

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Statement Of Estimated Regulatory Costs (SERC)

Division: Waste Management
Rule Number: 62-772.400, F.A.C.
Rule Description: Procurement Procedures for Petroleum Cleanup-Procedures for the Competitive Procurement of Contractors and Assignment of Work
Contact Person: Charles Williams

Please remember to analyze the impact of the rule, NOT the statute, when completing this form.

Introduction and Description of Rule:

Rule 62-772.400, F.A.C., establishes the procedures the Department of Environmental Protection (Department) will use for the competitive procurement of contractors to perform services for state funded petroleum contaminated site rehabilitation. The rule specifies that the Department will use the procedures established in Section 287.057, F.S., to enter into definite quantity contracts for petroleum site rehabilitation. The Department will also use the procedures in Section 287.057, F.S., to enter into multiple agency term contracts to conduct an indefinite quantity of petroleum site rehabilitation services on a task assignment basis. The rule also specifies that the Department will request quotes from agency term contractors when the estimated cost of the phase of site rehabilitation is in excess of \$25,000.

While the procedures established in this rule are based on pre-existing state procurement laws, the rule will be requiring potential vendors and contractors to assemble and submit bids, responses, replies and quotes to the Department to be considered for site rehabilitation activities. Additionally, the rules of the Department of Management Services (DMS) require the Department to use MyFloridaMarketPlace for the purchase of services; these rules assess a 1% transaction fee for all payments. The Department will estimate below the cost of complying with these procedures.

A. Is the rule likely to, **directly or indirectly**, have an adverse impact on economic growth, private-sector job creation or employment, or private-sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule?
No

- | | | |
|--|------------------------------|--|
| 1. Is the rule likely to reduce personal income? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the rule likely to reduce total non-farm employment? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the rule likely to reduce private housing starts? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the rule likely to reduce visitors to Florida? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the rule likely to reduce wages or salaries? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

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6. Is the rule likely to reduce property income? Yes No

Explanation: Any impacts are limited to those petroleum response action contractors seeking to do work in the State-funded Petroleum Restoration Program. The Department anticipates that the average cost per similar cleanup activity to be reduced as a result of the competitive procurement procedures outlined in this proposed rule. This cost savings will be invested in additional cleanup activity and more work for cleanup contractors.

If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

B. Is the rule likely to, **directly or indirectly**, have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of \$1 million in the aggregate within 5 years after the implementation of the rule? No

1. Is the rule likely to raise the price of goods or services provided by Florida business?
 Yes No
2. Is the rule likely to add regulation that is not present in other states or markets?
 Yes No
3. Is the rule likely to reduce the quantity of goods or services Florida businesses are able to produce, i.e. will goods or services become too expensive to produce?
 Yes No
4. Is the rule likely to cause Florida businesses to reduce workforces?
 Yes No
5. Is the rule likely to increase regulatory costs to the extent that Florida businesses will be unable to invest in product development or other innovation?
 Yes No
6. Is the rule likely to make illegal any product or service that is currently legal?
 Yes No

Explanation: Any impacts are limited to those petroleum response action contractors seeking to do work in the State-funded Petroleum Restoration Program

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If any of these questions are answered “Yes,” presume that there is a likely and adverse impact in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

C. Is the rule likely, **directly or indirectly**, to increase regulatory costs, including any transactional costs (see F below for examples of transactional costs), in excess of \$1 million in the aggregate within 5 years after the implementation of this rule? Yes

1. Current one-time costs \$0
2. New one-time costs \$0
3. Subtract 1 from 2 \$0
4. Current recurring costs: \$0 (no current rule)
5. New recurring costs: \$41.2 M/year for contractor responses to Department solicitations and the 1% MyFloridaMarketPlace transaction fee, see below:

The costs associated with preparing responses to Department solicitations performed in accordance with Chapter 287, F.S., as required by this rule are outlined below based on a query of several current State term contractors:

- a. Small Request for Quote (RFQ):
Average cost = \$1,353
Estimate 10 solicitations/month = 120/year
Estimate 20 responses/solicitation = 2,400 responses/year
 $2,400 \times \$1,353 = \3.25M/year
- b. Medium/Large Invitation to Bid (ITB):
Average cost = \$5,895
Estimate 10 solicitations/month = 120/year
Estimate 20 responses/solicitation = 2,400 responses/year
 $2,400 \times \$5,895 = \14.15M/year
- c. Invitation to Negotiate (ITN) for Term Contracts:
Average cost = \$42,333
Estimate 1 solicitation/5 years = 0.20/year
Estimate 100 responses/solicitation = 20/year
 $20 \times \$42,333 = \$847,000\text{/year}$
- d. Request for Quotes (RFQ) Among State Term Contractors for Jobs Estimated to Exceed \$25,000:
Average cost = \$3,624
Estimate 25 requests for quotes/month = 300/year

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Estimate 20 responses/request = 6,000/year
6,000 x \$3,624 = \$21.74M/year

Total cost/year = \$3.25M+\$14.15M+\$0.847M = \$21.7M = \$39.95M/year

The cost associated with the 1% MyFloridaMarketPlace transaction fee is estimated to be \$1.25 million annually. This estimate is based on 1% of the \$125 million that is expected to be appropriated from the Inland Protection Trust Fund for the rehabilitation of petroleum contaminated sites.

6. Subtract 4 from 5: \$41.2M
7. Number of times costs will recur in 5 years: 5
8. Multiply 6 times 7: \$206M
9. Add 3 to 8: \$206M

If 9. is greater than \$1 million, there is likely an increase of regulatory costs in excess of \$1 million, and the rule must be submitted to the legislature for ratification.

D. Good faith estimates (numbers/types):

1. The number of individuals and entities likely to be required to comply with the rule. *(Please provide a reasonable explanation for the estimate used for the number of individuals and methodology used for deriving the estimate).*

Based on the Department's records there are approximately 225 current petroleum cleanup contractors qualified in accordance with Section 376.30711, F.S.

2. A general description of the types of individuals likely to be affected by the rule.

The contractors currently qualified to do work in the State-funded Petroleum Restoration Program under Section 376.30711, F.S., and those that seek to do work in the Program in the future will be impacted. These contractors are primarily environmental consulting, engineering and cleanup firms that employ geologists, hydrogeologists, engineers, earth scientists, technicians, draftsman and administrative staff. They vary in size from small businesses to large corporations with offices located throughout the state in most of the urban areas.

E. Good faith estimates (costs):

1. Cost to the department of implementing the proposed rule:

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None. The Department intends to implement the proposed rule within its current workload, with existing staff.

Minimal. *(Provide a brief explanation).* While most of the impact from the proposed rule will be addressed within current workload, staff and contracted administrative and technical assistance, some additional assistance will be required in the Department's contracts/procurement office (one or two OPS staff estimated to cost \$80,000 per year).

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

2. Cost to any other state and local government entities of implementing the proposed rule:

None. This proposed rule will only affect the Department and petroleum response action contractors seeking to do work in the State-funded Petroleum Restoration Program.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

3. Cost to the department of enforcing the proposed rule:

None. The Department intends to enforce the proposed rule within its current workload with existing staff and the additional assistance in the Department's contracts/procurement office (one or two OPS staff estimated to cost \$80,000 per year) that has already been included in E.1 above.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

4. Cost to any other state and local government of enforcing the proposed rule:

None. This proposed rule will only affect the Department and petroleum response action contractors seeking to do work in the State-funded Petroleum Restoration Program.

Minimal. *(Provide a brief explanation).*

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Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).*

F. Good faith estimates (transactional costs) likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the proposed rule. *(Includes filing fees, cost of obtaining a license, cost of equipment required to be installed or used, cost of implementing processes and procedures, cost of modifying existing processes and procedures, additional operating costs incurred, cost of monitoring, and cost of reporting, or any other costs necessary to comply with the rule).*

None. This proposed rule will only affect the Department.

Minimal. *(Provide a brief explanation).*

Other. *(Please provide a reasonable explanation for the estimate used and methodology used for deriving the estimate).* The cost for contractors to satisfy the 1% MFMP transaction fee in accordance with DMS rules and Chapter 287, F.S., as required by this rule is estimated to be \$1.25M based on 1% of \$125M in estimated annual expenditures for cleanup services.

G. An analysis of the impact on small business as defined by Section 288.703, F.S., and an analysis of the impact on small counties and small cities as defined by Section 120.52, F.S. *(Includes:*

- *Why the regulation is needed [e.g., How will the regulation make the regulatory process more efficient? Required to meet changes in federal law? Required to meet changes in state law?];*
- *The type of small businesses that would be subject to the rule;*
- *The probable impact on affected small businesses [e.g., increased reporting requirements; increased staffing; increased legal or accounting fees?];*
- *The likely per-firm regulatory cost increase, if any).*

A small business is defined in Section 288.703, F.S., as “...an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement shall include both personal and business investments.”

A small county is defined in Section 120.52(19), F.S., as “any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.” And, a small city is defined in Section 120.52(18), F.S., as “any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.”

The estimated number of small businesses that would be subject to the rule:

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- 1-99 100-499 500-999
 1,000-4,999 More than 5,000
 Unknown, please explain:

Analysis of the impact on small business: Impacts are limited to those contractors seeking to do work in the State-funded Petroleum Restoration Program. The Department cannot confirm the number of contractors that will meet the definition of a small business in Section 288.703, F.S., however it is estimated that 50% of the 225 contractors currently qualified under Section 376.30711, F.S., will be small businesses. Therefore the impact to small business for the cost of responding to Department solicitations and satisfaction of the 1% MFMP transaction fee is estimated to be half that outlined in section C.5 and F above for all contractors or \$20.6M annually.

There is no small county or small city that will be impacted by this proposed rule.

A small county or small city will be impacted. Analysis:

Lower impact alternatives were not implemented? Describe the alternatives and the basis for not implementing them.

H. Any additional information that the agency determines may be useful.

None.

Additional. It should be noted that Chapters 2013-40 and 2013-41, Laws of Florida., requires that all petroleum cleanup services be competitively procured in accordance with Chapter 287, F.S., and further directs the Department to adopt rules by the end of this year. Likewise, the requirement for payment of the 1% MFMP transaction fee is a requirement of DMS rules implementing Chapter 287, F.S. However, because these requirements are now being made part of Rule 62-772.400, F.A.C., the Department has considered them a regulatory cost associated with complying with the rule.

I. A description of any good faith written proposal for a lower cost regulatory alternative to the proposed rule which substantially accomplishes the objectives of the law being implemented and either a statement adopting the alternative or a statement of the reasons rejecting the alternative in favor of the proposed rule.

No good faith written proposals for a lower cost regulatory alternative to the proposed rule were received.

See attachment "A".

Adopted in entirety.

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Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "B".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "C".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "D".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

See attachment "E".

Adopted in entirety.

Adopted / rejected in part. *(Provide a description of the parts adopted or rejected, and provide a brief statement of the reasons adopting or rejecting this alternative in part).*

Rejected in entirety. *(Provide a brief statement of the reasons rejecting this alternative).*

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