DIVISION OF INSPECTOR GENERAL
Ken Burke, CPA
Clerk of the Circuit Court and Comptroller
Pinellas County, Florida

FOLLOW-UP AUDIT OF SOLID WASTE CONTRACT FOR OPERATION OF THE WASTE-TO-ENERGY PLANT

Hector Collazo Jr. - Inspector General/Chief Audit Executive

Audit Team
Ava Sadowska, MS, CIA, CFE, CIG, CIGA, CIGI, CCA, CFS – Assistant Inspector General
Darcy Eckert, CIGA, CIGI, CCA, CECFE, CFS – Senior Inspector General
James Nassiri – Inspector General I

REPORT NO. 2020-04
JANUARY 22, 2020

Ken Burke, CPA
CLERK OF THE CIRCUIT COURT AND COMPTROLLER
PINELLAS COUNTY, FLORIDA

Division of Inspector General
510 Bay Avenue
Clearwater, FL 33756
Telephone: (727) 464-8371
Fax: (727) 464-8386
Fraud Hotline: (727) 45FRAUD (453-7283)
Clerk's website: www.mypinellasclerk.org

Clerk of the County Court
Recorder of Deeds
Clerk and Accountant of the Board of County Commissioners
Custodian of County Funds
County Auditor

January 22, 2020

Paul Sacco, Department Director

The Division of Inspector General has conducted a Follow-Up Audit of the Solid Waste Contract for Operation of the Waste-To-Energy Plant. The objective of our review was to determine the implementation status of our previous recommendations. We obtained the audit purpose, background information, opportunities for improvement, and recommendations from the original audit report. We added the status of recommendation implementation to this follow-up audit report.

Of the 34 recommendations contained in the original audit report, we determined that 21 have been implemented, an acceptable alternative has been applied to one, seven have been partially implemented, three have not been implemented, and two are no longer applicable. The status of each recommendation is presented in this follow-up report.

We appreciate the cooperation shown by the staff of the Solid Waste Department during the course of this review.

Respectfully Submitted,

Hector Collazo Jr.
Inspector General/Chief Audit Executive

cc: The Honorable Chairman and Members of the Board of County Commissioners
Barry Burton, County Administrator
Rahim Harji, Assistant County Administrator
Bill Embree, Department Manager
Ken Burke, CPA, Clerk of the Circuit Court and Comptroller

An Accredited Office of Inspector General

TABLE OF CONTENTS

INTRODUCTION **4**

Scope and Methodology *4*

Overall Conclusion *5*

Implementation Status Table *6*

Background *12*

STATUS OF RECOMMENDATIONS **19**

1. The Facility Contractor Did Not Transfer Subcontractor Prompt Payment Discounts To The County. *19*
2. The County Overpaid Sales Tax On Exempt Purchases. *26*
3. The County Miscalculated And Overpaid Invoice Retainage. *32*
4. The Facility Contractor Did Not Pay Its Subcontractors Timely And Invoiced The County Prior To Paying The Subcontractors. *33*
5. A Subcontractor Did Not Receive Payment For Work Performed At The WTE Facility. *38*
6. The County Did Not Maintain Project Documentation According To Service Agreement Requirements. *42*
7. The WTE Facility Is Not Always Maintained In An Acceptable Condition. *46*
8. There Is A Lack Of Security At The WTE Facility. *48*
9. Billing Discrepancies Between The County And The Facility Contractor Are Not Resolved. *51*
10. Policies And Procedures Are Not Complete. *53*

INTRODUCTION

Scope and Methodology

We conducted a follow-up audit of the Solid Waste Contract for Operation of the Waste-To-Energy Plant. The purpose of our follow-up review was to determine the status of previous recommendations for improvement.

The purpose of the original audit was to:

1. Determine the adequacy of the Facility Contractor's process controls in awarding TRP contracts.
2. Determine the adequacy of the County's processes for approving the Facility Contractor's awards of TRP contracts.
3. Determine the adequacy of the County's processes for approving the contract compliance of the Facility Contractor's subcontractors.
4. Determine the adequacy of the County's approval of the Facility Contractor's billings for TRP contracted services.
5. Determine the adequacy of the County's monitoring of Facility Contractor metrics and performance measures.
6. Review allegations made regarding employee favoritism at Solid Waste and the Facility Contractor disclosing bid information.

To determine the current status of our previous recommendations, we surveyed and/or interviewed management to determine the actual actions taken to implement recommendations for improvement. We performed limited testing to verify the implementation of the recommendations for improvement.

Our follow-up audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* and the *Principles and Standards for Offices of Inspector General,* and, accordingly, included such tests of records and other auditing procedures, as we considered necessary in the circumstances. Our follow-up testing was performed during the months of October – December 2019. The original audit period was November 3, 2014 through December 31, 2017. However, transactions and processes reviewed were not limited by the audit period.

Overall Conclusion

Of the 34 recommendations contained in the original audit report, we determined that 21 have been implemented, an acceptable alternative has been applied to 1, 7 have been partially implemented, 3 have not been implemented, and 2 are no longer applicable. We encourage management to continue implementing the remaining recommendations.

Implementation Status Table

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
1	***The Facility Contractor Did Not Transfer Subcontractor Prompt Payment Discounts To The County.***					
A	Work with the Facility Contractor to recover the $282,935 in excess payments made December 17, 2014, to October 25, 2016.	✓				
B	Require the Facility Contractor to submit proof of subcontractor payment amounts and dates with its invoice supporting documentation, including an indication of whether the Facility Contractor received subcontractor payment discounts and, if so, the total amount. The County should work with the Facility Contractor to amend the Service Agreement to include this documentation requirement to ensure the County pays the correct amount on each Facility Contractor invoice and to ensure the Facility Contractor communicates and transfers all discounts to the County.	✓				
C	We recommend Solid Waste Management work with the Facility Contractor to modify the Affidavit and Release form to require only the amount the Facility Contractor paid its subcontractors, exclusive of payment discounts and profit markup, to ensure the amount accurately represents total paid subcontractor claims. The County should work to ensure the Service Agreement, Schedule 21, also incorporates this change.		✓			
2	***The County Overpaid Sales Tax On Exempt Purchases.***					
A	Perform a cost-benefit analysis to determine if the level of effort required to recoup the $24,753 in tax-exempt sales tax on purchases of parts, materials, and labor would result in a				✓	

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
	net benefit to the County. If so, the County should work with the Facility Contractor to contact multiple subcontractors and file sales tax exemption affidavits with them referencing the applicable statutes and request retroactive sales tax reimbursement from each subcontractor.					
B	Work with the Facility Contractor to ensure it accurately understands the sales tax exemption statutes and the distinction between exempt and non-exempt purchases. The Facility Contractor should also ensure each of its subcontractors can identify and apply the sales tax exemptions correctly and extend this information to their secondary subcontractors. If necessary, the County and the Facility Contractor should seek legal counsel to express an opinion on what constitutes an exempt or non-exempt purchase and how far the sales tax exemption can extend as more levels of subcontractors become involved.				✓	
C	Ensure the Facility Contractor files with each of its subcontractors the tax exempt affidavit required by FS 212.08(5)(c)3. Moreover, the Facility Contractor should scrutinize all future subcontractor invoices for exempt sales tax and cease reimbursing those amounts. If subcontractors are unable to use the Facility Contractor's tax exemption for their purchases from secondary subcontractors, the County should consider having the Facility Contractor procure the materials directly to obtain the sales tax exemption and cost savings to the County.			✓		
D	Work with the Facility Contractor to recoup the $253,812 in reagent sales tax paid on the Facility Contractor's monthly service fee invoices from February 2015 through September 2017. This includes contacting the reagent vendors to determine documentation requirements and fulfilling those requirements.			✓		

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
E	Work with the Facility Contractor to ensure the urea reagent vendor honors the sales tax exemption affidavit to stop the billing of sales tax moving forward. If the urea reagent vendor continues to invoice sales tax, Management should consult the County Attorney's Office to obtain a legal opinion on deducting reagent sales tax from future payments.	✓				
F	Work with the Facility Contractor to file a sales tax exemption affidavit with the carbon reagent vendor to stop the billing of sales tax moving forward. If a sales tax exemption affidavit is already in place, the Facility Contractor should ensure the carbon reagent vendor honors it. If the carbon reagent vendor continues to invoice sales tax, Management should consult the County Attorney's Office to obtain a legal opinion on deducting reagent sales tax from future payments.	✓				
3	***The County Miscalculated And Overpaid Invoice Retainage.***					
A	Recoup the $314,448 in retainage overpayments to the Facility Contractor.	✓				
B	Improve its level of scrutiny to ensure all future invoice retainage calculations are accurate.	✓				
4	***The Facility Contractor Did Not Pay Its Subcontractors Timely And Invoiced The County Prior To Paying The Subcontractors.***					
A	Require the Facility Contractor to submit with its invoice and Affidavit and Release document proof of subcontractor payment. The supporting documentation could be in the form of a payment report or a copy of the check payable to the subcontractor. If the Facility Contractor does not provide the required proof, the County should deny payment of the Facility Contractor invoice, pursuant to Section 8.8.2 of the Service Agreement, until the Facility Contractor provides the required support. If practical, the County should work with the Facility Contractor to amend the Service Agreement to include this documentation requirement to ensure the County pays only			✓		

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
	after the Facility Contractor has fulfilled its subcontractor obligations.					
B	Work with the Facility Contractor to develop an expectation of timely subcontractor payment. If practical, the County should work with the Facility Contractor to amend the Service Agreement to require the Facility Contractor to pay each subcontractor in adherence to the associated payment terms.	✓				
C	Ensure the County pays all Facility Contractor invoices within 45 days of receipt, as required by the Local Government Prompt Payment Act.				✓	
5	***A Subcontractor Did Not Receive Payment For Work Performed At The WTE Facility.***					
A	Work more closely with the Facility Contractor to ensure there is more communication related to project completion and budget overages. Management should also ensure it collaborates with the Facility Contractor to jointly authorize all ongoing subcontractor work and confirm the work performed is within budget.	✓				
B	Work with the Facility Contractor to evaluate and consider disciplining the noted direct subcontractor. If the consensus is the direct subcontractor's behavior warrants discipline, the County should refer the matter to the Purchasing Department for evaluation. The Purchasing Department could then make the determination if the direct subcontractor's actions warrant suspension or debarment.					✓
C	Work with the Facility Contractor to add a clause to the Service Agreement requiring the Facility Contractor to vet all potential subcontractors against the Purchasing Department's suspension and debarment lists and prohibit any associated subcontractors from working at the WTE Facility.					✓
D	Review the TRP project-tracking workbook, compare it to hard copy project documents to ensure it captures all TRP projects, and update it as necessary.	✓				
E	Going forward, design a process for updating the TRP project-tracking workbook to limit updates to as few individuals as	✓				

OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
	possible. If necessary, hire a consultant to help with this process and/or consider purchasing a new project management system.					
6	***The County Did Not Maintain Project Documentation According To Service Agreement Requirements.***					
A	Review the award documentation process and modify as necessary to ensure required steps meet the needs of all parties and do not cause unnecessary delays in completing a project.	✓				
B	Ensure the Facility Contractor understands and follows the modified process.	✓				
C	Ensure the County inspects each completed TRP project, prepares a punch list, and maintains the list for future reference.	✓				
D	Ensure change orders are documented and approved by all parties prior to execution.	✓				
7	***The WTE Facility Is Not Always Maintained In An Acceptable Condition.***					
A	Ensure the Facility Contractor keeps the WTE Facility clean and orderly. This should include maintaining the new equipment well in order to maximize its useful life.	✓				
B	Ensure safe working conditions at all times at the WTE Facility.	✓				
8	***There Is A Lack Of Security At The WTE Facility.***					
A	Implement the use of identification badges for Facility Contractor and subcontractor staff who work at the WTE Facility.	✓				
B	Require visitors to check in with a security guard and provide photo identification upon entering the WTE Facility.			✓		

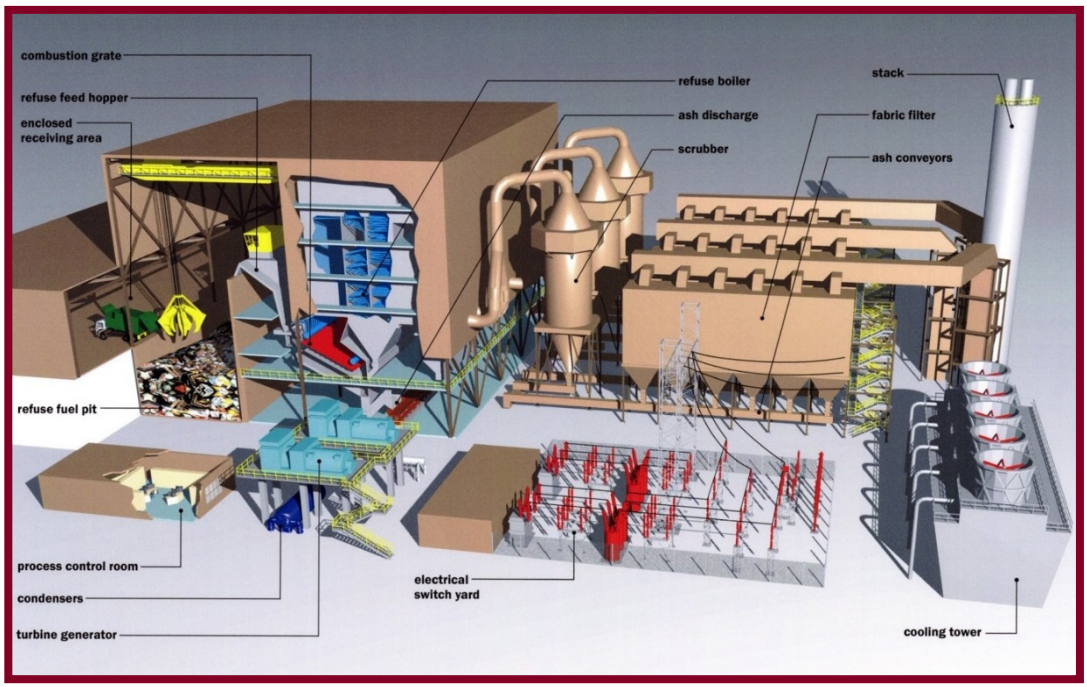
OFI NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS				
		Implemented	Acceptable Alternative	Partially Implemented	Not Implemented	No Longer Applicable
C	Continue working to install a security gate at the WTE Facility and, once installed, ensure it is closed as often as possible.	✓				
D	Consider performing background checks on potential contractors and subcontractors working at the WTE Facility.			✓		
9	***Billing Discrepancies Between The County And The Facility Contractor Are Not Resolved.***					
A	Attempt to resolve all billing disagreements immediately in order to eliminate the potential for a lengthy and expensive legal resolution process.	✓				
B	Exclude bond markup from all Notices to Proceed in order to ensure consistent application of its position on the matter.	✓				
C	Recoup the $1,385 payment bond markup overpaid to the Facility Contractor.	✓				
10	***Policies And Procedures Are Not Complete.***					
A	Update all policies and procedures to reflect current procedures.			✓		
B	Approve and implement all policies and procedures.			✓		

Background

Solid Waste manages the landfill, WTE Facility, and recycling operations. Since the County has only one landfill that accepts household, commercial, and industrial garbage, Solid Waste makes every attempt to burn or recycle waste. As a result, 85% is recycled or converted into energy in the WTE Facility. Solid Waste dumps the items that cannot be recycled or burned in the landfill, which sits underground. Solid Waste uses the landfill primarily when the WTE Facility is not operating due to repairs or maintenance or when it cannot burn or recycle certain items.

Solid Waste created the landfill by forming clay walls around the Earth's natural clay layer underground to provide a resting place for waste. When Solid Waste dumps trash in the landfill, it spreads, crushes, and covers the garbage with ash from the WTE Facility. Because there is limited landfill space, Solid Waste makes every attempt to bury only waste that cannot be burned or recycled, such as boats, mattresses, couches, construction debris, and large items of commercial waste.

When the WTE Facility burns trash, it converts it into electrical energy and leaves ash behind. The process begins when the plant burns garbage. The heat from the burning garbage boils water to make steam. The steam turns a turbine generator to make electricity. Solid Waste recovers both ferrous (steel) and non-ferrous (aluminum) metals from the ash by using magnets and eddy current separators. Solid Waste sells the recovered materials to smelters for recycling, and it uses the ash for landfill cover.



The WTE Facility can burn 3,000 tons of garbage every day or almost one million tons per year. Burning garbage can produce up to 75 megawatts (MW) of electricity per hour. After using some of the energy to run the plant, the County sells approximately 60 MW per hour to Duke Energy. This electricity powers approximately 40,000 homes and businesses every day.

The WTE Facility requires a large amount of water for the cooling towers to cool hot steam made in the WTE Facility after it exits the turbine generator. Solid Waste built an Industrial Water Treatment Facility that can provide all the necessary water by taking water from a large retention pond on site at Bridgeway Acres and cleaning it. That means Solid Waste conserves water, saves money, and cleans the pond water.

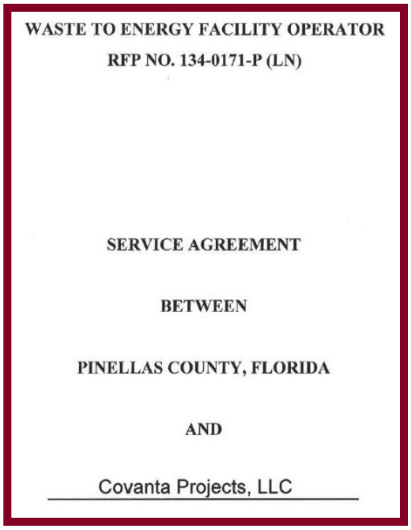
Annual recycling rate data released by the Florida Department of Environmental Protection (FDEP) for 2016 indicated the County tied for the highest county recycling rate statewide at 82% of all waste. This statistic takes into consideration the incineration of garbage at the WTE Facility to produce renewable energy. The FDEP's goal is the recycling of 75% of all waste statewide by 2020. Solid Waste has several recycling programs as follows:

- The Electronics and Chemical Recycling program is a free, safe way for citizens and businesses to dispose of electronics and chemicals. Solid Waste operates a Chemical Collection Center to collect these materials.
- Mobile Collection Events and the Haz-to-Go Truck allow a free, convenient means to safely collect and recycle chemicals and electronics.
- Cutting Waste at Work is a program that helps businesses reduce unnecessary waste and establish best practices in recycling.

- The Artificial Reef program uses environmentally safe demolition and construction debris to construct artificial reefs underwater that benefit fish and other sea life.
- The Beach and Park Recycling program provides recycle containers for most County-managed beaches and parks and many city beaches.
- School Recycling promotes recycling to educate children about recycling and reducing garbage.
- Yard Waste Recycling creates mulch from yard waste, which is available free to the public.

WTE Facility Operator Service Agreement

The County entered into a Service Agreement with the Facility Contractor on November 3, 2014. The Service Agreement term is 10 years, including a provision for two extensions of five years each. Estimated total expenditures are not to exceed $470,000,000. The Service Agreement provides the terms and conditions the Facility Contractor must follow. The Facility Contractor's role in the Service Agreement is to perform management, operation, repair or replacement, and maintenance of the WTE Facility. The Facility Contractor officially assumed responsibility for operation of the WTE Facility on December 7, 2014.


WASTE TO ENERGY FACILITY OPERATOR
RFP NO. 134-0171-P (LN)

SERVICE AGREEMENT

BETWEEN

PINELLAS COUNTY, FLORIDA

AND

Covanta Projects, LLC

The County based the original $470,000,000 estimated contract value on the volume of waste received at the WTE Facility at the time. The total contract value included the following:

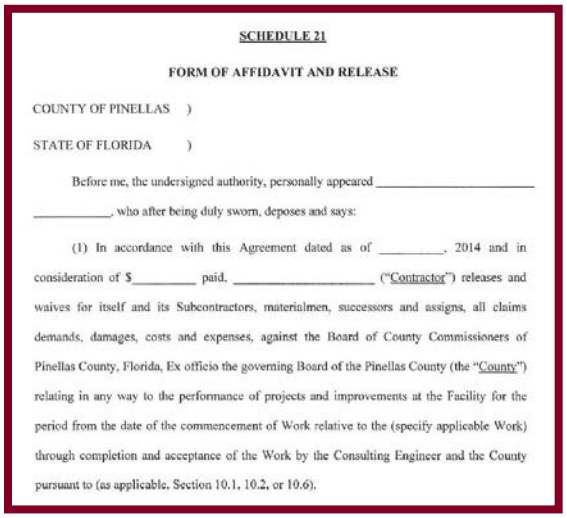
- Per ton waste processing fee, including annual escalation based on industry cost indices;
- Facility Contractor's share of electrical energy and recovered materials (e.g., ferrous and non-ferrous metals) revenue, maintenance of capacity credit for achieving the required level of production, and pass-through costs (e.g., chemicals, utilities);
- TRP management fee;
- Maximum of $150,000,000 for the TRP to perform various projects to restore the WTE Facility to meet the required capacity commitment and performance guarantees stipulated in the Service Agreement.

Discussions with Solid Waste Management and Facility Contractor staff revealed the WTE Facility was in a state of disrepair when the Facility Contractor took responsibility. Therefore, the TRP was a key component of the Service Agreement to bring the WTE Facility back to acceptable operating condition. The Service Agreement stipulates performance metrics in the form of capacity levels and output. Moreover, without essential repairs and equipment replacements, it would have been difficult to attain those objectives and operate the plant in an efficient and effective manner.

Section 10.6 of the Service Agreement addresses the TRP. The Facility Contractor proposes TRP projects to Solid Waste Management and solicits subcontractors to perform the TRP projects in the WTE Facility. Solid Waste Management reviews all project submittals, provides feedback, and approves or disapproves the projects based on scope and budget requirements. Solid Waste Management also has an opportunity to review the subcontractor solicitations. Solid Waste classifies TRP projects as either “cost substantiation” or “lump sum,” where Solid Waste and the Facility Contractor agree on a fixed price for all project components.

The Facility Contractor supervises its subcontractors during the performance of TRP project work. Solid Waste inspects the quality of TRP project work performed. It also relies on the expertise of its Independent Consulting Engineer. The Independent Consulting Engineer reviews the Facility Contractor’s preparation of TRP project submittals and scopes of work, performs monitoring of TRP projects upon completion, and performs monthly inspections for maintenance related issues at the WTE Facility. The Independent Consulting Engineer uses the information gathered to compose a quarterly operations report.

Upon completion of TRP projects, subcontractors invoice the Facility Contractor in accordance with Schedule 12B of the Service Agreement. The Facility Contractor is then responsible for reviewing and paying the subcontractor invoices. The Facility Contractor signs and notarizes an Affidavit and Release document affirming it has fulfilled all subcontractor obligations. Schedule 21 of the Service Agreement contains a template for the Affidavit and Release document. The Facility Contractor then generates its invoice, which includes an agreed upon 10% profit markup as stipulated in the Service Agreement, and submits it to Solid Waste along with the Affidavit and Release document. Solid Waste Management reviews and approves the invoices for payment and sends them to the Clerk of the Circuit



SCHEDULE 21

FORM OF AFFIDAVIT AND RELEASE

COUNTY OF PINELLAS)

STATE OF FLORIDA)

Before me, the undersigned authority, personally appeared _____ _____, who after being duly sworn, deposes and says:

(1) In accordance with this Agreement dated as of _____, 2014 and in consideration of $_____ paid, _____ ("Contractor") releases and waives for itself and its Subcontractors, materialmen, successors and assigns, all claims demands, damages, costs and expenses, against the Board of County Commissioners of Pinellas County, Florida, Ex officio the governing Board of the Pinellas County (the "County") relating in any way to the performance of projects and improvements at the Facility for the period from the date of the commencement of Work relative to the (specify applicable Work) through completion and acceptance of the Work by the Consulting Engineer and the County pursuant to (as applicable, Section 10.1, 10.2, or 10.6).

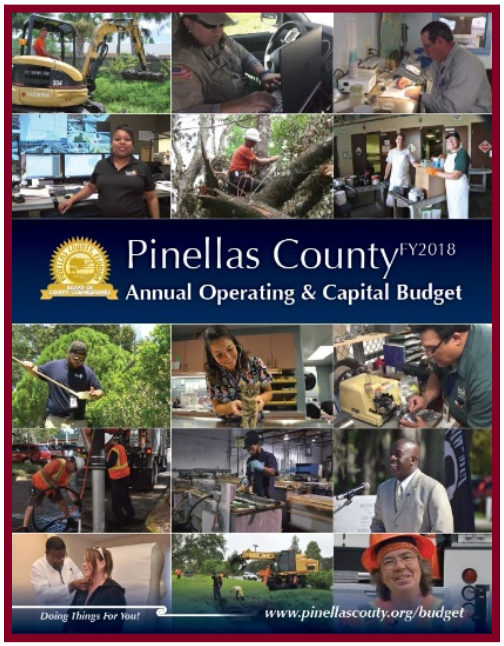
Court and Comptroller's Finance Division for processing. For projects exceeding $1 million, Solid Waste holds the final 10% due on each project as retainage until project completion.

In addition to TRP invoices, the Facility Contractor submits a monthly service fee invoice to Solid Waste in accordance with Schedule 12A of the Service Agreement. The service fee invoice includes agreed upon charges for the following:

- Monthly processing fee to perform all Facility Contractor obligations in the Service Agreement;
- Facility Contractor percentage share of electric energy net revenues;
- Capacity maintenance credit based on the Facility Contractor achieving a required percentage of energy production as compared to total capacity;
- Monthly TRP management fee for performance of management and supervisory services;
- Facility Contractor percentage share of net revenue from recovered materials;
- Pass-through costs.

The Service Agreement defined the TRP period as the two-year initial operating period, which ended December 31, 2016. Since not all TRP projects were complete as of that date, the County entered into an amended Service Agreement with the Facility Contractor on March 21, 2017. The amendment increased the total estimated TRP project cost from $150,000,000 to $243,357,899. The amendment also stipulated all remaining TRP projects as lump sum.

Operating and Capital Budget



For the operating and capital budget, all of Solid Waste funds are enterprise funds, or business-type activities, which offer goods and services to the citizens of the County, and are intended to be self-supporting. Solid Waste utilizes two funds: Revenue and Operating, and Renewal and Replacement (capital). The Revenue and Operating Fund supports the majority of the WTE Facility operations. The impact of the Service Agreement is evident in both funds.

Solid Waste uses the Revenue and Operating Fund to account for revenues generated by the County's WTE Facility. The four main sources of revenue are as follows: tipping fees charged for the disposal of refuse, power capacity payments, proceeds from the sale of electricity generated by the WTE Facility to Duke Energy, and monies generated from the sale of recycled metals. The fund accounts for the expenses associated with operating and maintaining all Solid Waste facilities. This fund also accounts for any grant proceeds, which the County may receive for the various recycling programs it administers. Following is a three-year

budget outlook for the Solid Waste Revenue and Operating Fund obtained from the Office of Management and Budget (OMB):

Solid Waste Revenue & Operating Budget	FY 16 Actual	FY 17 Budget	FY 18 Request
RESOURCES			
Beginning Fund Balance	$ 93,886,783	$ 75,879,730	$ 98,816,350
Revenues	$ 97,319,899	$ 94,787,180	$103,044,450
Total Resources	**$191,206,682**	**$170,666,910**	**$201,860,800**
REQUIREMENTS			
Total Expenditures	$ 87,238,226	$104,838,080	$109,748,610
Reserves	$ 0	$ 65,828,830	$ 92,112,190
Total Requirements	**$ 87,238,226**	**$170,666,910**	**$201,860,800**

Revenues have remained consistent over the budget period with some minor fluctuations due to changes in electrical capacity, electrical rates, levels of electrical consumption, garbage disposal collections, recovered materials sales, recycling revenue, interest earnings, and/or other miscellaneous revenue generated by Solid Waste operations. The cost to operate the WTE Facility is the primary driver for increased expenditures over the budget period. The Revenue and Operating Fund expenditures have increased by $22,510,384 (26%) from FY 2016 through the FY 2018 budget request.

Solid Waste uses the Renewal and Replacement Fund to account for capital improvement projects associated with Solid Waste facilities. Revenues generated by the Solid Waste system fund these projects. This fund supports a portion of the WTE Facility operations. Following is a three-year budget outlook for the Solid Waste Renewal and Replacement Fund obtained from the OMB:

Solid Waste Renewal & Replacement Capital Budget	FY 16 Actual	FY 17 Budget	FY 18 Request
RESOURCES			
Beginning Fund Balance	$155,308,381	$113,657,320	$ 80,372,760
Revenues	$ 25,000,444	$ 30,000,000	$ 30,000,000
Total Resources	**$180,308,825**	**$143,657,320**	**$110,372,760**
REQUIREMENTS			
Total Expenditures	$ 38,835,467	$ 91,467,300	$ 66,354,620
Reserves	$ 0	$ 52,190,020	$ 44,018,140
Total Requirements	**$ 38,835,467**	**$143,657,320**	**$110,372,760**

All Renewal and Replacement Fund revenues are transfers from other funds. The capital needs of the WTE Facility are the primary drivers for increased capital expenditures over the budget period. Capital needs have been greater due to the improvement of the WTE Facility required by the Service Agreement. The Renewal and Replacement Fund expenditures increased by $52,631,833 (136%) from FY 2016 to FY 2017. The expenditures then decreased by $25,112,680 (28%) as reflected in the FY 2018 budget request.

STATUS OF RECOMMENDATIONS

This section reports our audit follow-up on actions taken by management on the recommendations for improvement in our original audit report of the Solid Waste Contract for Operation of the Waste-To-Energy Plant. The recommendations contained herein are those of the original audit report, followed by the current status of the recommendations.

1. The Facility Contractor Did Not Transfer Subcontractor Prompt Payment Discounts To The County.

While reviewing the supporting documentation for a sample of 20 Facility Contractor TRP invoices, we discovered two (10%) instances in which one subcontractor offered the Facility Contractor a prompt payment discount in its invoice payment terms. Specifically, the subcontractor's invoice payment terms offered a 2% discount if paid within 10 days of the invoice date or a 1% discount if paid within 20 days of the invoice date. As the operator of the WTE Facility and TRP projects, the Facility Contractor subcontracts the TRP project work to subcontractors that invoice the Facility Contractor for completed work. After paying its subcontractors, the Facility Contractor then bills the County the amount paid the subcontractors plus 10% profit markup as defined in the Service Agreement. In addition, the Facility Contractor submits to the County a signed and notarized Affidavit and Release, which states the Facility Contractor has paid all associated subcontractor invoices and relieves the County of any obligation to the subcontractors. The Affidavit and Release also includes the total amount of subcontractor payments and Facility Contractor markup invoiced to the County.

The Facility Contractor Controller confirmed the Facility Contractor actively sought prompt payment discounts, where available, and the Facility Contractor received the prompt payment discounts from the noted subcontractor on the two sampled TRP invoices. However, the Facility Contractor billed the County the full subcontractor invoice amounts and profit markup, prior to subtracting the prompt payment discounts. The Facility Contractor also submitted Affidavit and Release documents for the full subcontractor invoice amounts plus markup. The County is only responsible for reimbursement of actual direct TRP project costs and profit markup.

Since these did not appear to be isolated instances, we requested all Facility Contractor payments to the subcontractor we identified in sample testing in October 2016, in order to determine if the Facility Contractor received additional prompt payment discounts, which it then withheld from the County. The Facility Contractor Controller indicated the Facility Contractor's central office could only provide information for calendar year 2016 to date, which included 28 subcontractor invoices paid from January 4, 2016, through September 21, 2016. Of those 28

subcontractor invoices, the Facility Contractor Controller noted the subcontractor provided prompt payment discounts on 14 (50%).

Due to the potential of additional prompt payment discounts from the same subcontractor, as well as other subcontractors, during the TRP period, we decided to review all Facility Contractor payments to subcontractors during the TRP period. We requested all Facility Contractor subcontractor payments since the Facility Contractor began operation of the WTE plant on December 7, 2014. In response, the Facility Contractor Vice President of Business Management and Development informed us the Facility Contractor could not provide a payment report beyond one year. However, the Facility Contractor could provide information on specific subcontractor invoices, if requested.

When it became clear the Facility Contractor would not fulfill the original request, we initiated a review of all TRP invoices and supporting subcontractor invoices. We pulled a report from the County's financial reporting system, the Oracle Project Unified Solution (OPUS), on December 20, 2016. As a result, we identified 310 paid Facility Contractor TRP invoices since the TRP period began to date. On May 18, 2017, we generated another OPUS invoice report to ensure we obtained all Facility Contractor TRP invoices paid subsequent to the initial invoice report. This report identified five additional invoices previously noted as unpaid that the County subsequently paid, which increased the total to 315 paid Facility Contractor TRP invoices. We reviewed all 315 paid Facility Contractor TRP invoices, including all Facility Contractor purchase orders (POs) and supporting subcontractor invoices that comprised the Facility Contractor invoices. One or more subcontractor invoices supported each Facility Contractor invoice depending on the size of the project. We created a list of all subcontractor invoices and reviewed each invoice to determine if the associated subcontractors offered prompt payment discounts.

We focused attention on subcontractor invoices and/or Facility Contractor POs that offered percentage discounts (e.g., 1%, 2%) for payments made within a specified period after the invoice date, typically 10-20 days. The Facility Contractor stamped most subcontractor invoices with a payment approval date. We reviewed each supporting subcontractor invoice where the subcontractor potentially provided a prompt payment discount to the Facility Contractor, as determined by reviewing the subcontractor invoice and/or Facility Contractor PO terms. In order to accomplish this review, we compared the subcontractor invoice payment approval dates to the subcontractor invoice dates to determine if the Facility Contractor paid the subcontractor invoice within the required period to receive a prompt payment discount. We compiled a list of subcontractor invoices where the Facility Contractor likely received a discount or there was insufficient information to make this determination. We submitted the resulting 442 subcontractor invoices to the Facility Contractor to verify how much the Facility Contractor paid for each subcontractor invoice, including any discount amount and the payment date.

After multiple follow-up attempts, the Facility Contractor responded to our request for information six months after the initial request. We documented and summarized the subcontractor discount information provided and calculated the 10% Facility Contractor markup since it billed the County markup in addition to each discount. We summed all discounts received, markup, and discounts plus markup, with grand totals as follows:

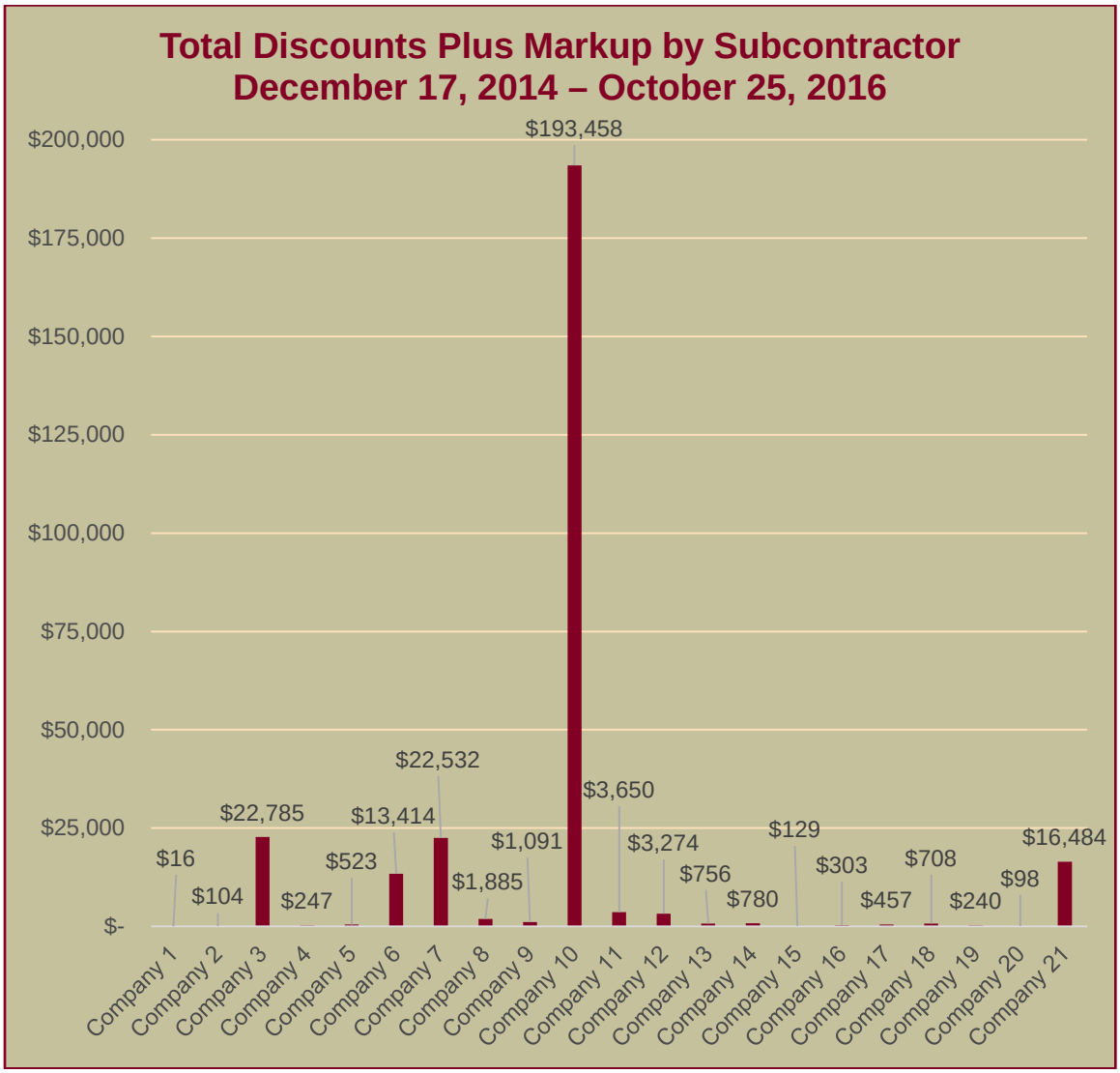
Total Prompt Payment Discounts Received December 17, 2014 – October 25, 2016	
Total Prompt Payment Discounts Received	$ 257,214
Contractor 10% Markup	25,721
Total Prompt Payment Discounts Plus Markup	**$ 282,935**

The Facility Contractor received $257,214 in prompt payment discounts from 21 subcontractors on 205 subcontractor invoices paid December 17, 2014, to October 25, 2016. The Facility Contractor then billed the County this amount plus an additional 10% markup ($25,721), for a grand total County overpayment of $282,935.

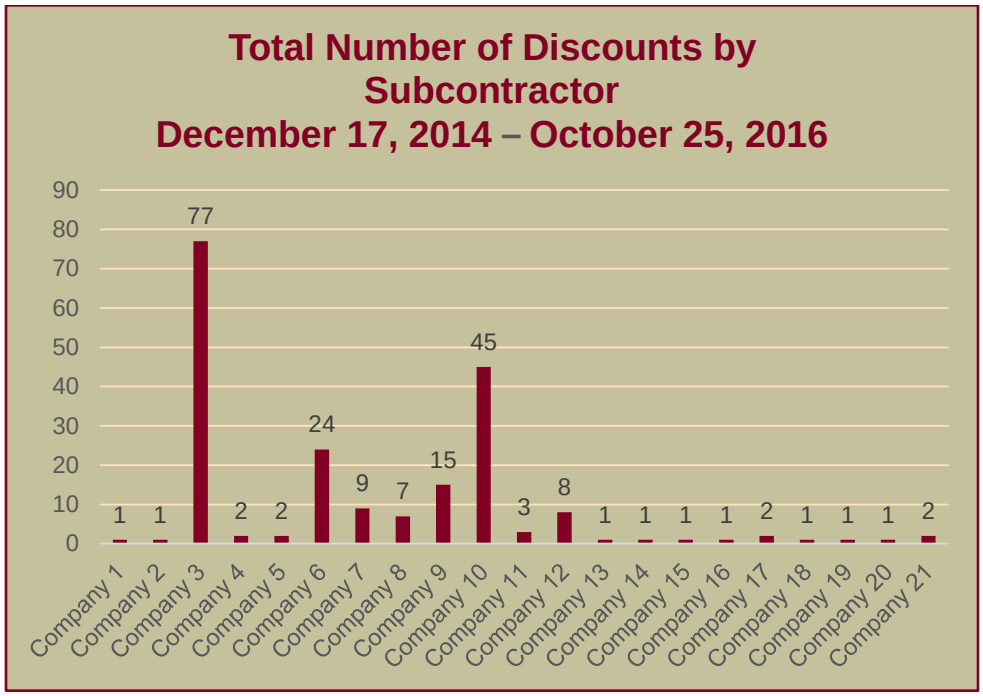
Total subcontractor prompt payment discounts, plus markup, are broken down by year in the following table:

Total Discounts Plus Markup by Year	
Year	**Total Discounts Plus Markup**
2014	$ 185
2015	162,659
2016	120,092
Grand Total	**$ 282,936**
Note: When summarizing by year, there is a $1 difference due to rounding each year's total.	

We noted one subcontractor (Company 10 in the following chart) that provided the Facility Contractor $193,458 in prompt payment discounts, plus markup, which was over 68% of the total subcontractor invoice discounts plus markup. The following chart shows the subcontractor prompt payment discount amounts by company for the TRP period (note that eight of the subcontractors provided discounts less than $500, and the cumulative total of all subcontractor prompt payment discounts was $1 less than the above total due to rounding):



Among the 205 invoices where a subcontractor provided a prompt payment discount, one subcontractor (Company 3 in the following chart) was associated with 77 of those invoices, or 38%. In addition, the same subcontractor noted above (Company 10) as comprising over 68% of the total discount, plus markup, value, provided discounts on 45 total invoices, or 22% of the total discounted invoice population. The following chart shows the number of subcontractor discounted invoices by company for the TRP period:



The Facility Contractor reduced its subcontractor payments without notifying the County of the payment reductions and proceeded to invoice the County full price and additional profit markup. We discussed the subcontractor prompt payment discounts with the Solid Waste Program Manager when we first discovered them. At that time, he indicated he would begin scrutinizing all prospective Facility Contractor TRP invoices to ensure the County reimbursed only the actual subcontractor payments (i.e., subcontractor invoice amounts minus any prompt payment discounts), plus Facility Contractor markup.

Our analysis of the proportional amount of subcontractor prompt payment discounts and the value of those discounts revealed two companies that comprised the bulk of the activity. The motivation to obtain prompt payment discounts makes it more enticing for the Facility Contractor to favor subcontractors that offer discounts over those that do not.

Section 3.15.2, Access to Data and Records, of the Service Agreement states the following with regard to the County's ability to access the Facility Contractor's records in support of direct costs paid:

> *"The County's Authorized Representative, the Consulting Engineer and the County's employees, representatives and agents, with the full cooperation of the Contractor, shall have, during normal business hours and upon reasonable notice to the Contractor, access to review or copy, or both, in accordance with Applicable Law, including Chapter 119, Florida Statutes, all documents, papers and letters, in Native Electronic Format (including metadata) or otherwise, and all other records, books, accounts, documents, papers, letters and invoices to verify costs incurred or payments by the County pursuant to this Agreement or in connection with the Work or that are made or received by the Contractor in connection with this*

> *Agreement; provided, however, the foregoing costs and expenses shall not apply to payments of the Processing Fee and fixed or lump sum costs. The aforesaid documents, papers and letters (collectively, 'Records') will be made available by the Contractor for audit or inspection purposes by the County consistent with the foregoing proviso."*

In addition, Section 11.6, Audits, of the Service Agreement states the following pertaining to the County's right to audit the Facility Contractor's direct cost records:

> *"The County shall also have the right to audit the Contractor's invoices for fees, expenses, costs and charges under the Agreement at any time at the County's sole cost and expense; provided, however, the County shall not have the right to audit that portion of any Contractor invoice for a fixed fee or lump sum payment. The Contractor shall fully cooperate with the County regarding any and all such audits."*

Section 10.6.8.1, Payment for Approved Outage Work, TRP Projects, Latent Defect Cure (LDC) Projects and Part C Repairs and Replacements, of the Service Agreement states the following regarding the County's requirement to pay actual direct TRP project costs:

> *"…payment for (a) Approved Outage Work performed by the Contractor in accordance with Section 10.6.2.4, (b) TRP Projects and LDC Projects approved by the County's Authorized Representative in accordance with this Section 10.6, and (c) those items Repaired or Replaced as specified in Part C of Schedule 19 (Technical Recovery Plan) shall be based on the Direct Costs incurred and paid or payable by the Contractor for such Approved Outage Work or Project, as applicable, subject to Cost Substantiation, inclusive of Markup..."*

Section 2.1, Definitions, of the Service Agreement defines markup as follows:

> *"'Markup' means, wherever such term is used, overhead and profit equal to ten percent (10%) of Direct Costs."*

Per the Service Agreement, the County may recoup any funds it paid out, which proper documentation did not support. Specifically, per Section 8.8.2, Payment to Contractor, of the Service Agreement:

> *"The County's Authorized Representative may also decline to approve an invoice submitted pursuant to this Section 8.8 or, because of subsequently discovered evidence or subsequent inspections or audits by the County's Authorized Representative, may reduce in whole or in part any future payment to the extent the County reasonably believes it has overpaid the Contractor under any prior invoice because of (i) defective or incomplete Work, (ii) improper or unsupported invoice calculations or (iii) lack of appropriate and supporting documentation."*

As shown in the following excerpt from Section 10.8, Payment for Facility Recovery and other Projects, of the Service Agreement, an Affidavit and Release form must accompany each Facility Contractor invoice:

> *"Payment for all Projects and improvements performed in accordance with Sections 10.1, 10.2 or 10.6 of this Section 10 shall be paid in accordance with the provisions of Sections 8.7 and 8.8, and invoices for all such payments shall be accompanied by an affidavit and release in the form provided in Schedule 21 (Form of Affidavit and Release)."*

The Facility Contractor did not notify the County that some subcontractors provided prompt payment discounts. Instead, the Facility Contractor invoiced the County full price in addition to profit markup for the associated subcontractor invoices. The County also did not notice prompt payment discounts in the payment terms of the Facility Contractor POs and the subcontractor invoices.

We Recommended Solid Waste Management:

A. Work with the Facility Contractor to recover the $282,935 in excess payments made December 17, 2014, to October 25, 2016.

B. Require the Facility Contractor to submit proof of subcontractor payment amounts and dates with its invoice supporting documentation, including an indication of whether the Facility Contractor received subcontractor payment discounts and, if so, the total amount. The County should work with the Facility Contractor to amend the Service Agreement to include this documentation requirement to ensure the County pays the correct amount on each Facility Contractor invoice and to ensure the Facility Contractor communicates and transfers all discounts to the County.

C. We recommend Solid Waste Management work with the Facility Contractor to modify the Affidavit and Release form to require only the amount the Facility Contractor paid its subcontractors, exclusive of payment discounts and profit markup, to ensure the amount accurately represents total paid subcontractor claims. The County should work to ensure the Service Agreement, Schedule 21, also incorporates this change.

Status:

A. **Implemented.** Solid Waste received payment from the Facility Contractor for $282,935.

B. **Implemented.** The Facility Contractor includes subcontractor invoices with its invoices, which indicate when discounts are offered. In addition, Management works with the Facility Contractor to stay apprised of the invoice terms.

C. **Acceptable Alternative.** Management did not concur with this recommendation initially, because modifying the affidavit would require a contract amendment. However,

Management has taken steps to ensure the Facility Contractor communicates discounts taken to the County.

2. The County Overpaid Sales Tax On Exempt Purchases.

While reviewing the supporting documentation for a sample of 20 Facility Contractor TRP invoices, we discovered two (10%) instances where subcontractors charged sales tax to the Facility Contractor. One of the subcontractors charged the Facility Contractor sales tax plus a 15% profit markup. The Facility Contractor then billed the County the sales tax, including any applicable subcontractor profit markup, and the Facility Contractor's 10% profit markup. The purchases included materials going into the plant as part of the TRP facility repairs (e.g., grating, tubing, electrical). The purchase of machinery and equipment necessary in the production of electrical or steam energy, as well as labor, parts, and materials associated with the repair of machinery and equipment, are sales tax exempt pursuant to Chapter 212 of the FS. Conversely, purchases of consumable items (e.g., tape, fuel, safety equipment, and other miscellaneous supplies), are not sales tax exempt.

We subsequently reviewed all paid Facility Contractor TRP invoices dated February 23, 2015, through October 26, 2016. Our review included all subcontractor invoices supporting the Facility Contractor invoices. We initiated this review in conjunction with the discovery of subcontractor prompt payment discounts, which we addressed separately in OFI #1. During our review of the paid Facility Contractor TRP invoices, we documented all instances where the Facility Contractor's subcontractors billed sales tax and the associated amounts. We further reviewed the associated items purchased to determine if they qualified as exemptions pursuant to Chapter 212 of the FS. In some instances, the available documentation made it difficult to distinguish between material and miscellaneous supply purchases. Therefore, we used available resources, such as internet queries of the items purchased, to determine judgmentally what constituted material and supply purchases, and categorized the purchases accordingly.

As a result, we identified 68 subcontractor invoices where the subcontractors charged sales tax for purchases of materials, parts, and/or labor either directly to the Facility Contractor or as a pass through cost (PTC) from a secondary subcontractor's invoice. In some instances, the subcontractors also charged profit markup on the sales tax, and the Facility Contractor, in turn, charged its profit markup when billing the County. The total tax-exempt sales tax billed to and paid by the County was $24,753.

The WTE Facility operation also requires substances known as reagents to clean pollutants from its emissions. The County uses the following reagents at the WTE Facility: pebble lime, carbon,

and urea. Based on Sections 8.2.7 and 8.3.6 of the WTE Facility Service Agreement, the Facility Contractor agreed to purchase the reagents for the County and then bill the County the actual amount as a PTC on Schedule 12A, Attachment D (2), of its monthly service fee invoice. The Facility Contractor reagent purchases have historically included sales tax, as the Facility Contractor has been unable to use the County's tax-exempt status for reagent purchases.

During audit fieldwork, the Facility Contractor successfully lobbied and achieved tax-exempt status with the State of Florida for the purchase of reagents used for air pollution control equipment pursuant to FS 212.051. The statute requires the purchaser to complete a certificate acknowledging the product complies with the law and qualifies for a tax exemption. The Facility Contractor signed a sales tax exemption affidavit with its urea vendor on February 2, 2017, and a sales tax exemption affidavit with its pebble lime vendor on May 24, 2017. The Facility Contractor did not provide a tax exemption affidavit for its carbon vendor. In addition, the Facility Contractor indicated it could retroactively obtain a refund for reagent sales tax paid since it began operation of the WTE Facility on December 7, 2014.

In order to quantify the amount of reagent sales tax paid, we reviewed all paid Facility Contractor monthly service fee invoices from December 2014 through September 2017. Schedule 12A, Attachment D (2), of each monthly service fee invoice we reviewed contained the total invoiced amount of each reagent, including sales tax. We also reviewed the Facility Contractor's pass through expense listing and the County's associated calculations attached to each monthly service fee invoice. This documentation contained the supporting detail for each reagent purchase made during the month, which included information such as the reagent vendor name, invoice number, description, quantity, unit, cost per unit, total cost, freight, fuel surcharges, severance tax, sales tax, and total invoiced amount. Since the sales tax exemption only applies to the reagent products themselves and the Facility Contractor's calculations included sales tax on fuel surcharges and severance tax, we had to calculate the amount of sales tax paid strictly on the reagent product cost.

As a result of our analysis, we determined the County paid the Facility Contractor $74,766,730 for monthly service fee invoices from December 2014 through September 2017. Of that number, the County paid $4,681,144 for all Facility Contractor reagent purchases invoiced from February 2015 through September 2017. The Facility Contractor invoiced no reagent purchases in December 2014 and January 2015. The reagent invoice total included the reagent chemicals, freight, fuel surcharges, severance tax, and sales tax. The Facility Contractor did not invoice the County sales tax on freight charges. Paid reagent invoices issued for the months of February 2015 through September 2017 were comprised of the following:

Reagent Invoice Breakdown February 2015 - September 2017	
Reagent Chemicals	$4,319,461
Freight, Fuel Surcharges, and Severance Tax	103,968
Sales Tax – Reagent Chemicals	253,812
Sales Tax – Fuel Surcharges and Severance Tax	3,903
Total Reagent Invoices	**$4,681,144**

The County paid the Facility Contractor $253,812 in reagent chemical sales tax on the monthly service fee invoices issued for the months of February 2015 through September 2017. The Facility Contractor used one carbon vendor and one urea vendor during this period. The Facility Contractor purchased pebble lime from three vendors in 2015, but the Facility Contractor has only made purchases from one of the three pebble lime vendors since that time. The current pebble lime vendor ceased invoicing sales tax, which the Facility Contractor reflected on its April 2017 service fee invoice. The Facility Contractor continued to invoice sales tax through September 2017 for carbon and urea purchases. A breakdown of the reagent sales tax paid can be seen in the following table:

Sales Tax Paid On Purchased Reagent Chemicals February 2015 - September 2017	
Carbon Vendor (February 2015 through September 2017)	$33,962
Pebble Lime Vendor 1 (February 2015 through December 2015)	19,761
Pebble Lime Vendor 2 (March 2015 through March 2017)	177,477
Pebble Lime Vendor 3 (May 2015)	794
Urea Vendor (February 2015 through September 2017)	21,818
Total Sales Tax Paid	**$253,812**

The County overpaid for parts, materials, and labor by paying sales tax. In addition, the County paid profit markup to the Facility Contractor and, in some cases, other subcontractors involved in the procurement of these items. The County paid $24,753 in tax-exempt sales tax and associated profit markup on Facility Contractor TRP invoices dated February 23, 2015, through October 26, 2016.

The County paid unnecessary sales tax of $253,812 on pebble lime, carbon, and urea reagent purchases from February 2015 through September 2017. The County continues to pay sales tax on carbon and urea reagent purchases. These funds could be used for other purchases to supplement the overall TRP budget.

The Facility Contractor has a sales tax exemption pursuant to FS 212.08(5)(c)1. and FS 212.08(7)(xx) for the purchase of machinery and equipment, as well as repair thereof, necessary for the production of electrical steam energy resulting from the burning of boiler fuels. FS 212.08(5)(c)1. states the following regarding the sales tax exemption for machinery and equipment:

> *"The purchase of machinery and equipment for use at a fixed location which machinery and equipment are necessary in the production of electrical or steam energy resulting from the burning of boiler fuels other than residual oil is exempt from the tax imposed by this chapter. Such electrical or steam energy must be primarily for use in manufacturing, processing, compounding, or producing for sale items of tangible personal property in this state. Use of a de minimis amount of residual fuel to facilitate the burning of nonresidual fuel shall not reduce the exemption otherwise available under this paragraph."*

FS 212.08(7)(xx)1. states the following regarding the sales tax exemption for labor charges and parts and materials related to the repair of machinery and equipment:

> *"Subject to the provisions of subparagraphs 2. and 3., there is exempt from the tax imposed by this chapter all labor charges for the repair of, and parts and materials used in the repair of and incorporated into, industrial machinery and equipment which is used for the manufacture, processing, compounding, production, or preparation for shipping of items of tangible personal property at a fixed location within this state."*

Specific to the tangible personal property requirement, the WTE Facility operations produce metals and electricity for sale.

In addition, the following language from FS 212.08(5)(c)3. mandates that purchasers must furnish the vendor with an affidavit stating the items purchased are for the designated use:

> *"The department may adopt rules that provide for implementation of this exemption. Purchasers of machinery and equipment qualifying for the exemption provided in this paragraph shall furnish the vendor with an affidavit stating that the item or items to be exempted are for the use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed under this chapter shall be subject to the penalty set forth in s. 212.085 and as otherwise provided by law. Purchasers with self-accrual authority shall maintain all documentation necessary to prove the exempt status of purchases."*

The County is exempt from sales tax on direct purchases pursuant to FS 212.08(6)(a), which states the following:

> *"There are also exempt from the tax imposed by this chapter sales made to the United States Government, a state, or any county, municipality, or political subdivision of a state when payment is made directly to the dealer by the government entity."*

Reagent sales tax is a tax-exempt cost pursuant to FS 212.051(1), which states as follows:

> *"Notwithstanding any provision to the contrary, sales, use, or privilege taxes shall not be collected with respect to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery. To qualify, such facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product must be used, installed, or constructed to meet a law implemented by, or a condition of a permit issued by, the Department of Environmental Protection; however, such exemption shall not be allowed unless the purchaser signs a certificate stating that the facility, device, fixture, equipment, structure, specialty chemical, or bioaugmentation product to be exempted is required to meet such law or condition."*

The County was not aware of the available sales tax exemption for machinery and equipment and the repair thereof. The Facility Contractor Controller was aware of the sales tax exemption. The Facility Contractor noted the sales tax exemption on its PO. However, the Facility Contractor did not effectively communicate the tax exemption to its subcontractors and scrutinize subcontractor invoices for tax-exempt items.

The Facility Contractor only recently achieved tax-exempt status for the purchase of reagents, yet it has not consistently enforced the tax exemptions to ensure all reagent invoices omit sales tax.

We Recommended Solid Waste Management:

A. Perform a cost-benefit analysis to determine if the level of effort required to recoup the $24,753 in tax-exempt sales tax on purchases of parts, materials, and labor would result in a net benefit to the County. If so, the County should work with the Facility Contractor to contact multiple subcontractors and file sales tax exemption affidavits with them referencing the applicable statutes and request retroactive sales tax reimbursement from each subcontractor.

B. Work with the Facility Contractor to ensure it accurately understands the sales tax exemption statutes and the distinction between exempt and non-exempt purchases. The Facility Contractor should also ensure each of its subcontractors can identify and apply the sales tax exemptions correctly and extend this information to their secondary subcontractors. If necessary, the County and the Facility Contractor should seek legal counsel to express an opinion on what constitutes an exempt or non-exempt purchase and how far the sales tax exemption can extend as more levels of subcontractors become involved.

C. Ensure the Facility Contractor files with each of its subcontractors the tax exempt affidavit required by FS 212.08(5)(c)3. Moreover, the Facility Contractor should scrutinize all future subcontractor invoices for exempt sales tax and cease reimbursing those amounts. If subcontractors are unable to use the Facility Contractor's tax exemption for their purchases from secondary subcontractors, the County should consider having the Facility Contractor procure the materials directly to obtain the sales tax exemption and cost savings to the County.

D. Work with the Facility Contractor to recoup the $253,812 in reagent sales tax paid on the Facility Contractor's monthly service fee invoices from February 2015 through September 2017. This includes contacting the reagent vendors to determine documentation requirements and fulfilling those requirements.

E. Work with the Facility Contractor to ensure the urea reagent vendor honors the sales tax exemption affidavit to stop the billing of sales tax moving forward. If the urea reagent vendor continues to invoice sales tax, Management should consult the County Attorney's Office to obtain a legal opinion on deducting reagent sales tax from future payments.

F. Work with the Facility Contractor to file a sales tax exemption affidavit with the carbon reagent vendor to stop the billing of sales tax moving forward. If a sales tax exemption affidavit is already in place, the Facility Contractor should ensure the carbon reagent vendor honors it. If the carbon reagent vendor continues to invoice sales tax, Management should consult the County Attorney's Office to obtain a legal opinion on deducting reagent sales tax from future payments.

Status:

A. **Not Implemented.** Management intends to consult with the County Attorney for interpretation of the ability to capture taxes paid and tax exemption for other materials, and services, before taking steps to recoup the funds.

B. **Not Implemented.** Management intends to consult with the County Attorney regarding sales tax exemptions so it can apply the exemption accurately.

C. **Partially Implemented.** Management provided an invoice demonstrating that the sales tax exemption was applied. However, due to the uncertainty of the correct application as

noted in the status of recommendation B above, we conclude this recommendation is partially implemented.

D. **Partially Implemented.** During the follow-up audit, Management determined it would seek to recoup the funds and planned to prepare an invoice for the reimbursement.

E. **Implemented.** We reviewed invoices that demonstrated sales tax was not charged, and purchase orders that indicated a sales tax exempt status.

F. **Implemented.** We reviewed invoices that demonstrated sales tax was not charged, and purchase orders that indicated a sales tax exempt status.

3. The County Miscalculated And Overpaid Invoice Retainage.

The County miscalculated retainage for one subcontractor, which resulted in an overpayment by the County. The County paid the Facility Contractor a total of $3,144,483 on five Facility Contractor invoices for the work of one subcontractor. Of the five Facility Contractor invoices, one represented the return of retainage withheld from the other four invoices and totaled $314,448. However, the County did not retain anything from the other four Facility Contractor invoices, so the fifth payment was an overpayment.

In order to analyze all activity for the noted subcontractor, we summarized and reviewed all invoices submitted for payment by the noted subcontractor to the Facility Contractor and determined the subcontractor submitted five invoices to the Facility Contractor, which totaled $2,572,759. After the Facility Contractor paid the five subcontractor invoices and added its 10% profit markup, the Facility Contractor billed the County $2,830,035. The County paid the full amount of these invoices plus an additional invoice for retainage it never withheld, for a total of $3,144,483. Therefore, this represents an overpayment to the Facility Contractor for $314,448.

According to the Solid Waste Program Manager, the Clerk's Finance Division created the retainage calculation schedule. The calculation never reduced the original Facility Contractor invoices to account for withheld retainage and instead allowed the full invoice amounts to be paid, yet the retainage was subsequently refunded to the Facility Contractor as if it had been previously withheld. As a result, the County should not have paid the return of the retainage invoice to the Facility Contractor.

Per the Service Agreement, the County may recoup any funds it paid without proper supporting documentation or invoice calculations. Specifically, per Section 8.8.2, Payment to Contractor,

> *"The County's Authorized Representative may also decline to approve an invoice submitted pursuant to this Section 8.8 or, because of subsequently discovered evidence or subsequent inspections or audits by the County's Authorized Representative, may reduce in whole or in part any future payment to the extent the County reasonably believes it has overpaid the Contractor under any prior invoice because of (i) defective or incomplete Work, (ii) improper or unsupported invoice calculations or (iii) lack of appropriate and supporting documentation."*

The Solid Waste Program Manager relied on an incorrect invoice retainage calculation completed by the Clerk's Finance Division, which resulted in the overpayment.

We Recommended Solid Waste Management:

A. Recoup the $314,448 in retainage overpayments to the Facility Contractor.

B. Improve its level of scrutiny to ensure all future invoice retainage calculations are accurate.

Status:

A. **Implemented.** Solid Waste was reimbursed for the overpayments.

B. **Implemented.** Management has implemented a system for tracking retainage to ensure that retainage is not paid out prior to project completion.

4. The Facility Contractor Did Not Pay Its Subcontractors Timely And Invoiced The County Prior To Paying The Subcontractors.

While reviewing all Facility Contractor TRP invoices and supporting documentation, we identified instances where the Facility Contractor invoiced the County for subcontractor work prior to paying the associated subcontractors. In addition to the Facility Contractor invoice, the Facility Contractor submits to the County the supporting subcontractor invoice or invoices, depending on the size and complexity of the project, and a signed and notarized Affidavit and Release, which states the following regarding the Facility Contractor's payment for work performed:

> *"The Contractor certifies for itself and its Affiliates, Subcontractors, materialmen, successors and assigns, that all charges for labor, materials, supplies, lands, licenses and other expenses for the above-specified Work for which the County might be sued or for which a lien or a demand against any payment bond might be filed, have been fully satisfied and paid."*

We reviewed all Facility Contractor TRP invoices paid since December 7, 2014, which is the date the Facility Contractor began operating the WTE Facility. Our review included all supporting

subcontractor invoices and Affidavit and Release documents. We initiated this review in conjunction with the discovery of subcontractor prompt payment discounts, which we addressed separately in OFI #1. We first narrowed our population to 442 subcontractor invoices where the Facility Contractor potentially received prompt payment discounts from its subcontractors. We next submitted the list of invoices to the Facility Contractor and requested the subcontractor payment amount, prompt payment discount amount, and the date the Facility Contractor paid the subcontractor invoice. We then compared the subcontractor payment date to the date the Facility Contractor invoiced the County for the associated work and signed the Affidavit and Release document.

We determined the Facility Contractor invoiced the County for 68 of 442, or 15%, subcontractor invoices prior to paying the associated subcontractors. In addition, since the Facility Contractor submitted a signed Affidavit and Release document with each Facility Contractor invoice, the statement in the Affidavit and Release that all subcontractor charges were fully satisfied and paid was false.

In order to analyze the timeliness of Facility Contractor payments to subcontractors, we calculated for each of the 442 subcontractor invoices the length of time between the subcontractor invoice date and the Facility Contractor payment date. We then compared the length of time it took the Facility Contractor to pay its subcontractors to the payment terms (e.g., net 30 days, net 45 days, or net 60 days) stipulated in the associated subcontractor invoices or the Facility Contractor POs. As a result, we determined the Facility Contractor paid 92 of the 442 invoices, or 21%, after the invoice due date. Of that number, the number of days late ranged from 1 day to 180 days. See the following table for the number of days late summarized and expressed in 30-day intervals:

Facility Contractor Payments to Subcontractors December 17, 2014 – October 25, 2016	
Days Late	**Count of Subcontractor Invoices**
1-30	56
31-60	18
61-90	10
91-120	6
121-150	1
151-180	1
Total	**92**

Additionally, in our sample review of Facility Contractor invoices, we determined the County did not consistently pay within 45 days of receipt as required per the Local Government Prompt Payment Act. Seven of 20 invoices (35%) reviewed were paid untimely, ranging from a total of 46 to 53 days after receipt. We noted that Solid Waste Management processed the invoices in an average of 32 days, and Finance processed the invoices in an average of 17 days.

Untimely subcontractor payments by the Facility Contractor could expose the County to unnecessary claims from the subcontractors. Payment uncertainty could also tarnish the County's reputation and discourage potential subcontractors from bidding on future projects.

When the County does not pay Facility Contractor invoices within 45 day of receipt as required by the Local Government Prompt Payment Act, the Facility Contractor may charge the County interest of 1% per month on the unpaid balance beginning 30 days after the due date pursuant to FS 218.74(4).

Chapter 218, Part VII, of the FS codifies the Local Government Prompt Payment Act. Per FS 218.74(2):

> *"The payment due date for a local governmental entity for the purchase of goods or services other than construction services is 45 days after the date specified in s. 218.73."*

FS 218.73 defines the payment due date as follows:

> *"Timely payment for nonconstruction services.--The time at which payment is due for a purchase other than construction services by a local governmental entity must be calculated from:*
>
> *(1) The date on which a proper invoice is received by the chief disbursement officer of the local governmental entity after approval by the governing body, if required; or*
>
> *(2) If a proper invoice is not received by the local governmental entity, the date:*
>
> *(a) On which delivery of personal property is accepted by the local governmental entity;*
>
> *(b) On which services are completed;*
>
> *(c) On which the rental period begins; or*
>
> *(d) On which the local governmental entity and vendor agree in a contract that provides dates relative to payment periods*; *whichever date is latest. "*

Specific to penalties for non-compliance, FS 218.74(4) states the following:

> *"All payments, other than payments for construction services, due from a local governmental entity and not made within the time specified by this section bear interest from 30 days after the due date at the rate of 1 percent per month on the unpaid balance."*

Although the FS address prompt payment for local governmental entities, they do not specifically address the responsibilities of local government contractors to pay their subcontractors timely. The Facility Contractor should adhere to the payment terms negotiated with each of its subcontractors to ensure it makes net payment within the required timeframe to avoid late payments.

Section 8.8.2, Payment to Contractor, of the Service Agreement states the following with regard to the County's ability to withhold payment in the event the Facility Contractor does not pay its subcontractors:

> *"The County may decline to approve the Contractor's request for payment and shall withhold its approval, in whole or in part, if… (d) the Contractor has failed to make uncontested payments to Subcontractors or Affiliates (or failed to obtain necessary payment documentation from them)."*

Section 10.8, Payment for Facility Recovery and other Projects, of the Service Agreement states the following regarding the required payment documentation:

> *"Payment for all Projects and improvements performed in accordance with Sections 10.1, 10.2 or 10.6 of this Section 10 shall be paid in accordance with the provisions of Sections 8.7 and 8.8, and invoices for all such payments shall be accompanied by an affidavit and release in the form provided in Schedule 21 (Form of Affidavit and Release)."*

Upon invoicing the County, the Facility Contractor should provide proof that it has satisfied all its subcontractor obligations. If the Affidavit and Release document is unreliable, the County cannot accept it as proof the Facility Contractor fulfilled its subcontractor obligations. The Facility Contractor must provide additional documentation to support this conclusion.

Solid Waste Management indicated the Facility Contractor does not have an efficient payment processing system. Local Facility Contractor staff approves payments and then sends the documentation to corporate for payment disbursement. This often results in delays. In addition, the processing time between Solid Waste Management and Clerk's Finance can cause delays. Clerk's Finance may ask Solid Waste Management for clarification or additional information prior to processing an invoice.

The Facility Contractor did not provide sufficient proof of subcontractor payment to the County. The County relied on the Affidavit and Release document submitted with each Facility Contractor invoice as proof the Facility Contractor paid all subcontractor claims. However, the Affidavit and Release document was unreliable.

We Recommended Solid Waste Management:

A. Require the Facility Contractor to submit with its invoice and Affidavit and Release document proof of subcontractor payment. The supporting documentation could be in the form of a payment report or a copy of the check payable to the subcontractor. If the Facility Contractor does not provide the required proof, the County should deny payment of the Facility Contractor invoice, pursuant to Section 8.8.2 of the Service Agreement, until the Facility Contractor provides the required support. If practical, the County should work with the Facility Contractor to amend the Service Agreement to include this documentation requirement to ensure the County pays only after the Facility Contractor has fulfilled its subcontractor obligations.

B. Work with the Facility Contractor to develop an expectation of timely subcontractor payment. If practical, the County should work with the Facility Contractor to amend the Service Agreement to require the Facility Contractor to pay each subcontractor in adherence to the associated payment terms.

C. Ensure the County pays all Facility Contractor invoices within 45 days of receipt, as required by the Local Government Prompt Payment Act.

Status:

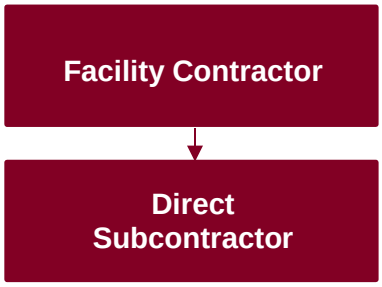
A. **Partially Implemented.** Approximately 80% of current TRP projects are billed as lump sum projects, and discounts are not applicable. For the remaining 20% of cost substantiation projects, the Facility Contractor submits proof of payment only when discounts are taken. We continue to encourage management to implement our recommendation.

B. **Implemented.** Management continues to review payment information for timely subcontractor payment when it is provided. There have not been any subcontractor complaints due to untimely payment.

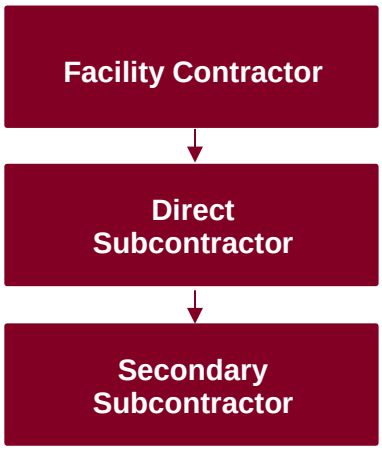
C. **Not Implemented.** We reviewed three Facility Contractor invoices and corresponding payment data and noted that one invoice was paid beyond the allowable 45-days (63 days after receipt). In this instance, Solid Waste Management processed the invoice in 39 days and Finance processed the invoice in 24 days. Untimely payment by the County may result in the Facility Contractor charging the County interest of 1% per month on the unpaid balance, beginning 30 days after the due date pursuant to F.S. 218.74(4). We continue to encourage management to implement our recommendation.

5. A Subcontractor Did Not Receive Payment For Work Performed At The WTE Facility.

While evaluating the Facility Contractor's management of the WTE Facility, we identified a subcontractor that had difficulty obtaining payment for work performed. Some subcontractors contract directly with the Facility Contractor. Others contract with the Facility Contractor's subcontractors. Following is an illustration of a direct subcontractor relationship:



Following is an illustration of a direct and secondary subcontractor relationship:



We conducted interviews with various direct and secondary subcontractors of the Facility Contractor. The purpose of the interviews was to obtain feedback about the subcontractors' experiences working at the WTE Facility and with the Facility Contractor.

During one of the interviews, the President of a secondary subcontractor informed us the direct subcontractor had not paid some of the secondary subcontractor's invoices. As a result, he had to discontinue work on the project. He was uncertain of the possible remedies since he was not in a direct contract with the Facility Contractor, but he planned to discuss potential remedies with legal counsel.

At the time we conducted the interview, unpaid balances dated back six months for approximately $260,000. According to the President of the secondary subcontractor, when he

contacted the Facility Contractor directly about this issue, the Facility Contractor stated the direct subcontractor was over budget for the associated project. The secondary subcontractor subsequently offered to reduce its bill by $40,000 in order to expedite payment. The Facility Contractor's stance was it had already paid the direct subcontractor for the work, so it was up to the direct subcontractor to pay the secondary subcontractor. Therefore, the Facility Contractor refused to pay the secondary subcontractor since it would have been a duplicate payment.

Throughout the remainder of the audit period, the noted secondary subcontractor continued to contact the Inspector General (IG) to inquire about the status of its payment. We were also in contact with Solid Waste Management who informed us the noted direct subcontractor included incomplete work in its invoice and change orders to the Facility Contractor. Due to the unethical behavior, Solid Waste Management banned the direct subcontractor from the WTE Facility and developed a solution to release funds to the direct subcontractor for the completed portion of the work, which the direct subcontractor could in turn release to the secondary subcontractor.

During a more recent conversation, Solid Waste Management stated the direct subcontractor continued to perform work at the WTE facility under the Facility Contractor's direction despite the County instructing the direct subcontractor not to do so. Additionally, the direct subcontractor did not provide scopes of work to the County for review and approval. Therefore, the County declined payment for the work. The direct subcontractor also refused to pay the secondary subcontractors for the associated work.

Solid Waste Management met with the Facility Contractor multiple times to resolve this issue. According to Solid Waste Management, the Facility Contractor provided assurance it would strengthen its project management controls over the tracking of the direct subcontractor and the direct subcontractor had made management staff changes to improve its project completion controls. The Facility Contractor also requested Solid Waste Management's approval for the direct subcontractor to return to work at the WTE Facility and had discussions and negotiations with the direct subcontractor to get the direct subcontractor on site at the WTE Facility. Solid Waste Management agreed to review all submitted change orders to approve completion of outstanding work and extra work by the direct subcontractor. This would allow the Facility Contractor to pay the direct subcontractor so it could pay its secondary subcontractors.

Most recently, the President of the noted secondary subcontractor communicated again with the IG and stated the direct subcontractor still had not paid him despite the Facility Contractor paying the direct subcontractor.

The noted secondary subcontractor indicated it is still seeking payment from the direct subcontractor and expressed the lack of revenue has resulted in a significant strain on its cash flow. The County has no legal responsibility to subcontractors and cannot mediate between two subcontractors. However, this could still affect the County's reputation and dissuade potential subcontractors from seeking work at the WTE Facility. Moreover, if project oversight controls do not improve, this issue could repeat itself.

We also noted during audit fieldwork, the County could not provide accurate management statistical reporting on projects nor accurately predict future funds' requirements and

contingencies. Moreover, the County did not consistently update its TRP project-tracking workbook to reflect current project statuses.

When we tried to identify the population of closed projects, we found there was not an accurate listing, and we instead had to rely on hard copy binders in storage from which to pull a sample. Since the TRP project-tracking workbook contained so much information and had so many users, it became difficult to maintain an accurate listing that the County could readily summarize for reporting purposes. In addition, the County sometimes had difficulty identifying final Facility Contractor invoices because the Facility Contractor did not know if its subcontractors would submit additional invoices, thereby delaying the invoice approval process.

Without an accurate and reliable source of project information, Management cannot use project information to make decisions or forecast the budget. It is crucial that project tracking be efficient so the County does not experience budget deficits related to the TRP.

The Facility Contractor should have sufficient project management controls to ensure all subcontractor work is approved and within budget prior to completion. The County and Facility Contractor should also ensure there are documented disciplinary recourses for subcontractor non-compliance.

The County's Purchasing Policy and Procedure Manual states the following in Section 7.0:

> *"Because the opportunity to participate in competitive procurements or to supply goods or services to the county is a privilege, not a right, this privilege should be denied to persons or entities that engage or are involved in activities or actions as described herein that adversely impact the quality of goods and services provided to the county for the benefit of the public. In those instances, it is in the best interests of the public to disqualify vendors by suspension or debarment from inclusion on future vendor lists or from consideration for award of new contracts, work, or any work assignments on existing contracts, based upon documentation that the grounds for suspension or debarment as provided herein exist."*

Section 7.0 (1) d. states the following related to financial reasons for potential suspension:

> *"The vendor becomes insolvent, has proceedings in bankruptcy instituted against it, or has a receiver or trustee appointed over its property…"*

Section 7.0 (1) f. provides the following reasons for potential suspension related to performance:

> *"The vendor and the county are engage [sic] in adversarial proceedings (i.e., court proceedings, arbitration, or administrative proceeding) arising from or related to the vendor's performance of a contract with the county…"*

According to Wrike, a work management and collaboration platform, project management best practices include documenting everything. Wrike specifically states:

> *"Documenting everything that happens in your project is a sure-fire way to ensure… you have all the data you need to make better decisions and learn from previous challenges."*

It is imperative to be able to track work performed and be able to provide project completion statistics as needed.

The Facility Contractor did not adequately monitor and approve the work performed by its direct subcontractor to ensure it was appropriate and on budget. In addition, the direct subcontractor poorly managed its work and budget. The Facility Contractor and its direct subcontractor also did not communicate well with each other on project completion.

Additionally, the County does not have an organized method for tracking projects. Currently, staff uses a convoluted Excel workbook. Multiple individuals have access to the workbook, and it is configured in shared mode so all users may update it simultaneously, if needed.

We Recommended Solid Waste Management:

A. Work more closely with the Facility Contractor to ensure there is more communication related to project completion and budget overages. Management should also ensure it collaborates with the Facility Contractor to jointly authorize all ongoing subcontractor work and confirm the work performed is within budget.

B. Work with the Facility Contractor to evaluate and consider disciplining the noted direct subcontractor. If the consensus is the direct subcontractor's behavior warrants discipline, the County should refer the matter to the Purchasing Department for evaluation. The Purchasing Department could then make the determination if the direct subcontractor's actions warrant suspension or debarment.

C. Work with the Facility Contractor to add a clause to the Service Agreement requiring the Facility Contractor to vet all potential subcontractors against the Purchasing Department's suspension and debarment lists and prohibit any associated subcontractors from working at the WTE Facility.

D. Review the TRP project-tracking workbook, compare it to hard copy project documents to ensure it captures all TRP projects, and update it as necessary.

E. Going forward, design a process for updating the TRP project-tracking workbook to limit updates to as few individuals as possible. If necessary, hire a consultant to help with this process and/or consider purchasing a new project management system.

Status:

A. **Implemented.** Management has implemented a process for project tracking and meets consistently with the Facility Contractor to discuss project budgets.

B. **No Longer Applicable.** Management and the Facility Contractor developed a plan for monitoring the subcontractor so that it could complete the required work. The subcontractor has since terminated its business.

C. **No Longer Applicable.** There have been no reported issues at the WTE Facility and the Facility Contractor uses a group of well performing subcontractors.

D. **Implemented.** Management has updated their project-tracking workbook.

E. **Implemented.** One person is responsible for maintaining the project-tracking workbook.

6. The County Did Not Maintain Project Documentation According To Service Agreement Requirements.

We determined the Facility Contractor and the County did not always follow the established procedures and the sequence of events as described in the Service Agreement for TRP projects. We reviewed a sample of ten project files and noted the following:

- Three of ten project files (30%) did not contain all of the project documents that the Facility Contractor is required to submit during the project submittal phase. One project was missing the entire project submittal, one project was missing a preliminary scope of work, and one project was missing a bid evaluation report.

- Three of ten project files (30%) did not contain a Notice to Proceed, which the County issues as the first approval after being notified of the need for the project by the Facility Contractor. In all three cases, the County issued a memo in place of the Notice to Proceed. All three memos stated the County provided verbal authorization previously. In one instance, the County gave verbal authorization five months prior to the memo being issued.

- Five of ten project files (50%) did not include an authorization letter, which the County issues after the Facility Contractor submits a preliminary scope of work. The authorization letter serves as the County's approval for the Facility Contractor to prepare the final scope of work.

- Three of ten project files (30%) were missing a punch list, which identifies any outstanding issues to be resolved before the County is satisfied the project was completed appropriately. Once outstanding issues are resolved, the punch list serves as documentation that a project has been completed.

Additionally, during interviews, Solid Waste staff indicated the Facility Contractor was providing insufficient project specifications in the scopes of work. The County's Independent Consulting Engineer compiles quarterly and annual operations reports regarding Facility Contractor performance. A review of these reports revealed the same concern during the first year of the TRP (December 7, 2014 through September 30, 2015). Due to the Facility Contractor's concerns over the release of its proprietary trade information, the only way the County can look at the detailed project specifications the Facility Contractor provides its vendors, is to look at them at the Facility Contractor's office. Solid Waste Management indicated this was not an efficient practice for reviewing project scopes of work.

Solid Waste Management confirmed insufficient detail on the scopes of work was a problem, but, ultimately, issues were resolved through communication. However, staff indicated in interviews that communication on projects could sometimes be a problem. There are multiple points of contact on each project, and without having a single person to coordinate communication, delays occur. Management believes having one point of contact would create more delays and noted the TRP is a non-routine situation. Management also stated communication has improved over time.

During audit discussions related to the project documentation process, Solid Waste Management indicated concerns with the project award documentation on two TRP projects. As a result of reviewing cost summaries for the two TRP projects, we noted both projects required change orders. However, neither of the change orders were on file, and Management could not provide documentation to demonstrate they had approved the changes. One project had an original winning bid of $475,000, with a change order of $238,745, or just above 50%. The second project had an original winning bid of $265,000, with a change order of $25,740, or just below 10%.

The Service Agreement states a specific process for submitting TRP projects for review, and for documenting the project. Specifically, Schedule 19 Technical Recovery Plan, states:

> *"Unless otherwise waived in advance in writing by the County's Authorized Representative, the following shall each be provided, in reasonable detail, for each Project as part of the Preliminary Scope of Work and Final Scope of Work developed in accordance with Section 10.6 of the Service Agreement..."*

Required information includes the project name, summary report (preliminary scope of work), timing and schedule, maximum project price, payment type, criteria for project completion and acceptance, impact on performance guarantees and utilization allowances (if any), a list of additional insurance or securities required to be obtained, a statement of consequences, and a business case (if applicable).

According to the Federal Financial Institutions Examination Council:

> *"Detailed project plans, clearly defined expectations, experienced project managers, realistic budgets, and effective communication significantly enhance an organization's ability to manage projects successfully."*

Per Solid Waste Management, it created and implemented a punch list in order to identify items that needed correction, to document that the items were corrected, and that the project was successfully completed. Furthermore, Section 10.7.1 of the Service Agreement states the following specific to project inspections:

> *"Upon completion of each Project, the Contractor's Authorized Representative shall promptly give Notice to the County's Authorized Representative. The County's Authorized Representative shall inspect the Project Work, review any test results and approve or disapprove such Project as being complete within ten (10) Days following the Notice of such delivery from the Contractor's Authorized Representative."*

Obtaining change orders in writing is a best practice in the construction industry and minimizes the risk of disputes. Solid Waste staff indicated the Facility Contractor must submit change orders and obtain authorization, and Solid Waste only approves change orders if the maximum budget has not been expended.

There are instances when it is not feasible to complete all administrative steps based on time constraints. In other instances, the Facility Contractor does not submit the appropriate documentation at the appropriate times. Communication delays create some time constraints, as there is not one point of contact between the County and the Facility Contractor.

Solid Waste staff involved with completing punch lists were not aware of the reason the punch lists were not on file for three of the projects we reviewed. Initially, staff indicated it compiled the project files we reviewed prior to implementing punch lists. However, we determined all three project completion dates were after the implementation of the punch list procedure. Solid Waste Management was also not aware why the change orders were not on file, but it stated it always discusses and approves change orders, if needed.

Not following the award documentation process results in all parties being unclear of the status of a given project submittal, as well as the intent of each correspondence item, which causes much back and forth, and limits the ability to impose deadlines. This could result in unnecessary change orders and the prolonging of the TRP period, both of which could ultimately cost the County money in the form of additional project expenses and loss of performance-based revenue.

Due to the short-term nature of the Service Agreement, there is a risk of the Facility Contractor installing substandard equipment or materials and not being responsible for long-term maintenance. During a walkthrough of the WTE Facility, we observed a discussion that exemplified the direct result of insufficient scopes of work. The discussion was about a Continuous Emission Monitoring system, which was insufficient for the WTE Facility's needs. Since the Facility Contractor did not provide a detailed scope of work, all parties did not agree to the project specifications. During the discussion, staff from the County's Independent Consulting Engineer stated the Facility Contractor previously discussed the issue with the

subcontractor without the County's knowledge. During our observation, the County's Independent Consulting Engineer was making County staff aware of the issue.

By not completing the punch list form, it is unclear if there were deficiencies noted during the completion inspection. Moreover, there is no proof the responsible subcontractor corrected any applicable deficiencies. Similarly, change orders are necessary to document the agreed upon changes to the scope or terms of the project. Relying on verbal agreements increases the risk of lengthy disputes due to misunderstandings, which could result in project delays. Change orders could significantly affect the project cost, which could create budget constraints. Therefore, it is imperative the County evaluates all proposed project changes and, if approved, formalize them in change orders.

We Recommended Solid Waste Management:

A. Review the award documentation process and modify as necessary to ensure required steps meet the needs of all parties and do not cause unnecessary delays in completing a project.

B. Ensure the Facility Contractor understands and follows the modified process.

C. Ensure the County inspects each completed TRP project, prepares a punch list, and maintains the list for future reference.

D. Ensure change orders are documented and approved by all parties prior to execution.

Status:

A. **Implemented.** Management and the Facility Contractor have developed a process to meet the needs of each party.

B. **Implemented.** Management and the Facility Contractor have developed a process to meet the needs of each party.

C. **Implemented.** Management, the Facility Contractor, and the County's consultant engineer are involved with the inspection of each completed project, and use a punch list to document the inspection.

D. **Implemented.** Management has retained documentation of change order requests and subsequent approval letters.

7. The WTE Facility Is Not Always Maintained In An Acceptable Condition.

Although the Facility Contractor has made substantial improvements at the WTE Facility with regard to housekeeping, there are areas the Facility Contractor still needs to address. During a plant tour, we noted ash buildup on the new grating and machines with illegible tags. Per the Independent Consulting Engineer's operations report for the final quarter of 2015, "Poor housekeeping has been a significant and recurring issue in the past at the Pinellas WTE Facility."

During interviews with subcontractors, some subcontractors also indicated they experienced unsafe working conditions at the WTE Facility at the time of an outage. An outage occurs when the plant shuts down to complete numerous projects simultaneously. Specifically, there were several subcontractors working in close quarters with cranes moving overhead, sparks flying, and steel plates being dropped close to workers.

Housekeeping is important to ensuring the Facility Contractor maintains the new WTE Facility equipment in order to reach its full useful life. Section 3.9, Housekeeping, Maintenance of Buildings and Grounds and Customer Service, of the Service Agreement states:

"The Contractor shall continually and on a daily basis maintain the Facility and the Facility Site in an aesthetically attractive, clean, neat, orderly, and litter free condition, and shall implement and maintain appropriate dust control measures in and around the Facility."

Safety is paramount in the WTE Facility to protect workers from injury. The Service Agreement states in Section 3.5, Safety Program:

"...assure that all employees and Subcontractors are trained in the safety, health and environmental regulations and procedures specific to the Facility... take all reasonable precautions, in accordance with Prudent Industry Practices, to prevent damage, injury or loss..."

When the Facility Contractor took over the WTE Facility, it was not appropriately maintained. It has been a significant undertaking to bring the WTE Facility up to an acceptable condition. Since the reports of safety concerns occurred during an outage and there were time constraints to complete projects, this may have resulted in some of the unsafe working conditions, as workers were rushing to complete work in proximity to other workers.

When the WTE Facility is not maintained, it cannot operate at peak efficiency, unsafe work conditions may exist, and employees may perform work inefficiently to compensate for the conditions. In addition, an improperly kept facility can result in decreased staff morale, accidents, injury, or death.

We Recommended Solid Waste Management:

A. Ensure the Facility Contractor keeps the WTE Facility clean and orderly. This should include maintaining the new equipment well in order to maximize its useful life.

B. Ensure safe working conditions at all times at the WTE Facility.

Status:

A. **Implemented.** During a tour of the facility, the auditors noted the WTE Facility was in an orderly condition. Additionally, the County's consultant engineer reviews housekeeping and noted in a recent quarterly report that the Facility Contractor has significantly improved housekeeping at the WTE Facility.

B. **Implemented.** In a recent quarterly report, the County's consultant engineer indicated that the WTE Facility had gone 2,147 days without lost time due to injury.

8. There Is A Lack Of Security At The WTE Facility.

During our audit, we identified multiple areas where the Facility Contractor could improve security at the WTE Facility, including worker identification and stronger physical security controls. Currently, there are very little physical security controls in place. The existing gate is inoperable and left open. A security guard is on site for outages, but there is no guard during non-outage periods, which is a majority of the time.

While the IG's staff was conducting a site visit at the WTE Facility during an outage, the IG's staff observed the main gate to the WTE Facility was open. Although the Facility Contractor staffed a guard at the gate entrance, the IG's staff was able to gain access without interference from the guard and drove through the work area to the rear of the WTE Facility. The IG's staff also noted many workers did not have visible identification issued by the County or Facility Contractor. Some had identification provided by their company, and some did not have any visible identification.

According to County staff during a discussion regarding WTE Facility security, the Pinellas County Sheriff's Office had recently been on site and recommended the County implement worker identification. The number of staff on site varies depending on the projects being performed, but during an outage, which occurs multiples times per year, there are 250–300 workers on site. Solid Waste Management did not feel identification was necessary and indicated the gate was being repaired, and eventually, some Facility Contractor staff would be issued electronic access cards for entry through the gate.

The IG's staff conducted interviews with various subcontractors, and on the issue of security, one subcontractor commented there was little security at the WTE Facility. For example, there is a guard, but only to monitor vehicles, not foot traffic. The subcontractor also noted many other facilities have various additional security protocols, including:

- Magnetic key cards
- Required check-in with facility staff
- Required photo identification
- Background checks
- Security guard onsite 24/7/365

Other subcontractors interviewed thought security was adequate due to the guard being on site, and two subcontractors stated they must have a sticker on their vehicle to gain entry by the guard into the WTE Facility, which further strengthened security in their opinion. However, as noted above, the IG's staff was able to enter the WTE Facility by driving directly in front of the guard, without a sticker on their vehicle. In addition, the guard is only on site during outages.

The WTE Facility is even more vulnerable during non-outage periods when unknown visitors can freely enter the site with no potential of a guard stopping them. Given that the guard is the primary physical security control during outages, this control should be strengthened. In non-outage periods, other controls should be implemented to ensure the WTE Facility is as secure as possible.

Section 3.16, Security at the Facility; Confidentiality of Security Measures, of the Service Agreement includes the following:

- *"The Contractor shall be responsible for Facility security, including the administration and implementation of the security procedures for the Facility..."*

- *"...access to the Facility and the Facility Site shall only be given to its employees, Subcontractors, Affiliates, Contractor's invitees, Solid Waste haulers, Governmental Authorities and those Entities permitted by Section 3.15 and as mutually determined by the County's Authorized Representative and the Contractor's Authorized Representative."*

- *"The access gates to the Facility Site shall remain closed except when admitting such employees, Subcontractors, Affiliates, Contractor's invitees, haulers, Governmental Authorities and Entities."*

- *"Contractor staff and, as approved by the County, Subcontractor staff, shall be assigned card access for specified gates and buildings on the Facility Site, with such access specific to the work being performed by such staff. Access cards and all card readers and associated access and security devices shall be provided, programmed and maintained by the County. It shall be the Contractor's responsibility to issue access cards, provide information required by the County for staff to whom cards are issued, and to recover such cards at the termination of employment by Contractor or Subcontractor staff that have been issued access cards."*

- *"The Contractor shall also provide all additional security measures as directed by the County; provided that if any such additional measures increase the Contractor's costs, the County's Authorized Representative and the Contractor's Authorized Representative shall negotiate an appropriate amendment to this Agreement..."*

Both County and Facility Contractor staff have indicated that badges would be costly. In addition, there was a consensus that Facility Contractor staff is observant enough to note any unusual circumstances, and there had not been any security related issues at the WTE Facility to date.

Threats to the WTE Facility include theft, malicious activity, and inadvertent injury to a citizen looking for waste disposal facilities. In addition, if there is an emergency, it is imperative Management is aware of who is on site.

We Recommended Solid Waste Management:

A. Implement the use of identification badges for Facility Contractor and subcontractor staff who work at the WTE Facility.

B. Require visitors to check in with a security guard and provide photo identification upon entering the WTE Facility.

C. Continue working to install a security gate at the WTE Facility and, once installed, ensure it is closed as often as possible.

D. Consider performing background checks on potential contractors and subcontractors working at the WTE Facility.

Status:

A. **Implemented.** During a tour of the WTE Facility, the auditors noted staff had proper identification on their uniforms.

B. **Partially Implemented.** During a visit at the WTE Facility, there was no security guard on site and the auditors were not required to check in before entering the site. Management indicated that a security guard is on site only during outages. We continue to encourage management to implement our recommendation.

C. **Implemented.** Management indicated the security gate was installed and activated.

D. **Partially Implemented.** The Facility Contractor performs a general background check of the subcontractor company, but does not perform background checks of subcontractor employees. We continue to encourage management to implement our recommendation.

9. Billing Discrepancies Between The County And The Facility Contractor Are Not Resolved.

The County and the Facility Contractor have unresolved disagreements in billed and projected budget amounts. We noted four of 20 invoices (20%) that demonstrated a discrepancy between the County's and the Facility Contractor's records.

- One invoice showed a discrepancy of $4,042 between the County's and Facility Contractor's records because a previous invoice had been rejected for not being a TRP cost, and the Facility Contractor had not updated its records to reflect this rejected amount.
- Three invoices showed discrepancies totaling $3,306, because the County deducted the payment bond markup, and the Facility Contractor had not accepted this decision. In one of these instances, the County paid the payment bond markup of $1,385 despite this being against its policy. A payment bond is a surety bond that guarantees project subcontractors and material suppliers will be paid.

Additional details related to the three invoices with bond markup discrepancies are below:

- Bond markup was included as an approved cost in the Notice to Proceed issued by the County, then later deducted from a payment.
- One of the County's recalculated invoices included a different budget amount due to a previous deduction of a bond markup on a project that the Facility Contractor did not deduct in its records.
- One invoice included a bond markup that was inadvertently paid, and the County is attempting to recoup it.

Section 14.1 of the Service Agreement states the following, specific to the dispute resolution process:

> *"To facilitate the timely and effective resolution of any controversy or dispute that may arise under this Agreement, the Parties shall establish, at least thirty (30) Days prior to the Commencement Date, a coordination committee consisting of management representatives of the Contractor, the County and the Consulting Engineer (the "Member Entity(ies)"). Such representatives on the coordination committee shall be appointed by each Member Entity within such thirty (30) Day period prior to the Commencement Date, and Notice of such appointment shall be delivered to each member Entity. The appointed representatives are subject to change, and Notice of any such change by any Member Entity shall be delivered to all other Member Entities.*
>
> *To the extent that the Parties, after good faith attempts, cannot resolve any controversy or dispute that may arise under this Agreement, (a) either Party, to the extent that its interests are adversely affected, may refer the matter to mediation*

in the State in accordance with Section 14.2 by a mediator selected pursuant to Section 14.3.1 and such mediator shall assume exclusive jurisdiction over the matter in controversy or (b) if the Parties agree that the matter primarily involves Technical Issues and desire that the Independent Engineer resolve the matter, the matter shall be referred to the Independent Engineer for resolution and such Independent Engineer shall assume exclusive jurisdiction over the matter in controversy. Neither the decision of the mediator nor the decision of the Independent Engineer shall be binding on the Parties, and either Party, after the mediator renders his or her recommendation or, as applicable, the Independent Engineer renders his or her decision, may refer the matter, exclusive of any other jurisdictional forum, to the Sixth Judicial Circuit Court for Pinellas County, Florida. The Contractor may, in its discretion, join Subcontractor(s) in any resolution of disputes under this Section 14."

Since the County did not pay an invoice the Facility Contractor submitted, because the invoice did not include charges for a TRP project, and the Facility Contractor did not reflect this in its records, the County's and Facility Contractor's records are not in agreement. In addition, the County and the Facility Contractor do not agree on the markup eligibility for bond costs, and the Service Agreement is not specific.

The County has consulted with multiple agencies, including the County Attorney, to reach its conclusion, and most recently, the Assistant County Administrator has concurred that payment bonds are a PTC and are not eligible for markup. It took approximately one year to get a formal County opinion on this issue. The Facility Contractor believes the required bonds are a direct cost and, therefore, should be eligible for the assessment of 10% markup on all bond costs. If the budget discrepancies are not resolved timely, the County may face litigation at the end of the TRP period.

We Recommended Solid Waste Management:

A. Attempt to resolve all billing disagreements immediately in order to eliminate the potential for a lengthy and expensive legal resolution process.

B. Exclude bond markup from all Notices to Proceed in order to ensure consistent application of its position on the matter.

C. Recoup the $1,385 payment bond markup overpaid to the Facility Contractor.

Status:

A. **Implemented.** Management and the Facility Contractor meet twice monthly to reconcile project information.

B. **Implemented.** Management has excluded bond markup on the Notices to Proceed.

C. **Implemented.** Solid Waste received the bond markup overpaid to the Facility Contractor.

10. Policies And Procedures Are Not Complete.

Management provided a compilation of 28 policies and procedures for plant operations and performance, electrical generation reporting, invoice processing, and other miscellaneous procedures. Twenty-seven of the provided policies and procedures (96%) were in draft form. One of the procedures provided did not contain a date, and it was unclear if the information was current.

Written policies and procedures provide guidance necessary for proper and consistent methods of carrying out departmental activities at a required level of quality. Establishing policies and procedures provides Management an opportunity to identify adequate processes and internal controls for staff. The development of policies and procedures also supports the cross training and backup for key staff functions.

It is Management's responsibility to establish written policies and procedures covering key department processes. The policies and procedures should be in sufficient detail to provide standard performance criteria and reduce the risk of misunderstanding and/or unauthorized deviations that could cause processing errors.

Since Management has not established written policies and procedures, unauthorized deviations may occur that could cause processing errors. In addition, backup staff will not have a reference when performing another staff member's duties.

We Recommended Solid Waste Management:

A. Update all policies and procedures to reflect current procedures.

B. Approve and implement all policies and procedures.

Status:

A. **Partially Implemented.** Management is working to complete the policies and procedures. We continue to encourage management to implement our recommendation.

B. **Partially Implemented.** Management is working to complete the policies and procedures. We continue to encourage management to implement our recommendation.

Division of Inspector General

Ken Burke, CPA

Clerk of the Circuit Court and Comptroller
Pinellas County, Florida

Services Provided

Audit Services
Investigations
Guardianship Services
Consulting
Training
County Fraud Hotline
Guardianship Fraud Hotline
PCSO PREA Hotline

An Accredited Office of Inspector General

Call: (727) 464-8371
Fax: (727) 464-8386
Fraud: (727) 45FRAUD
(727) 453-7283

Internet: www.mypinellasclerk.org
www.twitter.com/pinellasig
www.facebook.com/igpinellas

Write:
Division of Inspector General
510 Bay Avenue
Clearwater, FL 33756