Background of Changes to the FDEP Petroleum Restoration Program

Marco Island Environmental Permitting Summer School

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Basis for Changes

- Legislative Requirement
- Desire for More and Quicker Closures
- Questionable Practices
- Broader use of RBCA & Conditional Closures
- Encourage cost sharing with RPs/Owners
- Continue with successful programs
  - LSSI, PCPP, SRFAAs, LSAs, PAC
Why?

2013 Funding Provisio Language

- Funded 2013/2014 at $125 million
- FDEP to contract on Competitive Bidding
- Expend $50MM by June 30, 2013
- Develop Plan for Legislative Budget Committee
- Write new site ranking and procurement rules
- Spend remaining $75 million under new competitive procurement program (post 1/1/14)
New FDEP PRP Program Process Flow – 2013 to 2014

1. **Legislative Approvals**
2. **Procure ATC Contractors**
3. **Clean-up and Closures Proceed**
4. **Develop Work Assignments and Competitive Bidding**
5. **Legislative Plan, New Rules, New Program**
Key Changes?

New Rules & Bill

- Chapter 62-771 – Ranking Rules
  - Added definition of imminent threat
  - Allows and describes re-scoring process
- Chapters 62-772 – Procurement Procedures
  - Established competitive process for PRP
  - Established Agency Term Contractors
  - Electronic registration/procurement through MyFloridaMarketPlace
- Senate Bill 1582/HB 7093
  - Repealed 376.30711 – Preapproval
  - Provides intent of PRP
  - Provides for RP to cost share with FDEP to achieve faster cleanups
Program funded 2013/2014 at $125 million - the FDEP to contract on Competitive Bidding (057)

Why
What
When
How
Current Status

Very aggressive timeline for planning, rule making, new solicitation & program overhaul.
Details of the Changes

Why

What

Agency Term Contractors (72) – 3 regions
E-Quotes & ITBs
MFMP – Electronic Purchase Orders
Scopes of Work Developed by FDEP
Work assigned (<$195K) through RCI formula
Affidavits, Access, HSPs, Proposals
Continuity – If ATC is performing well, work continues with that ATC for O&M & NAM (<$195,000)
287.057 requires projects > $195K to be bid
RP can select if 25% cost savings
New PRP is still under significant development
Start * Assignment of the next Phase of Work for Agency Term Contractors (ATCs)

Is the expected purchase order Cost for the next phase of site rehabilitation > $195,000?

Has an ATC already been assigned a phase of rehabilitation at this site through the ATC Selection Process or another s. 287.057, F.S., procurement?

Did the existing ATC achieve a performance rating of Acceptable or Better using the Interim Contractor Evaluation form?

Based on highest RCI scores, identify:
- the Proposed ATC for the purchase order where expected cost ≤ $195,000, or
- top three or more eligible ATCs for multiple price quotes where expected cost is > $195,000

Request price quotes from Proposed ATC, or ATCs where multiple price quotes are being requested

Has the responsible party indicated a desire to provide input into the rehabilitation process, for the option to reject an ATC?

Provide proposed ATC(s) identified by the RCI to the Responsible Party

Does the Responsible Party object to a proposed ATC?

Stop Purchase Order Issued

Stop Re-evaluate Selection Process and Results

NOTE: * For sites under an active O&M or PARM phase with acceptable performance, a continued O&M or a follow-up PARM Purchase Order may be directly issued to the current ATC, where the expected cost for an upcoming year is ≤ $195,000.

Review price quote(s) from Proposed ATC(s)

Do the price quote responses contain one or more responses meeting requirements for award?

Have the requirements of Rule 62-772.300(1), F.A.C., been met?

Issue new Purchase Order to Selected ATC, or ATC with the lowest eligible responsive price quote, where multiple price quotes are requested

Add next eligible ATC based on RCI

Remove rejected ATC

Florida Department of Environmental Protection
Petroleum Restoration Program ATC Selection Process
Division of Waste Management, May 5, 2014
Effective: May 13, 2014
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Relative Capacity Index (RCI)

\[
\text{BondingCap} = \frac{(\text{EncBal} \times \frac{\text{EncBal}}{25,000})^b + \text{SchRank}^r}{\text{BondingCap}}
\]

Where:

**BondingCap** = The vendor’s most recently demonstrated limits of Performance or Financial Guarantee Bonding* for performance of the corresponding petroleum restoration services on a state-wide basis, with an upper limit of $3 million for the purposes of this calculation. The BondingCap term is raised to the power \( c \), where the exponent \( c = 0.85 \).

**EncBal** = The total available Encumbrance Balance from STCM for work being performed for the Petroleum Restoration Program (PRP), excluding performance based contract encumbrances, and contract encumbrances subject to the alternative contractor selection provisions of Rule 62-772.401, F.S., where the participant or applicant has selected the agency term contractor. For the purpose of this calculation, the EncBal term includes potential purchase order assignment values for agency term contractors, while identified as a candidate for a given purchase order issuance under the associated PRP procurement. The EncBal reflects reductions for pending invoice payments for invoices once they are approved by the Petroleum Restoration Program, even prior to their actual disbursement. The EncBal term is raised to the power \( b \), where the exponent \( b = 0.7 \).

**SchRank** = The rank of the eligible vendors within a given region based on each vendor’s contracted Schedule of Pay Item Prices (Pay Schedule) for the expected Scope of Work; where the resulting lowest Pay Schedule calculated cost is ranked as 1 for the expected work elements, and where the highest cost is ranked \( n \) for a particular region, where \( n \) is the number of eligible contracted PRP vendors in the region. The rank is to be raised to the power \( r \), where the exponent \( r = 2.5 \).

Notes:

* The financial institution or surety company providing the performance or financial guarantee bonding commitment to the eligible Vendor must be authorized to do business in the State of Florida and be listed currently and continuously on U.S Treasury Department Circular 570 to constitute an acceptable surety commitment. The Vendor shall give notice to the Department not more than five days following any listing removal therefrom, and in the event of any other change in the financial institution or surety company providing the surety commitment or in the amount of the surety commitment.

It is expected that a uniform retainage rate (e.g., 10%) would be initially applied during invoice payments for each contracted purchase order, in lieu of requiring that a performance bond be obtained. The retainage rate may be adjusted, up to a maximum of 25%, for a contractor’s future purchase orders based on relevant factors such as contractor performance.
Current Status

- New rules have been ratified
- New bill is in place
- ATC Contractors have been selected /contracted
- Current Program
  - Equotes and ITBs
  - ATC Work Assignments
  - Developing SOW
  - LSSI, PCPP, PAC, SRFAA continue
  - RP designation w/25% cost savings
  - Many SOW to be assigned and POs issued
  - Many issues still being worked out, but progress is being made.
Imagine the result