc.  
Division of Waste Management

Report: A-1920DEP-005

Contractor provided an audit, issued November 2018, of the Contractor's indirect and overhead rates. Based on the audit, these rates were generally consistent with the Contract.

We reviewed two task assignments issued under the Contract as follows:

Task	Facility	Facility ID	Task	Original Task Amount	Final Task Amount	Total Paid
HW001I	Pharmco Laboratories	ERIC 3920	Fixed price	\$101,399.04	\$132,644.05	\$132,644.05
DC001K	Site Review	N/A	Fixed price	\$3,884.46	\$3,884.46	\$3,884.46

Task Assignment HW001I (HW001I) was issued for well installation, groundwater testing, pilot testing, and the issuance of a Remediation Action Plan (RAP). Three change orders were considered necessary for added well installation, additional groundwater testing, and associated costs. HW001I included ten subtasks. Task Assignment DC001K (DC001K) was issued for a site review meeting.

Costs for Project Management are allowed under the Contract as an indirect cost with a multiplier of 12.5% applied to direct labor. However, in the tasks assigned under the Contract, the Program has included Project Management costs as a separate subtask in which Overhead, General & Administrative, and Fringe indirect costs multipliers are then applied and added to the total costs. The application of other indirect cost multipliers to the calculated indirect cost of Project Management is not consistent with the indirect rate application allowed under the Contract.

According to Paragraph 10.C.vi, of the Contract, Project Management includes, *Progress Meetings - Periodic (e.g., weekly/biweekly) meetings between the Department and the Contractor to discuss the status of all related task assignments and to identify and resolve outstanding issues.* DC001K was issued for the Contractor to attend a site review meeting with

Report: A-1920DEP-005

Program management regarding 15 sites. Of the two subtasks issued under DC001K, one included cost for hours needed for meeting preparation by a Project Manager, and the cost for travel and hours for attendance by a Professional Engineer. The other subtask included the indirect costs for Project Management in which all other Contract indirect cost multipliers were applied.

Paragraph 2 of the Contract states, *In the event that services are required to be performed that are not specifically set out in Attachment C [Scope of Services], but are within the general scope of the services, the Department and the Contractor hereby reserve the right to negotiate task assignments covering the required services.* The Program Administrator indicated that the meeting was necessary for site status discussions beyond the Progress Meetings described in the Contract under Project Management. However, the submitted Site Review Meeting Notes appeared to document the status of tasked activities for 15 sites, consistent with the description of periodic meetings in the Contract's provision for Project Management.

One of the deliverables under HW001I was for the completion of a RAP. The Program Contract Manager approved payment for the RAP on June 6, 2018. However, the RAP lacked a Well Construction and Development Log for one of the 12 wells to be installed under Subtask 2, as well as documentation of groundwater sampling for three of 35 wells to be sampled under Subtask 10. The Well Construction and Development Log was subsequently provided. Based on our inquiry, the Program requested reimbursement from the Contractor for the three groundwater samples that were not conducted.

Report: A-1920DEP-005

## **Conclusions**

Procurement processes under the Contract were not consistent with contract negotiations as required under Section 287.055, F.S., in awarding the Contract. In addition, the Department has not adopted administrative rules guiding procurement procedures for Program response action contracts as required under Section 287.0595, F.S. The Program has allowed costs for Project Management that are not consistent with the Contract. In a sampled task assignment, the Program Contract Manager had not ensured that all tasked activities were documented consistent with task description.

## **Findings and Recommendations**

### **Finding 1: Contract Procurement**

As documented in FACTS, the Contract was awarded under the Consultants' Competitive Negotiation Act, Section 287.055, F.S. According to Section 287.055(5), F.S., the Department is to negotiate a contract with the most qualified firm for professional services at compensation which the Department determines is fair, competitive, and reasonable. Should the Department be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price determined to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The Department shall then negotiate with the second most qualified firm. Failing accord with the second most qualified firm, the Department must terminate negotiations and undertake negotiations with the third most qualified firm. Under the original solicitation, the Department did not follow contract negotiations as required under Section 287.055, F.S., in awarding the Contract, but rather planned for and awarded 12 contracts.



Report: A-1920DEP-005

Section 287.0595, F.S., directs the Department to adopt administrative rules which include:

- *procedures for determining the qualifications of responsible potential vendors prior to advertisement for and receipt of bids, proposals, or replies for pollution response action<sup>2</sup> contracts, including procedures for the rejection of unqualified vendors.*
- *Procedures for awarding such contracts to the lowest responsible and responsive vendor as well as procedures to be followed in cases in which the department declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of such contracts to the lowest responsible and responsive vendor.*
- *Procedures governing payment of contracts.*
- *Procedures to govern negotiations for contracts, modifications to contract documents, and terms and conditions of contracts.*

In adopting these rules, the Department is required to follow criteria applicable to the Department's contracting consistent with the goals and purposes of Sections 376.307, and 376.3071, F.S. Per this statute, the Department has adopted procurement procedures for contracts managed by the Petroleum Restoration Program under Chapter 62-772, F.A.C. However, the Department has not adopted administrative rules guiding procurement procedures for Program response action contracts. In addition, the Program has also not formally established procedures in which tasks are assigned among the 12 existing contractors. As a result, the Division has limited assurance regarding the nature of competitive assignment of work for Program activities. The current Contract will expire December 9, 2020.

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<sup>2</sup> Under Section 376.301(39), F.S., "Response action" means any activity, including evaluation, planning, design, engineering, construction, and ancillary services, which is carried out in response to any discharge, release, or threatened release of a hazardous substance, pollutant, or other contaminant from a facility or site identified by the department under the provisions of ss. 376.30 – 376.317.

Report: A-1920DEP-005

## Recommendation

We recommend the Division take steps necessary to adopt administrative rules for all pollution response action contracts as required under Section 287.0595, F.S. The Division should work with the Program to establish procedures to document the competitive assignment of work for Program activities. Going forward, the Division should also ensure future contract negotiations and awards follow applicable statutory direction.

## Finding 2: Project Management

Costs for Project Management are allowed under the Contract as an indirect cost with a multiplier of 12.5% applied to direct labor. However, in the tasks assigned under the Contract, the Program has included Project Management costs as a separate subtask in which all other indirect multipliers are then applied and added to the total costs.

We reviewed two task assignments issued under the Contract. HW001I was issued for well installation, groundwater testing, pilot testing, and the issuance of a RAP. DC001K was issued for the Contractor to attend a site review meeting. For HW001I and DC001K, the cost for Project Management was developed as follows:

Category	HW001K	DC001K
Direct Labor	\$13,863.36	\$1,129.17
Indirect Costs for Project Management (12.5% of Direct Labor)	<b>\$1,732.92</b>	<b>\$141.14</b>
Overhead 113%	\$1,958.20	\$159.50
General & Administrative 28%	\$485.22	\$39.52
Fringe 25.5%	\$441.90	\$35.99
Total Project Management Costs for Labor	<b>\$4,618.23</b>	<b>\$376.16</b>

The application of Overhead, General & Administrative, and Fringe indirect cost multipliers to the calculated cost of Project Management is not consistent with the indirect cost rate application allowed under the Contract.

Report: A-1920DEP-005

According to Paragraph 10.C.vi, of the Contract, Project Management includes, *Progress Meetings - Periodic (e.g., weekly/biweekly) meetings between the Department and the Contractor to discuss the status of all related task assignments and to identify and resolve outstanding issues*. DC001K was issued for the Contractor to attend a site review meeting with Program management regarding 15 sites. Of the two subtasks issued under DC001K, Subtask 2 included cost for direct labor hours needed for meeting preparation by a Project Manager and cost for travel and hours for attendance by a Professional Engineer. Subtask 1 included the indirect costs for Project Management in which all other indirect multipliers were applied.

The Contract Rate Schedule includes the positions of Senior Project Manager and Project Manager Engineer as direct labor classifications. However, by including direct labor hours for the Project Manager in addition to the application of Project Management as an indirect cost, the Program is allowing duplicative costs for Project Management.

Paragraph 2 of the Contract states, *In the event that services are required to be performed that are not specifically set out in Attachment C [Scope of Services], but are within the general scope of the services, the Department and the Contractor hereby reserve the right to negotiate task assignments covering the required services*. The Program Administrator indicated that the meeting was necessary for site status discussions beyond Progress Meetings defined in the Contract under Project Management. However, the submitted Site Review Meeting Notes appeared to document the status of tasked activities for 15 sites consistent with the description of Progress Meetings covered in the Contract's provision for Project Management. Without a definitive description of the additional service expectations for the site review meeting tasked

Report: A-1920DEP-005

under DC001K, the issuance of an additional task for this activity has the appearance of duplicate costs already funded by the Department under each task's Project Management costs.

### **Recommendation**

We recommend the Division work with the Program to ensure task assignment payments for Project Management costs are calculated as an indirect cost of direct labor consistent with the Contract. If Contract task assignments require services from a Senior Project Manager or Project Manager Engineer that are beyond the activities described in the Contract under Project Management, we recommend Program management document the nature of the service to ensure Project Management costs are not duplicated. We also recommend the Division work with the Program to ensure tasks are not issued for documented activities which appear to be funded under each task's Project Management costs.

### **Finding 3: Contract/Task Assignment Oversight**

One of the deliverables under the sampled task HW001I was for the completion of a RAP. The Program Contract Manager approved payment for the RAP on June 6, 2018. However, the RAP lacked a Well Construction and Development Log for installation of one of 12 wells under Subtask 2, as well as documentation of groundwater sampling for three of 35 wells tasked under Subtask 10. The Well Construction and Development Log was subsequently verified. Based on our inquiry, the Program requested reimbursement from the Contractor for the three groundwater samples that were not conducted.

Report: A-1920DEP-005

## **Recommendation**

We recommend the Division work with the Program to strengthen Contract management oversight to ensure all required activities are verified prior to approving payment.

## **Management Comment**

According to Florida's Reference Guide for State Expenditures issued by the Department of Financial Services (DFS), *Service agreements with deliverables paid on a fixed price basis are for services in which the quantity of units or tasks to be completed are known and defined in the agreement.* Under the Contract, the Program generally assigns tasks as fixed price. Fixed price tasks are developed using agreed upon rates under the Contract.

Paragraph 26 of the Contract states, *due to the nature of work conducted under this Contract, the need exists for field decisions that can cause an increase in the Contractor's costs or time under a specific task assignment. This type of field decision change shall be evidenced by the use of the Work Change Directive (Attachment D) and can be authorized by the Department Contract Manager.*

Of the 492 task assignments issued during the review period, change orders for necessary cost adjustments were issued for 234 (48%). Many task assignments had multiple change orders. In total, 227 change orders were issued for a collective cost reduction of \$804,843.15, and 235 change orders were issued for a collective cost increase of \$1,655,625.23. While the Contract allows for fixed price tasks, the Division would benefit from a review of the Program's current use of fixed price tasks to ensure Program objectives are being met through a task assignment process consistent with the nature of work conducted under the Contract.

Review of Contract HW555 with GHD Services, Inc.  
Division of Waste Management

Report: A-1920DEP-005

*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 Robert Gay and Joy James and was 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

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## MEMORANDUM

**TO:** Valerie Peacock, Audit Director  
Office of the Inspector General

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

**SUBJECT:** Audit Response to Preliminary Audit Report A-1920DEP-005

**DATE:** February 25, 2020

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The following is in response to the Operational Audit of DEP Contract HW555 by the Office of Inspector General (OIG).

## FINDING AND RECOMMENDATIONS

### Finding 1: Contract Procurement

#### Recommendation:

We recommend the Division take steps necessary to adopt administrative rules for all pollution response action contracts as required under Section 287.0595, F.S. The Division should work with the Program to establish procedures to document the competitive assignment of work for Program activities. Going forward, the Division should also ensure future contract negotiations and awards follow applicable statutory direction.

#### Division Response:

Concur, in accordance with Section 287.0595, F.S., the Department is now in the process of adopting administrative rule Chapter 62-787, F.A.C. In adopting this rule, the Department is following criteria applicable to the Department's contracting that is consistent with the goals and purposes of Sections 376.307, and 376.3071, F.S. Upon promulgation of 62-787, F.A.C., the Department will initiate a solicitation for new contracts.

### Finding 2: Project Management

#### Recommendation:

We recommend the Division work with the Program to ensure task assignment payments for Project Management costs are calculated as an indirect cost of direct labor consistent with the Contract. If Contract task assignments require services from a Senior Project Manager or Project Manager Engineer that are beyond the activities described in the Contract under Project Management, we recommend Program management document the nature of the service to ensure Project Management costs are not duplicated. We also recommend the Division work with the Program to ensure tasks are not issued for documented activities which appear to be funded under each task's Project Management costs.

**Division Response:**

The Division has worked with the Program to ensure that task assignment payments for Project Management costs are being consistently and appropriately managed. Upon review, it has been the intent and practice of the Program to allow for multipliers to be applied to the Direct Labor Hours associated with Project Management. This application of project management is reflected in the Cost Estimate Forms (CEFs) which were provided to the Contractors prior to the execution of their Contracts, and the method of applying multipliers was understood by all parties to the contracts. The understood method for applying multipliers is for project management labor to be calculated at 12.5% of the total direct labor, and that project management labor is subject to having the same indirect costs (fringe; overhead; general & administrative) applied to it as the total direct labor. The Project Management category has been consistently applied in this manner (both within the language of the Contracts and in the calculations within the CEFs) for contracts awarded under Solicitation 2010016C and all similar multiple contracts awarded under prior solicitations 2002012C and 2006054C.

The Program also strives to ensure that Task Assignments provide a clear description of Project Management activities that do not fall within the Contract definition of Project Management. Level of Effort (LOE) forms are provided in every task assignment and serve to specifically identify the contractor staff activities summarized within the Cost Estimate Form (CEF). Any work description within the LOEs that falls within the description of project management should be negotiated out of the task assignment. Contract Management training will be strengthened to provide additional guidance on this issue to WCP Contract Managers.

**Finding 3: Contract/Task Assignment Oversight**

**Recommendation:** We recommend the Division work with the Program to strengthen Contract management oversight to ensure all required activities are verified prior to approving payment.

**Division Response:**

Concur, the Contractor was notified on 21-Nov-19, that a reimbursement of \$198.00 would be necessary for the three groundwater samples not completed under the Task Assignment. The \$198.00 reimbursement was received from the Contractor on 5-Dec-19. Contract Management guidelines and training will be strengthened in those areas to address management oversight and deliverable verification. As part of that training, all Contract Managers will have this IG Audit assigned as a mandatory reading requirement.



Report: A-1920DEP-005

## **OIG Comment Regarding the Division's Response**

Based on the Division's response to Finding 2 in the report, the following comment serves to clarify review results.

### **Finding 2: Project Management – OIG Comment**

As discussed in the finding, costs for Project Management are allowed under the Contract as an indirect cost with a multiplier of 12.5% applied to direct labor. The application of Overhead, General & Administrative, and Fringe cost multipliers to the calculated indirect cost of Project Management is not consistent with the Contract Indirect Rate schedule. The Cost Estimate Forms referenced in the Division's response were not part of the executed Contract or solicitation. As such, the Division's practice of allowing multipliers to be applied to the Project Management indirect cost calculation is a departure from the Contract.