



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

August 15, 2016

Mr. Nick Wiley
Executive Director
Florida Fish and Wildlife Conservation Commission
Farris Bryant Building
620 South Meridian St
Tallahassee, Florida 32399-1600

Dear Director Wiley:

The Bureau of Auditing (Bureau) performs audits in accordance with section 17.03, Florida Statutes (F.S.). This statute relates to the Chief Financial Officer's (CFO) responsibilities to settle the claims of the state using various methods. The Bureau also audits pursuant to the requirements of section 215.971, F.S., for grant agreements funded with Federal and State monies. Audits on contractual services agreements are audited pursuant to sections 287.057, 287.058(1), and 255 F.S. The CFO also issues memorandums that provide additional audit requirements.

The Bureau audits contracts and grants to determine whether:

- The contract contains a scope of work that clearly establishes the tasks to be performed by the provider;
- The contract defines quantifiable, measurable, and verifiable units of deliverables that must be received and accepted before payment is made;
- The contract specifies the financial consequences that the agency must apply if the provider fails to perform in accordance with the contract;
- The contract contains provisions of section 287.058, F.S.;
- The manager provided written certification for the receipt of goods and services; and
- The manager enforced performance of the contract terms.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Christina B. Smith • Director

Division of Accounting and Auditing

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AFFIRMATIVE ACTION • EQUAL OPPORTUNITY EMPLOYER

Because many of the deficiencies in agency contract and grant agreements stem from poor contract management and a lack of effective monitoring, the Bureau conducts on-site reviews of contracts and contract managers' files. In addition to reviewing the contract document, the Bureau evaluates the contract management function to determine if the agency is monitoring the contractors' performance and validating the actual delivery of goods and services. These audits result in written reports to the agency, with the agency providing a corrective action plan to address any deficiencies noted during the review. To date, 40 audits have been completed and the results are available on the Bureau website,

http://www.myfloridacfo.com/aadir/auditing_activity.htm.

The Bureau conducted an audit of 23 Fish and Wildlife Conservation Commission (FWC) contracts and the management of those contracts in 2012. Our audit disclosed a contract deficiency rate of 65% and a management deficiency rate of 34.78%. In response, the Department submitted a corrective action plan (CAP). As a follow-up to ensure corrective actions were implemented and operating effectively, we have concluded our audit of selected Department contracts and grants active July 1, 2014 through June 30, 2015, and related management activities. Our audit focused on compliance with the CAP and the following statutory requirements:

- Contracts must contain a clear scope of work.
- Contracts must contain deliverables that are quantifiable, measurable, verifiable and directly related to the scope of work.
- Contracts must contain financial consequences that an agency must apply if the provider fails to perform in accordance with the agreement.
- Contracts contain all other provisions of section 287.058, section 255, or section 215.971, F.S.
- Agencies must comply with the provisions of section 216.3475, F.S., and related CFO Memoranda.
- Contract managers must complete training as required by statute.
- Contract managers must enforce performance of the contract terms and conditions; review and document all deliverables for which payment is requested by service providers; and provide written certification of the Agency's receipt of goods and services.

Our audit included a review of 10 contracts totaling \$10,207,529. Eight (8) of the contracts were reviewed to determine if required contract provisions were included. All eight (8) included the contract provisions required by law. Additionally, we reviewed the contract management files for all 10 contracts. There were areas where improvements can be made. A summary of our review is included as Attachments A and B.

Contract/Grant Management

Verification Activities Not Documented

CFO Memorandum #6 (2011-2012) states that the contract management file must contain documentation of the contract manager's activities to verify that the deliverables were received and were in compliance with criteria established in the contract. FWC was unable to provide adequate documentation to support the verification of deliverables received.

- FWC issued an Invitation to Bid on December 8, 2014 to construct a shooting range and sporting clay course in Osceola County on the Triple N Ranch Wildlife Management Area. FWC executed a contract with the lowest bidder, McCree Construction, for base work and four (4) alternates on January 30, 2015. In December, 2015 FWC executed Amendment 1 adding the remaining five (5) alternates and a change order bringing the total cost of the project to \$2,340,269.
- The contract with McCree required the provider to submit daily work logs on a weekly basis reflecting the prior week's activity. The daily logs for May and June 2015 were included in the contract management file and examined by the auditor. There was no evidence in the contract management file that the agency reviewed the logs to monitor the contractor's progress.

When the auditor requested the daily logs for December 2015 and January 2016, which could not be found in the contract management file at the time of the review, FWC staff stated that McCree utilizes an on-line database to maintain the daily work logs and that FWC had access to the database; however, as of June 28, 2016, FWC had not provided the requested logs to the audit team.

- FWC executed a change order on December 18, 2015 increasing the value of the McCree contract by \$365,000. There was no documentation in the contract management file to justify the need for the change order and that provided specific values to support the increase in price.

Inadequate Verification

CFO Memorandum #1 (2012-2013) requires the contract manager to certify that goods and services have been satisfactorily received prior to making a payment. FWC approved payment for deliverables that were not in compliance with the agreement.

- The McCree contract required payment based on substantial completion of deliverables according to the schedule of values or AIA form. FWC, however, paid the first invoice totaling \$82,551 based on a percentage of completion for scheduled values that were not substantially completed. The AIA form submitted by McCree with the first invoice included a request for payment for three scheduled values that were only 15,17 and 25 percent complete.

The Department did not execute a written contract prior to the rendering of services as required by section 287.058(2), F.S.

- The McCree contract required work identified under the base bid to be completed by October 24, 2015, or 180 days from the date the Notice to Proceed was issued. Likewise, any additive alternates awarded were to be completed no later than December 23, 2015, or 240 days from the date the Notice to Proceed was issued. McCree, however, submitted an invoice and supporting AIA form on April 15, 2016 for work completed in the month of March, 2016. Neither the base bid items or the alternate items were completed within the timeframes established in the contract. In addition, FWC approved payment for \$120,750 for work completed in November, 2015 that was added after the fact through the execution of Amendment 1 on December 10, 2015.

Monitoring

CFO Memorandum No. 01 (2010-2011) states that monitoring activities provided by the contract manager must be adequate to provide reasonable assurance that contract deliverables have been provided as required by the contract. Documentation reviewed from the contract management file indicated FWC's oversight of the McCree project was not sufficient.

- C. Vargas and Associates (Vargas) was contracted by FWC on July 1, 2015 to perform closeout activities for the McCree project. Vargas made a visit to the project site on January 27, 2016. Vargas subsequently sent a memo to FWC on January 29, 2016 documenting the January 27 site visit. The memo stated there was "no work taking place and the site looked abandoned. Areas claimed complete do not look finished and are still disturbed." In a follow-up memo to McCree dated April 12, 2016, Vargas stated, "so to complete your obligations as already paid for..." and "you were paid at the agreed unit price for earth movement done and yet no part of the project is completed." In response to our inquiry, FWC stated that no work was being done during this time because information regarding the site work and quantities of fill were being reviewed for accuracy and relevance. Despite the work stoppage, FWC continued to make payments to McCree totaling \$365,732 for work completed February through April 2016. It should

be noted also that for seven (7) of 11 AIA forms submitted for payment by the contractor, Vargas certified that the work was complete as invoiced.

Date Work Completed	Payment
February 1-29, 2016	\$305,827
March 1-31, 2016	\$32,343
April 1-30, 2016	\$27,562
Total Payments	\$365,732

Financial Consequences

Section 287.057 (14), Florida Statutes requires the agency to enforce the performance of the contract terms and conditions. The contract management file did not provide evidence that FWC assessed financial consequences for noncompliance with the contract terms and conditions as required.

- The McCree contract required FWC to assess liquidated damages of \$100 for each calendar day the work was not substantially complete beyond the completion date. The change order signed on December 18, 2015 extended the due date for work to be completed to January 31, 2016; however, the project encountered difficulties and went beyond the expiration date. FWC made three (3) payments totaling \$365,732 for work completed after the deadline without applying the liquidated damages clause or without documenting their justification for not doing so.

In response to the auditor's inquiry, FWC stated that the delay was due to reasons of unforeseeable circumstances beyond the Contractor's control. Section 7.2 of the contract provides for delays due to unforeseeable causes beyond the control of the contractor; however, the contractor is required to notify FWC in writing within 48 hours after the commencement of the delay. FWC was unable to provide evidence of such notification by McCree.

Cost Analysis

Section 216.3475, Florida Statutes and CFO Memorandum No. 2 (2012-2013), requires agencies to perform a cost analysis for contracts awarded on a noncompetitive basis. Each agency shall maintain records to support a cost analysis, which includes a detailed budget submitted by the person or entity awarded funding and the agency's documented review of individual cost elements from the submitted budget for allowability, reasonableness, and necessity. According to CFO Memorandum No. 3 (2014-2015) a cost analysis is required if a competitive solicitation results in less than two responsive bidders to establish competition.

- The FWC did not conduct a cost analysis for its contract with **Leisure Construction, Inc.** The contract with Leisure Construction was for structural repairs to the 100 yard range and sand trap backstop at the Babcock-Webb Shooting Range Complex.
- The FWC did not document the cost analysis on the approved form for the contract with **Slack Construction, Inc.** or provide a basis for price reasonableness. The contract was for the constructing of the boys and girls cabin restrooms at the Ocala Youth Camp.
- The FWC did not perform a cost analysis for the contract with **Sea World of Florida, Inc.** to provide manatee rescue and rehabilitation services. The contract requires the FWC to reimburse the provider for manatee care at the rate prescribed in Section 379.208, F.S. and transportation costs incurred for the rescue of the manatees. The reimbursement rates for the transportation costs are not specifically established by statute. The FWC did not establish transportation rates in the contract and, consequently, reimburses transportation rates at the rate invoiced by the provider without a mechanism in place to establish the maximum charge.

Contract/Grant Management - Other

Section 215.86, F. S., states that Each state agency and the judicial branch shall establish and maintain management systems and controls that promote and encourage compliance; economic, efficient, and effective operations; reliability of records and reports; and safeguarding of assets. Internal controls help an entity accomplish its mission; safeguard assets; operate efficiently; comply with laws and guidelines; and ensure accurate and reliable financial data. One way an agency can communicate the importance of internal controls to its employees is through effective policies and procedures.

- As part of the audit, we reviewed the FWC's Contract Manual. The auditors found that guidance in the Contract Manual allows contract managers to execute change orders without any additional approval, as long as the overall scope does not change. The contract manager for **Slack Construction Inc.** approved five (5) change orders during the term of the purchase order. No other approvals were obtained. Four (4) of the five (5) change orders increased the value of the contract by \$27,754 in total.

The FWC should establish an approval process requiring all changes orders to be routed through the appropriate levels at FWC for signature and approval. Implementing these measures will help mitigate error, fraud, or the appearance of a conflict of interest.

Please provide the Commission's corrective action plan which addresses how these deficiencies will be corrected for future contracts. This plan should include steps the Commission will take

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to provide a system of quality control, including training, periodic management review, and feedback to Commission staff that develop and manage contracts and grants. We request that the plan be submitted within 30 days of receipt of this letter.

We appreciate your staff's support and cooperation during the audit. Please contact Mark Merry, Chief of the Bureau of Auditing, at 850-413-3074, if you have any questions.

Sincerely,

A solid black rectangular box used to redact the signature of Christina Smith.

Christina Smith

Attachment A
Florida Fish and Wildlife Conservation Commission
Contract/Grant Agreement

Agreement Number	Service Provider	Contract Amount	Agreement Type	Scope of Work	Deliverables	Financial Consequences	State and Federal Financial Assistance	Legal Compliance	Annual Appropriation Contingency Statement	TOTAL NUMBER OF AREAS WITH DEFICIENCIES
15276	Leisure Construction Inc	\$2,548,121	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
14292	McCree Builders Inc	\$2,497,980	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
15120	Indian River County	\$144,000	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
13505	L Cobb Construction Inc	\$594,265	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
AB937A	Leisure Construction Inc	\$93,914	Purchase Order	Y	Y	Y	N/A	Y	Y	0
15177	Cobb Site Development	\$117,680	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
14304	C Vargas & Associates Limited	\$603,628	Standard Two Party Agreement by Statute	Y	Y	Y	N/A	Y	Y	0
AADDC7	Slack Construction, Inc.	\$470,060	Purchase Order	Y	Y	Y	N/A	Y	Y	0
13105	Sea World of Florida, Inc.	\$1,800,000	Standard Two Party Agreement by Statute	NA*	NA*	NA*	NA*	NA*	NA*	0
12343	Kemo Jama Enterprises, Inc DBA Greenspace	\$886,271	Standard Two Party Agreement by Statute	NA*	NA*	NA*	NA*	NA*	NA*	0
TOTAL NUMBER OF AGREEMENTS WITH DEFICIENCIES				0	0	0	0	0	0	0

NA* - Contract was reviewed by the Bureau of Auditing prior to this audit.

Attachment B
Florida Fish and Wildlife Conservation Commission
Contract/Grant Management

Agreement Number	Service Provider	Contract Amount	Agreement Type	Payment Certification	Provider Documentation	Veification Activities Documented	Adequate Verification & Monitoring	Financial Consequences	Cost Analysis	Other	TOTAL NUMBER OF AREAS WITH DEFICIENCIES
15276	Leisure Construction Inc	\$2,548,121	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
14292	McCree Builders Inc	\$2,497,980	Standard Two Party Agreement by Statute	Y	Y	N	N	N	N/A	N/A	3
15120	Indian River County	\$144,000	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
13505	L Cobb Construction Inc	\$594,265	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
AB937A	Leisure Construction Inc	\$93,914	Purchase Order	Y	Y	Y	Y	Y	N	N/A	1
15177	Cobb Site Development	\$117,680	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
14304	C Vargas & Associates Limited	\$603,628	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
AADDC7	Slack Construction, Inc.	\$470,060	Purchase Order	Y	Y	Y	Y	Y	N	N	2
13105	Sea World of Florida, Inc.	\$1,800,000	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N	N/A	1
12343	Kemo Jama Enterprises, Inc DBA Greenspace	\$886,271	Standard Two Party Agreement by Statute	Y	Y	Y	Y	Y	N/A	N/A	0
TOTAL NUMBER OF AGREEMENTS WITH DEFICIENCIES				0	0	1	1	1	3	1	7

NA* - Contract was reviewed by the Bureau of Auditing prior to this audit.