



Florida Department of Environmental Protection

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Herschel T. Vinyard Jr.
Secretary

July 9, 2012

Mrs. Christina Smith
Florida Department of Financial Services
Division of Accounting and Auditing
200 East Gaines Street
Tallahassee, FL 32399-0353

RE: Contract/Grant Agreement Review Letter Dated June 8, 2012

Dear Mrs. Smith:

Please accept this letter in response to the subject review completed by the Department of Financial Services (DFS) on our contract/grant agreements in effect on or after July 1, 2011. As requested, we are providing a corrective action plan to address the deficiencies noted for correction in future contracts. The Department strives to provide a system of quality control in all of its contract/grant activities and recognizes the importance of training and management review in the process.

The statutory requirements considered in DFS' review are restated below in support of our response.

- Contract/grant agreements must contain a clear scope of work.
- Contract/grant agreements must contain deliverables that are quantifiable, measurable, verifiable and directly related to the scope of work.
- Contract/grant managers must enforce performance of the agreement terms and conditions; review and document all deliverables for which payment is requested by service providers; and provide written certification of the Department's receipt of goods and services.

As you are aware, Department staff has been actively engaged in entering data into the Florida Accountability Contract Tracking System (FACTS). We have been entering this data directly from our active contract and grant agreement files which has provided us the opportunity to recognize areas where improvements can be made.

The following outlines our corrective action plan.

1. DFS Offered Staff Training - We have actively promoted, and will continue to promote, the DFS training program established to improve overall contract/grant agreement development and management. The current DFS training classes scheduled have been filled up through September 2012. No other training opportunities have been scheduled. In light of this limitation, the Department would like to work with DFS to schedule training at the Carr Building during the first quarter of FY 12-13 for our staff. We would also like to work with DFS to help structure some training examples that are more directly related to the type of services obtained by DEP (construction, research, environmental restoration, emergency response, best management practices, etc.) instead of focusing training on health care provider/client services types of agreements. We feel that if a broader set of service types can be used as examples, all agencies will benefit by this training.
2. DEP Offered Training - We are currently developing contract/grant manager training courses that can be taken on-line by all of our active managers. With contract/grant managers located across the state, and current travel limitations, we plan to offer this training in a webinar format too. The on-line training will be available for new hires and as a refresher for all managers to take on a convenient basis.
3. Program Area Discussions - The Department's Procurement Section and General Disbursements Section will continue to meet with program area representatives to help develop clear scopes of services/work with deliverables that represent payment points that can be evaluated and confirmed prior to payment authorization. A number of these meetings have occurred and more will be scheduled.
4. Performance Measures - As part of the discussions held under item 3 above, the importance of establishing the measures to be used to determine satisfactory completion/acceptance will be reiterated.
5. Financial Consequences - On June 27, 2012, CFO Atwater held a public meeting with the press to release FACTS. In his presentation, he stated that the State should not be paying for services that were performed unsatisfactorily. The DEP strongly agrees with this statement and recognizes the importance of communicating this message to our contractors/grantees. Although we feel that we have addressed the need for services/work to be performed satisfactorily before any payment is made under our agreements, we intend to develop language that clearly establishes the fact that unsatisfactory work will not be approved. At this time we are considering a provision that contains multiple steps, including the following:

- Payment for Satisfactory Performance Only
- Work Performed Unsatisfactorily - re-performed at the expense of the contractor/grantee within a defined timeframe.
- Corrective Action Plan - may be requested by the Department for submittal within a specified timeframe.
- Failure to Correct Timely - DEP will exercise its right to terminate for cause and other remedies will be initiated.


In addition to the above, the Department will update existing liquidated damages and retainage language to remove any "non-mandatory" terms that may appear. In doing so, the Department may include language for not applying liquidated damages to a given situation to allow for circumstances that are out of the control of the contractor/grantee. Please note that this allowance will not include non-performance by a contractor/grantee hired contractor.

As we draft this updated language, we would like to submit the information to DFS for review and comment.

6. The Department's leadership team recognizes the importance of good contract/grant management and monitoring. In order for our contract/grant managers to be effective in their roles, it is important for them to understand that our leadership stands behind them and expects them to carry out their duties efficiently, effectively, and appropriately. To this end, we will prepare a memorandum for issuance by the Secretary to all employees to re-enforce this message.

We appreciate the continued support and guidance provided by the Division of Accounting and Auditing and look forward to working closely together as we improve DEP's overall contract/grant management activities.

Sincerely,



Jennifer L. Fitzwater
Chief of Staff

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