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CONSULTANT'S UPDATE

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CONSULTANT'S COMPETITIVE NEGOTIATION ACT

By W.R. "Ron" Cauthan, PE



The Consultants' Competitive Negotiation Act (CCNA) is a public procurement law passed by the Florida Legislature in 1973 (Chapter 287, Florida Statutes). Its purpose is to promote fair and open competition and reduce the opportunity for the appearance of favoritism. Additionally, it serves to promote public confidence that the government awards contracts in an equitable manner.

All cities, counties, state agencies and political subdivisions (e.g., school boards and improvement districts) must use these procurement procedures. Under the CCNA, contracts awarded to Engineers, Surveyors, Architects and Landscape Architects are not to be awarded based on fee, but on qualifications.

While the CCNA process definitely has merit, it does take time and there is cost involved.

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DO YOU OWN ONE OF THESE CONTAMINATED SITES?

By Thomas E. Lewis, PG, MBA



On June 1, 2010, Florida Governor Charlie Crist unexpectedly vetoed HB-1385, halting (for now) efforts to provide revisions to the petroleum contamination site selection and cleanup criteria, as well as increasing the use of long-term natural attenuation monitoring for site remediation. It is still possible, however, that due to a special session this fall (now unlikely to take place) or through lobbying efforts next year on a similar bill, that similar legislation could become law in the future; therefore, the impacts of HB-1385 (the "Bill") to property owners should be fully appreciated.

Among the provisions in this Bill, the "low-scored site initiative" has the most impact for Florida property owners. This portion of the Bill would have enabled owners (or the confirmed responsible party) of properties in the Florida Department of Environmental Protection's (FDEP) Petroleum Cleanup Program (the

"Program") with a priority ranking score of ten points or less ("low-scored properties") to voluntarily participate in the "low-scored site initiative," provided the site still retained a priority ranking score of ten points or less. The priority score was derived to prioritize the relative threat posed to potential receptors. The most important criterion was a site's location in relation to public and private drinking water wells. A low priority score indicates that there are no known receptors for any potential contamination, so its relative threat is less than that of a site that is closer to receptors. All program sites were assigned a priority score when the owner (or responsible party) initially applied for funding assistance.

According to FDEP's online Excel table documenting "All Eligible Discharges" that was updated on September 1, 2010, there are approximately 3,500 eligible sites in the Program with a priority ranking score of ten or less that are "waiting" for state funding for site assessment and/or remediation activities.

To put this number in context, the current Priority Score Funding Threshold Level is 56, and there are approximately 6,000 sites with a priority ranking score between 11 and 55 still waiting for funding for assessment and cleanup activities. Additionally, there are approximately 2,900 sites currently undergoing site assessment and/or remediation activities. In these times of uncertain state budgets, coupled with approximately 8,900 sites either undergoing cleanup or awaiting funding for cleanup, it is quite possible that funding for these low priority ranked properties will not be available for at least two or more decades under the current law.

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Because of this time gap, the owners of low-scored properties are left in a “lurch.” Even though the State of Florida has guaranteed to pay all or a portion of the assessment and cleanup costs, the reality is that property resale is often difficult and costly due to the unknown contamination issues and the indefinite funding timeframe. This issue is further complicated if contamination could possibly be encountered on the property as part of redevelopment activities; for example, this is often the case for properties that were formerly locations for gas stations. If the Bill had been implemented, these property owners would have been able to obtain assessment data from their property and, in many cases, obtain No Further Action (NFA) from FDEP if their site met the following five criteria:

1. No excessively contaminated soil exists onsite as a result of a release of petroleum products;
2. A minimum of six months of ground-water monitoring indicates that the plume is shrinking or stable;
3. Release of petroleum products not adversely affecting adjacent surface waters (an issue unlikely due to low score);
4. Areas of groundwater containing petroleum products’ chemicals of concern less than one-quarter acre; and
5. Soils onsite found between land surface and two feet below land surface meet the soil cleanup target levels, or human exposure is limited by appropriate institutional or engineering controls.

One other interesting part of the “low-scored site initiative” is that it would have also allowed sites **ineligible** for state restoration funds with a priority ranking score of ten or less to voluntarily participate in the initiative. These property owners (or confirmed responsible parties) would still have to pay for the assessment and cleanup costs; however, the aforementioned criteria to obtain NFA would have been potentially less costly compared to the more rigorous criteria currently required for assessing and remediating a petroleum impacted property in accordance with Chapter 62-770, Florida Administrative Code. According to FDEP’s online Excel table documenting “All Ineligible Discharges” that was updated on September 1, 2010, there are approximately 1,600 low-scored ineligible sites either already actively undergoing site assessment and/or remediation activities, or waiting for site activities to take place that would have been impacted by implementation of the Bill.

For owners, confirmed responsible party, or individuals who represent, or know someone who owns one or more of these low priority ranking scored sites, the mes-

sage in all of this is to remain aware of potential similar future legislation that could have significant impacts to property valuation and assessment and cleanup costs. It should be noted that the “low-scored site initiative” of HB-1385 made funds available on a first-come, first-served basis. Because of this, it is critical that over the next year, people with an interest in low-scored properties stay informed and prepared to act if similar legislation is passed by the Florida Legislature. CSI can assist the property owner or the confirmed responsible party with this process if selected as the designated cleanup contractor for the respective site(s). This can be accomplished by simply signing FDEP’s Contractor Designation Form & Real Property Owner/Responsible Party Affidavit (CDF), which CSI can prepare and submit for the property owner or the confirmed responsible party.

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CRITTER WATCH

By Arthur “Art” D. Wade III, PWS

Often confused with the bald eagle, the osprey (*Pandion haliaetus*) is a large raptor, with a white body and head, and black wings and eye covering. The osprey’s body size is smaller than that of the bald eagle, but has a wingspan that is just as impressive: up to six feet! This beautiful bird has appropriately been given the common name “fish hawk” due to its diet that consists mainly of fish, although it will occasionally eat small birds and rodents.

Ospreys are one of the most widely distributed birds in the world and can be found on all continents, with the exception of Antarctica. Because of their dietary needs, ospreys generally build their nests in trees near water. However, many suitable trees no longer exist as a result of development, thereby creating a decline in the overall population. Ospreys, being a very adaptable species, make good use of manmade structures for nesting sites. Utility companies now set poles with separate nest platforms to accommodate the birds. It’s a win-win situation. The osprey is thriving and utility poles are not negatively impacted by the nests. With water being so prevalent in Florida, these nest sites can readily be observed from just about anywhere.

Interesting facts:

- The osprey has four toes. One of the outer toes can be reversed which allows it to grasp prey more powerfully with two toes in front and two in back.
- All toes are equal in length. All other raptors have toes of differing lengths.
- The lower surfaces of the toes are covered with small spines to aid in holding onto slippery prey.
- Ospreys usually mate for life and both take part in building and maintaining the nest.
- The nesting period in Florida varies depending on location: December in south Florida and February in north Florida.
- A female will typically lay two to four eggs and the male will feed the female while nesting.



References: Florida Fish and Wildlife Conservation Commission, The Audubon Society Encyclopedia of North American Birds, and Wikipedia.

(CCNA—Continued from page 1)

The CCNA lists five purchasing categories or threshold amounts:

Category One:	\$ 20,000
Category Two:	\$ 35,000
Category Three:	\$ 65,000
Category Four:	\$195,000
Category Five:	\$325,000

A Request for Qualifications (RFQ) is required when professional services must be purchased in conjunction with a project where the *construction cost* is estimated by the agency to exceed the threshold amount provided in Category Five (\$325,000) and for all *planning or study activities* where the fee for professional services exceeds the threshold amount provided in Category Two (\$35,000). The exception to this is in cases of valid public emergencies certified by the head of the municipal government or agency. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

In response to the published RFQ, the municipal government or agency must receive Statements of Qualifications (SOQ) from the interested professional firms. Based upon their SOQs, the professional firms are evaluated on their qualifications, which include an analysis of their capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the municipality or agency to be applicable to its particular project requirements.

A chosen number of professional firms are then selected by the municipal government or agency for interview. From the interview, the firms are ranked and an attempt to negotiate a contract begins with the highest ranked firm. In the event that the municipality is unsuccessful in negotiating a contract with the first ranked firm, then the municipality must move on to the second ranked firm and this process continues until a contract agreement is reached.

Municipalities or government agencies having *continuing contracts* with professional Engineering, Surveying, Architec-

ture or Landscape Architecture firms, are not restricted to the requirements listed above. A *continuing contract* as defined by F.S. 287.055, “is a contract for professional services entered into in accordance with all the procedures of CCNA between an agency and a firm, whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional service under continuing contracts shall not be required to bid against one another.”

In summary, projects that fall beneath the thresholds required for compliance with CCNA are as follows:

1. A professional services contract for Engineering, Surveying, Architecture or Landscape Architecture for projects with an estimated *construction cost* of up to \$325,000 or a *planning or study activity* up to \$35,000; and
2. Under an existing *continuing contract*, Engineering, Surveying, Architecture or Landscape Architecture services for projects with an *estimated construction cost* up to \$2 million or a *planning or study activity* up to \$200,000.

Upon meeting either of these two conditions, the municipality or public agency must comply only with the municipal or agency purchasing policy.

Should you have any questions concerning the CCNA process, CSI recommends consulting with your Staff Counsel or Purchasing Agent. Our CSI staff members are an additional resource for CCNA information.

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RECENT PROJECTS AND CONTRACTS OF INTEREST

- CSI has worked with **FDEP** to obtain a total of \$6.2 million in State Revolving Fund (SRF) Wastewater Preconstruction funding for two clients: the **City of Winter Haven** and the **City of Temple Terrace**, Florida. CSI's Project Funding Specialist, Ted Fylstra, noted that these funds, to be made available this fall, will be used for the planning and design of over \$121 million in various utility improvement projects. Low interest rate SRF funding will also be used for the actual construction of the improvements over the next few years. Currently pending are funding applications through other FDEP programs for an additional \$25.5 million in projects, for other clients.
- CSI was selected to provide Architectural design and any related Civil Engineering for the design of a new City Hall for the **Town of Dundee**.
- CSI Surveying department has been selected by **Polk County Solid Waste Division**, as well as by the **City of Lakeland**, to provide continuing surveying services.
- CSI is now an approved Environmental and Occupational Health and Safety service provider for the **United Space Alliance at Kennedy Space Center**.
- CSI was selected to provide design improvements to the Lakewood and Hammock Road intersection in **Highlands County** to include road widening and turn-lane additions.
- CSI will be working with **FDOT** to study/solve traffic delay and drainage issues at Highway 27 and Sparrow Avenue in Highlands County.

CONTAMINATED SITES AND RISK MANAGEMENT OPTIONS

By Greg J. Lassi, PG, MPH



Contaminated sites in Florida are generally addressed in accordance with the following Florida Department of Environmental Protection (FDEP) cleanup program rules: Petroleum (Chapter 62-770), Drycleaning (Chapter 62-782), Brownfields (Chapter 62-785); and Contaminated Site Cleanup Criteria (Chapter 62-780). While these rules have been designed to address the specific objectives of each program area, they all incorporate risk based corrective action (RBCA) principles in order to achieve protection of public health, public safety, and the environment in a cost-effective manner. Several fundamental concepts to the understanding of how RBCA principles can achieve protection of public health/safety in a cost effective manner are:

1. The risk to human health and safety at a contaminated site is based upon the toxicity of the contaminants of concern (COC) and the potential for exposure to the COCs.
2. The toxicity of the COCs is generally not considered to be a variable that can be changed from site to site with the application of RBCA principles. For instance, arsenic would have the same toxicity if found in the soil in a yard or beneath a six story office building.
3. The potential for exposure is generally considered to be a variable that can change from site to site with the application of RBCA principles. Using the above example, the current potential for exposure to the arsenic in a yard would be much greater than the potential for exposure to the soil beneath the six story building.

The No Further Action (NFA) sections of FDEP's Cleanup Program rules utilize RBCA principles to provide for site "closure" via Risk Management Option (RMO) Level 1, 2, and/or 3. A brief

summary of each of these options is as follows:

1. RMO Level 1 - Cleanup target levels for soil and water have been developed and included within FDEP Chapter 62-777 (Contaminant Cleanup Target Levels). The person responsible for site rehabilitation can choose to meet these "default" cleanup target levels or may utilize site specific information, such as soil properties, to develop site specific "alternative" cleanup target levels in order to obtain a "Site Rehabilitation Completion Order (SRCO) Without Conditions" from the Department. An example of a RMO Level 1 closure is as follows:
 - COCs are identified within soil and groundwater samples above Chapter 62-777 SCTLs and GCTLs due to a release of petroleum products from underground storage tanks.
 - A Site Assessment is completed to delineate the level and extent of contamination at and/or migrating from the site.
 - Interim source removal, groundwater monitoring, and/or active remediation strategies are conducted only as required to meet the owner's site rehabilitation objectives and the requirements of RMO Level 2.
 - An engineering control is utilized to prevent direct exposure to or leaching from contaminated soils allowed to remain at the site. This engineering control may consist of at least two feet of clean fill and/or an impermeable barrier over the contaminated soils.
 - Groundwater monitoring is utilized to demonstrate the following: groundwater contamination is present only at the source property; the impacted groundwater is less than $\frac{1}{4}$ acre; and the area of contaminated groundwater is stable (i.e. not expected to migrate).
 - An institutional control, such as a restrictive covenant, is utilized to prevent exposure to the soil and groundwater contamination allowed to remain at the site. These restrictive covenants will generally allow excavation activities as long as the excavated contaminated soils are properly managed, but generally preclude the construction/utilization of on-site water wells.

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3. RMO Level 3 - The person responsible for site rehabilitation may also choose to seek RMO Level 3 closure, which utilizes institutional and/or engineering controls if the criteria discussed above are exceeded and the site does not meet one or more of the default risk exposure criteria of RMO Level 2. As with RMO Level 2, when institutional or engineering controls are utilized to facilitate site closure, the Department issues a “Site Rehabilitation Completion Order (SRCO) With Conditions.” An example of a RMO Level 3 closure would be a site that generally meets the RMO Level 2 criteria, but the area of contaminated groundwater is

greater than $\frac{1}{4}$ acre. In this case, a RMO Level 3 closure, which generally requires an expanded risk assessment and/or groundwater fate and transport modeling evaluation, will be required. If this evaluation determines that the RMO Level 3 criteria are met, the engineering and/or institutional controls would be designed and implemented in a manner similar to RMO Level 2.

In summary, FDEP’s cleanup program rules incorporate RBCA principles. CSI is experienced in a variety of tasks associated with the application of RBCA principles within the state of Florida. Through this experience working on behalf of clients involved in contaminated site cleanup, CSI is well qualified to provide

guidance and assistance regarding the selection and implementation of RBCA principles in order to achieve site closure that is protective of public health, public safety, and the environment in a cost-effective manner.

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EOH NEWS

Florida Mold Regulation Update

The Florida Department of Business and Professional Regulation (FDBPR) has retained Chastain-Skillman’s Paul L. Osley, PE, BCEE, CIH, CSP to provide the following technical consultation services:

- ◆ Prepare Standards & Practices section for Mold Assessment
- ◆ Prepare Standards & Practices section for Mold Remediation
- ◆ Assist the Bureau of Education and Testing with Training Provider and Rule approval

The Florida Department of Business and Professional Regulation (FDBPR) has selected the American Council for Accredited Certification (ACAC) to provide the State license examinations for both Mold Assessors and Mold Remediaters

Applicants for the Mold Assessor license may take any of the following examinations:

- ◆ Council-certified Indoor Environmentalist (CIE)
- ◆ Council-certified Indoor Environmentalist Consultant (CIEC)
- ◆ Council-certified Microbial Consultant (CMC)

Applicants for the Mold Remediator license may take any of the following examinations:

- ◆ Council-certified Microbial Remediator (CMR)
- ◆ Council-certified Microbial Remediation Supervisor (CMRS)
- ◆ Council-certified Indoor Environmental Supervisor (CIES)

Congress EOHS Initiatives

Senate Bill 3209, introduced in April, would reform the EPA Toxic Substance Control Act (TSCA)

Both the House and Senate have introduced legislation that requires OSHA to enact a Safe Patient Handling Standard within two years.

New EOHS Terms, Concepts and Research Developments

Success in mapping the human genome has generated considerable scientific interest in the complementary concept of the “exposome.”

- ◆ Exposome – the totality of exposure over a lifetime that predispose and predict health effects in an individual.

The “exposome” describes response to any and all insults from conception – injuries, irritations, stressors and traumas, including those from occupational and environmental sources. These include lifestyle and diet, which are likely (in combination with the genome) to have a significant role in the etiology of disease. Thus, research on the “exposome” may help understand the multitude of interactions leading to disease.

This newsletter is provided solely for informational purposes and presents only highly condensed summaries relating to the topics presented. Therefore, it should not be relied upon as a complete record for purposes of regulatory compliance, nor is it intended to furnish advice adequate to any particular circumstances. For additional information on any of the topics in this newsletter, please contact the author, or Allan Duhm, (863) 646-1402, or e-mail us.

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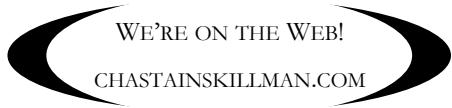
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