



Interoffice Memorandum

AGENDA ITEM

April 13, 2021

TO: Mayor Jerry L. Demings
–AND–
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development
Services Department



**CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Division
(407) 836-1406**

SUBJECT: May 18, 2021 – Consent Item
Petroleum Restoration Program Contract Renewal and Amendment
No. 1 with Florida Department of Environmental Protection

The Petroleum Restoration Program (PRP) has been delegated to the Environmental Protection Division (EPD) and funded by the Florida Department of Environmental Protection (FDEP) since 1989. The current contract became effective July 1, 2016, and expires on June 30, 2021, with the option for a five-year renewal. The FDEP has provided Amendment No. 1 to the contract to renew and extend the agreement until June 30, 2026. The amendment needs to be approved and executed prior to July 1, 2021, in order to ensure seamless execution of services.

The changes to the contract in Amendment No. 1 do not affect the scope of services that EPD provides, but address some administrative issues, including: dispute resolution procedures, changes in public records requirements, addition of a provision for disqualification if EPD or its subcontractors are on the Scrutinized Companies that Boycott Israel List, a provision that the most current Task Assignment (TA) forms will be used, and exemption of payments under the contract from the MyFloridaMarketPlace transaction fee.

The main purpose of the PRP is to protect valuable groundwater resources that supply the vast majority of Florida's drinking water needs by cleaning up contaminated soil and groundwater from petroleum discharges as quickly and cost effectively as possible. EPD provides regulatory oversight of most petroleum cleanup activities and contractual oversight of state-funded cleanups in Orange, Lake, Osceola, and Seminole counties.

The current FDEP contract includes an annual TA that provides the number of sites assigned to EPD for the state Fiscal Year (FY) and the associated compensation. The TA varies each year depending on the PRP priorities and the state budget. While the TA for the state FY 2021-2022 has not been provided yet, the TA amount for last year was \$1,396,426. Uncertainties with the state budget due to COVID-19 may possibly reduce FDEP's funding for the PRP. However, once the contract extension is in place, the Manager of EPD will

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annually verify that the amount of funding proposed in each TA is sufficient to cover program costs before signing each year.

EPD is not requesting any General Fund resources to maintain the PRP.

The contract amendment was reviewed by the County Attorney's Office and approved as to form.

ACTION REQUESTED: Approval and execution of Amendment No. 1 renewal to Contract No. GC895 between Florida Department of Environmental Protection and Orange County, Florida for administration of the Petroleum Restoration Program and authorization for the Environmental Protection Division Manager to sign the annual Task Assignments. All Districts

Attachment

BCC Mtg. Date: May 18, 2021

**AMENDMENT NO. 1
RENEWAL
TO CONTRACT NO. GC895
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
ORANGE COUNTY, FLORIDA**

This Amendment to Contract No. GC895, (Contract) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and Orange County, Florida 201 South Rosalind Ave, Orlando, FL 32801 (Contractor), on the date last signed below.

WHEREAS, the Department entered into the Contract with the Contractor to provide petroleum contamination cleanup site management activities effective July 1, 2016; and

WHEREAS, the parties wish to amend the Contract as set forth herein.

NOW THEREFORE, the parties agree as follows:

1. The Contract is renewed for a 5 year period to begin July 1, 2021, and remain in effect until June 30, 2026. The Department and the Contractor shall continue to perform their respective duties during this renewal period pursuant to the same terms and conditions provided in the Contract.
2. Paragraph 3.A is hereby deleted in its entirety and replaced with the following:

The Task Assignment Notification Form and Task Assignment Change Order Form as attached to the Contract are hereby deleted. All Task Assignments and Task Assignment Change Orders shall be executed on the Department's latest Task Assignment and Task Assignment Change Order forms, copies of which are available from the Department's Contract Manager.
3. Paragraph 26 is hereby deleted in its entirety and replaced with: "Exhibit A, Public Records Requirements, as attached to this Amendment, is hereby incorporated into the Contract."
4. The following provision is hereby added to paragraph 38, Disqualification:
 - C. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Contract at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Contract. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.
5. The following provision is hereby added to the Contract as a new paragraph 53:

Dispute Resolution. Any dispute concerning performance of the Contract shall be decided as follows:

 - A. All claims or disputes (Claims) must be presented to the Department in writing within thirty (30) days of the date such Claim arises (Notice of Dispute). The Notice of Dispute shall set out in detail all aspects of the disputed matters to be resolved, including the specific relief sought by the Contractor. Claims not presented by Notice of Dispute to Contract Manager shall be deemed waived by the Contractor.
 - B. The parties shall make a good faith attempt to resolve Claims which may arise from time to time by informal conference within ten (10) days of the Notice of Dispute.

- C. Within ten (10) days of the informal conference, the Department shall provide Contractor a detailed written response to the Claim. A formal conference of the parties shall be convened no later than thirty (30) days following the Department's response to the Notice of Dispute, unless the parties mutually agree in writing to a longer period of time within which to schedule a formal conference.
 - 1) All persons necessary to resolution of the claim or disputed matter shall attend the formal conference.
 - 2) Minutes of the formal conference shall be taken, recorded, transcribed, and signed by the Department and the Contractor. Any terms of settlement and/or resolution reached shall be signed by all persons authorized to resolve the Claim.
- D. Either party may request mediation of unresolved Claims, with the party seeking mediation to bear the expense of mediation.
- E. Any Claim not resolved at formal conference or mediation, may be the subject of a complaint filed in a court of competent jurisdiction in Leon County, Florida.

6. The following provision is hereby added to the Contract as a new paragraph 54:

MyFloridaMarketPlace Transaction Fee. The State of Florida, through the Department of Management Services (DMS), has instituted MyFloridaMarketPlace (MFMP), a statewide e-procurement system. Pursuant to Rule 60A-1.031, Florida Administrative Code, payments under this Contract are exempt from the MyFloridaMarketPlace transaction fee.

7. All other terms and conditions of the Contract remain in effect. If and to the extent that any inconsistency may appear between the Contract and this Amendment, the provisions of this Amendment shall control.

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

Orange County, Florida

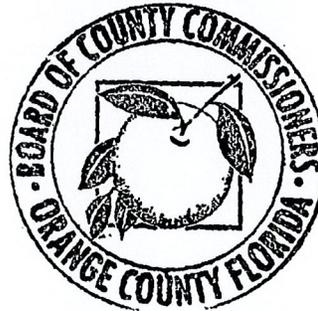
Florida Department of Environmental Protection

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By: *Jerry L. Demings*
Title: Mayor Jerry L. Demings
Date: MAY 18 2021

By: *Leslie Ames Reed*
Secretary or Designee
Date: 06/14/2021

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Dried*
For Deputy Clerk



List of attachments/exhibits included as part of this Contract:

Specify Type /	Description
Letter	
Exhibit A	Public Records Requirement (1 page)

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EXHIBIT A, PUBLIC RECORDS REQUIREMENTS

A. Public Records Access Requirements.

- a. If the Contract exceeds \$35,000.00, and if the Contractor is acting on behalf of the Department in its performance of services under the Contract, the Contractor must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by the Contractor in conjunction with the Contract (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Contract if the Contractor refuses to allow public access to Public Records as required by law.

B. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

If the Contractor is a "contractor" as defined in section 119.0701(1)(a), F.S., the Contractor shall:

- (1) Keep and maintain Public Records required by the Department to perform the service.
- (2) Upon request, provide the Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- (3) A Contractor who fails to provide the Public Records to the Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- (4) Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the Public Records to the Department.
- (5) Upon completion of the Contract, transfer, at no cost, to the Department all Public Records in possession of the Contractor or keep and maintain Public Records required by the Department to perform the service. If the Contractor transfers all Public Records to the Department upon completion of the Contract, the Contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the Contractor keeps and maintains Public Records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the Department, upon request from the Department's custodian of Public Records, in a format specified by the Department as compatible with the information technology systems of the Department. These formatting requirements are satisfied by using the data formats as authorized in the Contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the Contractor is authorized to access.
- (6) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT'S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118

Email: public.services@floridadep.gov

**Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399**