



Department of Environmental Protection Office of Inspector General

June 29, 2022

Report A-2122DEP-013

Review of Petroleum Restoration Program Agency Term Contract Purchase Order B699A3 for Operation and Maintenance with ATC Group Services, LLC

INTRODUCTION

The Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted a review of the Petroleum Restoration Program (PRP) Agency Term Contract GC739 (ATC) Purchase Order B699A3 (Purchase Order) for Operation and Maintenance (O&M) with ATC Group Services, LLC (Contractor). This review was initiated as a result of the Fiscal Year (FY) 2021-2022 Annual Audit Plan.

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 May 2022 PRP Monthly Dashboard Update report, the PRP manages 4,841 discharges which are eligible for funding under Section 376.3071, F.S.

Section 376.3072, F.S. established the Petroleum Liability and Restoration Insurance Program (PLRIP) to *provide restoration funding assistance to facilities regulated by the department's petroleum storage tank rules* that meet certain requirements. The Department approved Facility 8622760 (Facility) for funding under the PLRIP program on October 28, 1992.



*Gentry Oil LLC Facility 8622760
Source: Florida Department of Environmental Protection
Contamination Locator Map*

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

The Facility has a priority funding score of 11, which would not have qualified for funding until August 2019. However, in response to the Florida Springs and Aquifer Protection Act from 2014, the PRP implemented the Springshed Initiative, which prioritized assessment and remediation of petroleum discharges located within areas where groundwater and surface water basins contribute to the discharge of a spring. Due to the Springshed Initiative, the Facility was eligible for funding as a Low-Score Assessment (LSA) in June 2015.

Based on historic assessment activities conducted for this Facility, PRP funded a Remediation Action Plan (RAP) in December 2017 for site remediation. According to the RAP, the En R_x Feedback Optimized Continuous Injection System was recommended as a remediation strategy to inject reagents in conventional vertical and horizontal injection wells. It was estimated to require 18 months following the initiation of injection to reach post remedial monitoring levels. The estimated cost to implement the remedial activities was \$309,594.49.

The Purchase Order was issued on February 4, 2020 to the Contractor for \$111,941.72. The Scope of Work consisted of one Task that included O&M system readings, performing the second quarterly groundwater sampling, and preparing a Quarterly O&M Report. The following Change Orders were issued for the Purchase Order.

Change Order	Date	Task	Description	Amount
1	4/28/20	1	Time extension for Task 1 Deliverable	\$ 0.00
2	6/24/20	1	Time extension for Task 1 Deliverable	\$ 0.00
3	7/9/20	2	Add Task; includes additional quarter of O&M, rental for groundwater treatment system, and a quarterly groundwater sampling event	\$ 43,611.80
4	10/5/20	3	Add Task; includes additional quarter of O&M, rental for groundwater treatment system, additional injection materials, and a quarterly groundwater sampling event	\$ 105,709.25
5	2/11/21	3	Time extension for Task 3 Deliverable	\$ 0.00
6	2/12/21	3	Add well abandonment and replacement	\$ 2,908.56

The Purchase Order was completed on October 15, 2021 with a final cost of \$264,171.33. The actual costs of the completed work were comprised of four payments as follows:

Payment	Paid Date	Amount
1	October 14, 2020	\$ 103,494.63
2	December 2, 2020	\$ 41,431.21
3	May 3, 2021	\$ 103,186.92
4	July 7, 2021	\$ 13,058.57
Total		\$ 261,171.33

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

RESULTS OF AUDIT

Site Reassignment

Remediation activities for State-funded discharges are assigned to Agency Term Contractors through the Contractor Selection Formula (CSF) or direct assignment by the Department. A new Agency Term Contractor was assigned to the Facility after site assessment but prior to remediation work. During the reassignment of the site, the Contractor was directly assigned to the site for continuing scope.

We reviewed the requirements within PRP SOP 8 and the terminated contract for contractor assignment. The Program Administrator clarified that the site was reassigned due to the termination of the previous Agency Term Contractor's ATC, which was terminated due to the merger/acquisition of the businesses. The ATC allows for the reassignment or transfer of its rights, duties or obligations with prior written consent of the Department. Based on our review, we verified the PRP Program Administrator approved the transfer.

Change Orders

Six Change Orders were approved during the course of the Purchase Order. These Change Orders provided time extensions for deliverables, added two additional quarters of O&M with injections, and added the abandonment and replacement of one monitoring well.

Based on the requirements in Paragraph 26 of the ATC, we reviewed the documentation provided to verify the Change Orders were approved by the Site Manager. Based on our review, all six Change Orders received approval from the Site Manager prior to work being performed.

According to the PRP Request for Change guidance, a Change Order is a stand-alone document that acts as an amendment to the Scope of Work. The Description of Change and Justification within the Change Order should include a clear and understandable scope of work and include justification for the

**Contractor Assignment and Selection Process
PRP SOP 8**

The Department assigns work for State-funded discharges to a Contractor in accordance with Chapter 62-772, Florida Administrative Code and the Agency Term Contracts Assignment Process. The assignment process allows for work to be directly assigned to competitively procured Agency Term Contractors (ATCs) through the Contractor Selection Formula (CSF) or through one of the following:

1. *The ATC can receive a direct assignment for continuing scope (Select "SCOPE" as the assignment type in the Schedule of Pay Items (SPI) module in Storage Tank and Contamination Monitoring Database (STCM)), if:*
 - *the ATC was previously assigned work under a Purchase Order (Under the Agency Term Contract or an Invitation to Bid) or a Low Scored Site Initiative Work Order, and*
 - *acceptable performance was achieved per the Contractor Performance Evaluation form, and*
 - *the scope is < \$325,000 excluding contingent funding, and*
 - *if the previous work was Low Scored Assessment (LSA) and the receipt date of the Final Deliverable for the LSA Purchase Order was < 3 years ago.*

**Changing Contractors
PRP SOP 8**

When a contractor has an executed Purchase Order, they will continue to complete the assigned scope to the degree appropriate, prior to moving forward with a new contractor identified in a Contractor Recommendation or Contractor Selection Form. If the current scope of work in the executed purchase order is no longer appropriate the Site Manager and Team Leader can discuss with the current ATC an appropriate end to the current Purchase Order.

**Change Order
ATC, Paragraph 26**

*Changes to the quantities of units described in a Work Assignment, which changes **do not** require an increase in the compensable quantity of units authorized in a specific line item of a task on the site specific rate sheet of the Work Assignment, such changes may be requested in writing, reflected by email to, and email confirmation and acceptance by, DEP'S Site Manager. Any change which **does** require an increase in the compensable quantity of units authorized in a specific line item of a task on the site specific rate sheet of the Work Assignment or requires a change in the specified duration of a Work Assignment must be reflected in a Task Assignment Change Order Form or a Purchase Order Change Order in MFMP.*

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

change requested. Any documentation referenced within the Change Order supporting the change should be provided with the Request for Change. Based on our review of the six Change Orders, two did not include justification within the Change Order for the requested deliverable due date time extensions. Due to Site Manager turnover, Site Management could not provide the documentation to support these time extensions. However, Site Management acknowledged the need for additional oversight when approving change orders.

Two additional quarters of O&M were added to the Purchase Order through Change Orders. According to the Task 1 and Task 3 O&M Reports, the Contractor recommended continuing injection and O&M activities due to not meeting the Groundwater Cleanup Target Levels (GCTL). Based on our review and discussions with PRP management, the GCTLs were not met for the Facility which warranted additional remediation. The addition of these new tasks to an existing purchase order for O&M is within Division guidance parameters due to the uncertain nature of remediation activities.

Contingent funds of \$3,000 were included in the Purchase Order. Although Change Orders increased the Purchase Order amount to \$264,171.33, the contingent funds remained unused.

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 8 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. We compared each invoiced item to the SPI required documents under the ATC. Based on this review, we verified that the required documents were submitted for all invoiced SPIs prior to the Site Manager's approval of the invoice.

The Purchase Order's Scope of Work defines the amount of retainage held from each invoice payment until the completion and approval of all tasks as 5%. The Contractor submitted four invoices for payment under the Purchase Order. We verified that 5% retainage was withheld from the first three approved payments to the Contractor. The Contractor submitted a Release of Claims as required by

**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.

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

the ATC Paragraph 10 as a condition for the payment of retainage prior to the payment of retainage.

Oversight

We reviewed the deliverables associated with each Task under the Purchase Order. 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)	Date Deliverable Reviewed by Site Manager
1	Health and Safety Plan	8/20/20	2/4/20 ¹	5	Not documented
1	Operation & Maintenance Report	8/20/20	8/18/20	30	9/16/20
2	Operation & Maintenance Report	11/18/20	10/26/20	30	11/24/20
3	Operation & Maintenance Report	4/16/21	3/26/21	30	4/23/21

Based on our review, all four deliverables were submitted prior to the due date and three were reviewed by the Site Manager within the required timeframe. An approval date for the Health and Safety Plan could not be determined due to a lack of documentation. Site Management advised that the approval was inadvertently omitted from the Task 1 deliverable approval document.

Subcontracted Work

Paragraph 7.A. of the ATC requires the Contractor to complete and submit a Subcontractor Utilization Report Form with each invoice. Based on our review of the four invoices submitted for the Purchase Order, the Contractor provided Subcontractor Utilization Report Forms as required.

The Contractor used four subcontractors under the Purchase Order. Based on our review of the PRP ATC Subcontractor Lists, all four subcontractors were authorized by PRP ATC management prior to the commencement of work.

Contractor Evaluation

In accordance with Chapter 62-772.300(6) Florida Administrative Code (F.A.C.), Contractor performance on state-funded

**Subcontractors
ATC, Paragraph 19.B.**

Contractor shall not subcontract any work under this Contract, with the exception of those subcontractors identified on page 1 of this Contract, without prior written consent of Department's Contract Manager. Department reserves the right to reject any proposed subcontractor based upon Department's prior experience with subcontractor, subcontractor's reputation, or Department's lack of adequate assurance of performance by subcontractor. Contractor agrees to be responsible for the fulfillment of all work elements included in any subcontract and agrees to be responsible for the payment of all monies due under any subcontract.

**Contractor Performance Review
ATC, Paragraph 45**

Department shall evaluate, with input from the responsible party and/or site owner, Contractor's performance, at least after completion of each task assignment under this Contract, using the Interim Contractor Performance Evaluation form, and annually, based on the work performed under this Contract during the state fiscal year, using the Annual Contractor Performance Evaluation form. The current versions of these forms can be found at www.dep.state.fl.us/waste. Contractor performance shall be considered prior to assignment of task assignments, renewal of this Contract, and release of retainage.

¹ The received date was unable to be determined for the Health and Safety Plan. However, the report was dated 2/4/20.

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

petroleum cleanup projects shall be evaluated, monitored and documented after each task assignment or purchase order. The Contractor Performance Evaluation 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 Site Manager Guide, Contractor Performance Evaluations should be completed within 30 days of payment of the final Purchase Order invoice. The final invoice under the Purchase Order was paid on June 25, 2021. We verified the Site Manager completed the Contractor Performance Evaluation on July 22, 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.

Site Visits

To gain an understanding of site-specific conditions that may affect the petroleum cleanup at a facility, Site Managers perform site visits and complete Site Inspection Forms to document each site visit according to PRP SOP 12. In addition to these site visits, PRP utilizes dedicated inspectors through Local Programs and ATCs to inspect work performed at state-funded sites.

Based on our review, it was determined the Site Manager did not conduct a site visit or inspection during the time of the Purchase Order for this Facility. The PRP ATC assigned to oversee the Purchase Order advised that during the duration of the Purchase Order, staff were not traveling overnight due to restrictions related to the Pandemic. Further clarification determined this site did not require overnight travel.

CONCLUSIONS

Based on our review, the Site Manager provided adequate management oversight of the ATC and Purchase Order requirements regarding deliverables, SPI documented support, retainage, and subcontractor authorization. The Site Manager also completed a Contractor Performance Evaluation as required.

MANAGEMENT COMMENT

Site Visits and Inspections

According to PRP SOP 12, site visits are performed by site managers to gain an understanding of site-specific conditions that may affect the petroleum cleanup work at a site and fieldwork methods/equipment used to learn more cost-effective methods of accomplishing work. Site managers must complete a Site Inspection Form for every site visit they make documenting the purpose of the inspection, observations made at the site, and system performance checks. In addition to site managers performing site visits, PRP utilizes dedicated inspectors through Local Programs and ATCs to inspect work performed at state-funded sites.

We reviewed Division databases for documentation pertaining to site visits and inspections. Based on our review, the Site Manager did not perform site visits or inspections at this Facility during the duration of the Purchase Order. Since the frequency of site visits and inspections for each Facility are not defined within PRP SOPs or the PRP ATC, the Site Manager was not required to perform site visits or inspections. While not required, the lack of site visits and inspections performed by the assigned Site Manager increases the risk of insufficient accountability for the oversight of ATC remediation activities.

**Review of Petroleum Restoration Program Agency Term Contract Purchase Order
B699A3 for Operation and Maintenance with ATC Group Services, LLC
Department of Environmental Protection**

APPENDIX A - SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the review included activities and financial records associated with Purchase Order B699A3 for remediation activities at Facility 8622760. The scope also included related Purchase Orders and activities for this Facility.

The objective was to:

- Assess management oversight of the Purchase Order, Facility, and Contractor.

To achieve our audit objectives, our methodology included:

- Reviewing invoices and documentation of remediation work at the Facility;
- Reviewing ATC and Department procedures for Contractor oversight;
- Interviewing appropriate Department staff and management regarding the processes and controls used for oversight.

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 Section 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 Sarah Rudnik and supervised by Valerie J. Peacock.

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