



**Gulf Consortium Agenda
September 17, 2014, 9:30 a.m. Central
Azalea I & II, Sandestin Golf & Beach Resort
9300 Emerald Coast Parkway
Miramar Beach, Florida
Dial In Number: 1-888-670-3525
Participant Passcode: 998 449 5298#**

1. Call to Order
2. Pledge
3. Photograph of Gulf Consortium Board of Directors
4. Public Comment
5. Approval of August 7, 2014 Minutes
6. U.S. Treasury Report
 - 6.1 Interim Final Rule Comments Update
 - 6.2 US Treasury Direct Allocation Guidance Document
7. Restoration Council
 - 7.1 Approval of Comments on Council's Planning Allocation Interim Final Rule
 - 7.2 RESTORE Act Funding and Projects Update
Mr. Phil Coram, P.E.
Florida Department of Environmental Protection
Administrator, Florida Coastal Office
8. Approval of Request for Best and Final Offer (BAFO)
Roman Gastesi, Chair of the Evaluation Team
Shelly Kelley, Leon County Purchasing Director
9. Interim Manager's Report
 - 9.1 Meeting Schedule for 2015
 - 9.2 FY 2014/15 Budget Approval



- 9.3 Update on Other Deepwater Horizon Restoration Partners
- 9.4 Report on Counties' Multi Year Implementation Plans (Pot 1)

10. Interim General Counsel Report

- 10.1 Officer elections in January 2015
- 10.2 Procurement Policies Update for Grants Writer, General Counsel, Manager
- 10.3 Procurement Policy: Approval of Process for Securing Independent Auditor
- 10.4 Proposed Amendment to Interlocal Agreement with Leon County

11. Proposed Resolution Regarding Federal Fisheries Management

12. Enterprise Florida
Mr. Kim Wilmes, VP Marketing, Enterprise Florida

13. New Business

14. Public Comment

15. Upcoming 2014 Meetings

November 19, 2014
FAC Legislative Conference
Tampa Marriott Waterside Hotel & Marina
700 South Florida Avenue, Tampa, Florida 33602
9:00 – 11:00 a.m.

16. Adjourn

**Gulf Consortium Meeting
August 7, 2014 9:30 a.m. (CT)
Hilton Pensacola Beach
Escambia County (Pensacola Beach, FL)**

Board Members in Attendance: Ms. Pam Anderson, Mr. Parrish Barwick (Jefferson), Mr. Peter Bos, Commissioner Sara Commander (Walton), Commissioner Chris Constance (Charlotte), Commissioner Wayne Dukes (Hernando), Commissioner Charles Hines (Sarasota), Mr. Dustin Hinkel (Taylor), Commissioner Susan Latvala (Pinellas), Mr. Lino Maldonado, Commissioner Jack Mariano (Pasco), Commissioner Jim Melvin (Santa Rosa), Mr. Collier Merrill, Commissioner Dave Parisot (Okaloosa), Commissioner Grover Robinson (Escambia), Commissioner Cheryl Sanders (Franklin), Commissioner Mike Thomas (Bay), Commissioner Ralph Thomas (Wakulla), Mr. Laird Wreford (Sarasota).

Agenda Item #1 – Call to Order

Commissioner Grover Robinson (Escambia) called the meeting to order at 9:39 am (CT).

Agenda Item #3 – Public Comment

There was no public comment.

Agenda Item #4 – Consent Agenda

Mr. Doug Darling, Interim Manager, presented the consent agenda containing minutes from the June 20, 2014 meeting of the Gulf Consortium, the updated and then substituted list of Directors/Alternates/Governor's Appointees, the Financial Report and the Notice of Meeting as published in the Florida Administrative Register. A motion to approve the consent agenda was presented by Commissioner Susan Latvala (Pinellas) and seconded by Commissioner Sara Comander (Walton).

ACTION: APPROVED

Agenda Item #5 – Chairman Update on Congressional Testimony

Commissioner Grover Robinson (Escambia), Gulf Consortium Chairman, briefed the Committee on his recent testimony before the United States Senate Committee on Commerce, Science and Transportation, Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard.

Agenda Item #6 – Dr. William Hogarth, Florida Institute of Oceanography

Mr. Andy Shepard, Executive Director of the Gulf of Mexico University Research Collaborative, gave a presentation to the Board on behalf of Dr. William Hogarth who was unable to attend. He reviewed the existing and potential future oil and gas facilities along the Florida shelf, oil spill response and restoration coordination efforts and the latest effects being seen in seafood, turtles, dolphins and coral communities.

Agenda Item #7 – Manager Update

Mr. Chris Holley, Interim Manager, presented the Board with the Manager update. He informed the Board that effective August 15, 2014, Doug Darling would no longer be a part of the FAC interim management team for the Consortium and Ginger Delegal, FAC General Counsel, will be transitioning into that position.

Next, Mr. Holley informed the Board that staff is beginning to develop the Gulf Consortium's budget for FY14-15 using the same county allocations and invoicing process as the previous fiscal years. Discussion ensued. A motion to maintain the current budget levels was presented by Commissioner Dave Parisot (Okaloosa) and subsequently withdrawn.

Then, Mr. Holley briefed the Board on recent meetings held with State partners including the Secretary of the Florida Department of Environmental Protection, the Executive Director of the Florida Fish and Wildlife Conservation Commission and the Chief Financial Officer / Director of Administration of the Gulf Coast Ecosystem Restoration Council.

Finally, Mr. Holley informed the Board the National Association of Counties' Board of Directors had voted to officially form the Gulf Coast Counties and Parishes Caucus within its organization during its Annual Conference in New Orleans. The next meeting of the Caucus will be held on October 15, 2014 in Biloxi, MS.

Agenda Item #8 – General Counsel Update

Ms. Sarah Bleakley, Interim General Counsel, presented the Board with the General Counsel update. She began by providing an update on the process for procuring a consultant to provide assistance to the Consortium in developing the State Expenditure Plan. She informed the Board that the Executive Committee had approved the Evaluation Team's recommendation of four firms to proceed to the Best and Final Offer stage of the process. The Board discussed whether to hold interviews of the consultant teams as ranked by the evaluation team; however no motion was made on whether to hold such interviews. Discussion ensued. A motion to provide the Board with the detailed criteria and the matrix the Evaluation Team used in making their recommendation was presented by Commissioner Christopher Constance (Charlotte) and seconded by Commissioner Sara Comander (Walton).

ACTION: APPROVED

Then, Ms. Bleakley provided a status report on the Federal Clean Water Act litigation against BP and other responsible parties and the State of Florida's participation in that litigation.

Finally, Ms. Bleakley informed the Board of the possible effects to the Gulf Consortium as a result of the upcoming county elections in November. Following the General Election in November of 2014, the Consortium Manager will request a county designate a new Consortium Director in any instance where a commissioner is no longer in office, following the election.

Agenda Item #9 – Public Comment

1. Christian Wagley, Escambia County RESTORE Act Council
2. Jessica Koelsch, National Wildlife Federation
3. Darryl Boudreau, The Nature Conservancy

4. Barbara Albrecht, Panhandle Watershed Alliance

Agenda Item #10 – Meeting Schedule for 2014

Mr. Doug Darling, Interim Manager, reviewed the meeting schedule for the remainder of 2014.

Agenda Item #12 – Adjournment

There being no further business, the Committee adjourned at 12:12 pm (CT).

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 5
Approval of August 7, 2014 Gulf Consortium Minutes**

Statement of Issue:

This agenda item proposes approval of the August 7, 2014 Gulf Consortium meeting minutes.

Options:

- (1) Approve the August 7, 2014 Gulf Consortium minutes, as presented; or
- (2) Amend and then approve the August 7, 2014 Gulf Consortium minutes.

Recommendation:

Motion to approve the August 7, 2014 Gulf Consortium meeting minutes, as presented.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

Action Taken:

Motion to: _____, Made by: _____;
Seconded by: _____.

Approved____; Approved as amended____; Defeated_____.

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 6.2
US Treasury Direct Allocation Guidance Document**

Statement of Issue:

Shortly after the US Treasury published the Interim Final Rule on Regulations for the Gulf Coast Restoration Trust Fund, it published the Direct Component Guidance and Application to Receive Federal Financial assistance under the RESTORE Act (August 2014) (Treasury Guidance Document). This agenda item provides information about the Treasury Guidance Document to the Gulf Consortium and does not require Board action.

Background:

On November 5, 2013, the Consortium provided formal comments on the Proposed Treasury Rule regarding RESTORE Act funds that had been published in September 2013. In August 2014, the Treasury published its Interim Final Rule on Regulations for the Gulf Coast Restoration Trust Fund, which substantially revised and clarified its earlier Proposed Rule. *See, Agenda Item 6.1 for the Consortium's formal comments on the Treasury Interim Final Rule.* Shortly after the Interim Final Rule was published for comment, Treasury issued its Guidance Document, which is the subject of this agenda item.

Analysis:

As its title implies, the Treasury Guidance Document provides information to Florida counties and other entities eligible for Direct Component Funds for Multi Year Implementation Plans (MYIPs). The Document provides additional information and clearer directions regarding planning grants and the content, format and submission requirements for MYIPs.

The Document makes clear that all Direct Component funding for counties will be through the mechanism of a federal grant to Treasury—for planning grants and for grants to fund activities in MYIPs. In fact, the Document states that "[a]n application for multiyear plan planning assistance is the only exception to the requirement than an applicant have a multiyear plan before applying for Direct Component funds." *See, Treasury Guidance Document at p. 3.*

Regarding amounts of the Direct Component that are available for the counties' allocations, the Treasury Guidance Document notes that the allocation amounts are limited to the amounts currently in the Restoration Trust Fund and those additional funds not-yet deposited that represent known amounts to be deposited into the Trust Fund from the Transocean settlements. See, *Treasury Guidance Document n. 4*. Attached to the memorandum is an allocation chart published by Treasury titled: Gulf Coast Restoration Trust Fund Allocations Available for Distribution (As of June 30, 2014.)

The 41 page Treasury Guidance Document is filled with information, directions and forms required for submittal of grant applications and MYIP.

Options:

This agenda item is informational only. No action by the Board is required.

Fiscal Impact:

None.

Recommendation:

This agenda item is informational only. No action by the Board is required.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014

Gulf Coast Restoration Trust Fund Allocations Available for Distribution

(As of June 30, 2014)

	Direct Component	Comprehensive Plan Component	Spill Impact Component	NOAA Science Program	Centers of Excellence
Allocations Available (as of June 30, 2014)	\$220,255,042	\$187,753,400	\$188,790,036	\$15,744,185	\$15,744,185

Table Notes:

1) Transocean is expected to make its third and final payment of civil penalties and interest by March 2015 pursuant to its settlement agreement under the Federal Water Pollution Control Act, of which 80% of the total will be deposited into the Gulf Coast Restoration Trust Fund and invested. To date, Transocean's total payment of civil penalties and interest into the Trust Fund exceeds \$653 million.

2) The RESTORE Act requires that Treasury allocate the prior fiscal year's earned interest to the Comprehensive Plan (50%), NOAA's Science Program (25%), and Centers of Excellence Research Grants Program (25%). Under the Interim Final Rule, Treasury shall allocate the funds within 10 days after the federal fiscal year end - October 10, 2014.

Totals on these Allocation charts may not add up due to rounding.

Department of the Treasury

Office of Gulf Coast Restoration

Gulf Coast Restoration Trust Fund Allocations Available for Distribution

Treasury-Administered Centers of Excellence Research Grants Program and Direct Component

(As of June 30, 2014)

Centers of Excellence

(2.5% of Trust Fund)

State	Available Allocations (as of June 30, 2014)
Alabama	\$3,148,837
Florida	\$3,148,837
Louisiana	\$3,148,837
Mississippi	\$3,148,837
Texas	\$3,148,837
Total	\$15,744,185

Direct Component

(30% of Trust Fund)

State	Available Allocations (as of June 30, 2014)
Alabama	\$44,051,008
Florida Counties (23)*	\$44,051,008
Louisiana (70%)*	\$30,835,706
Louisiana Parishes (30%)*	\$13,215,302
Mississippi	\$44,051,008
Texas	\$44,051,008
Total	\$220,255,042

*See supplemental pages for allocations to the Florida Counties and proposed allocations to the Louisiana Parishes under Notice of Proposed Rule Making.

Department of the Treasury

Office of Gulf Coast Restoration

Florida Counties' Direct Component Available Allocations

As of June 30, 2014

Counties	Allocations Based on Interim Final Rule	Allocations Available (as of June 30, 2014)
<u>Disproportionately Affected</u>	<u>75%</u>	
Bay	15.101453044%	\$4,989,257
Escambia	25.334760043%	\$8,370,163
Franklin	8.441253238%	\$2,788,843
Gulf	6.743202296%	\$2,227,836
Okaloosa	15.226456794%	\$5,030,556
Santa Rosa	10.497314919%	\$3,468,130
Wakulla	4.943148294%	\$1,633,130
Walton	13.712411372%	\$4,530,341
Subtotal	100.000000000%	\$33,038,256
<u>Nondisproportionately Impacted</u>	<u>25%</u>	
Charlotte	5.162%	\$568,478
Citrus	4.692%	\$516,719
Collier	7.019%	\$772,985
Dixie	3.484%	\$383,684
Hernando	4.982%	\$548,655
Hillsborough	13.339%	\$1,468,991
Jefferson	3.834%	\$422,229
Lee	8.776%	\$966,479
Levy	3.894%	\$428,837
Manatee	6.809%	\$749,858
Monroe	8.297%	\$913,728
Pasco	7.079%	\$779,593
Pinellas	11.002%	\$1,211,623
Sarasota	7.248%	\$798,204
Taylor	4.383%	\$482,689
Subtotal	100.000%	\$11,012,752
TOTAL		\$44,051,008

Louisiana's Direct Component Available Allocations
Available as of June 30, 2014

Entity	Allocations Include Louisiana Coastal Zone Parish Formula Notice of Proposed Rulemaking (NPRM)*	Allocations Available Based on NPRM (as of June 30, 2014)
State of Louisiana	70%	\$30,835,706
Louisiana Coastal Zone Parishes	30%*	\$13,215,302
Ascension	2.42612%	\$320,619
Assumption	0.93028%	\$122,939
Calcasieu	5.07063%	\$670,099
Cameron	2.10096%	\$277,648
Iberia	2.55018%	\$337,014
Jefferson	11.95309%	\$1,579,636
Lafourche	7.86746%	\$1,039,709
Livingston	3.32725%	\$439,706
Orleans	7.12875%	\$942,086
Plaquemines	17.99998%	\$2,378,752
St. Bernard	9.66743%	\$1,277,580
St. Charles	1.35717%	\$179,354
St. James	0.75600%	\$99,908
St. John the Baptist	1.11915%	\$147,900
St. Martin	2.06890%	\$273,411
St. Mary	1.80223%	\$238,171
St. Tammany	5.53058%	\$730,883
Terrebonne	9.91281%	\$1,310,008
Tangipahoa	3.40337%	\$449,765
Vermilion	3.02766%	\$400,114
Subtotal	100.00000%	\$13,215,302
TOTAL		\$44,051,008

*Notice of Proposed Rule Making for Louisiana Parish Allocations:

<http://www.regulations.gov/#!documentDetail;D=TREAS-DO-2014-0006-0001>

Department of the Treasury

Office of Gulf Coast Restoration

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 6.1
Comments on U.S. Treasury Interim Final Rule
on Regulations for the Gulf Coast Restoration Trust Fund**

Executive Summary:

At its meeting on September 8th the Executive Committee approved the filing of formal comments on the U.S. Treasury Interim Final Rule Regarding Regulations for the Gulf Coast Restoration Trust Fund. The Chairman's correspondence providing the Consortium's comments on the Interim Final Rule is attached. The Rule comments are due on September 15, 2014. The Rule takes effect October 14, 2014.

The Consortium's comments consisted primarily of praise for the substantial, favorable revisions to the Interim Final Rule. However, the final paragraph expresses the Consortium's dismay about the lack of clarity in the Restoration Council Interim Final Rule. The Consortium desires the Council Rule to explain the path for the Consortium to secure federal funds for accomplishing the work required of it under the RESTORE Act. The memorandum and attached correspondence for agenda item 7.1 further discuss the necessity for a clear path to funding with regard to the Council Interim Final Rule.

Background:

On November 5, 2013, the Consortium commented on the original proposed Treasury Rule, suggesting that Treasury revise the Rule and address 12 major points:

1. Regulatory Flexibility Act and Seven Fiscally Constrained Counties.
2. Pre-Award Costs for the Consortium and Coastal Political Subdivisions.
3. Planning Costs for the Gulf Consortium and Florida's 23 Gulf Coast Counties.
4. Administrative Costs.
5. Procurement Issues.
6. Advance Payment.
7. Incremental Plans and Grants.
8. Additional Treasury Rule and a Standard Format.
9. Formula for the Eight Disproportionately Affected Counties.
10. Formula for the Fifteen Nondisproportionately Impacted Counties.
11. Environmental Law Compliance.

12. Recognition of the Gulf Consortium as the Entity Required to Prepare the State Expenditure Plan.

The Rule comment deadline did not end the Consortium's advocacy to secure changes to the Treasury rule. Two members of the Consortium Executive Committee have testified before Congress, urging that Treasury promptly issue a revised Rule addressing the Consortium's concerns. Consortium Directors, Consortium staff and county representatives and staff held numerous meetings with Congressional and Executive Branch officials, seeking amendments to the Rule as proposed in the Consortium's comments.

Because of the work of the 23 counties and the Consortium, the new Treasury Interim Final Rule is much better than the original 2013 Treasury Rule. In fact, Treasury favorably addressed eleven of the Consortium's twelve points in the Treasury Interim Final Rule ("TIFR"), which was published on August 15, 2014 in the Federal Register.

In developing recommendations regarding comments to Treasury on the TIFR, the Consortium staff has sought advice from a broad range of people. Consortium staff sent an e-mail providing staff's initial analysis and soliciting comments to each of the Consortium directors, alternates, Governor's appointees, county administrators, and county attorneys. Additionally, the Consortium staff held a conference call with the 23 Gulf Coast county attorneys on August 21st.

Consortium staff also met with partners at the Restoration Council and in the Governor's office, the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission regarding the TIFR. No written comments have been received. And based on our discussions, everybody seems pleased with the TIFR.

Analysis:

This analysis section describes the major provisions of the TIFR affecting the 23 Gulf Coast counties and the Gulf Consortium. This analysis is substantially similar to the initial analysis that was circulated to the Consortium members on August 25th.

Structurally, the TIFR includes a Preamble which addresses the comments received by Treasury on the 2013 Rule, explaining many of the TIFR's changes from the original Treasury Rule.

*Rule Provisions Relating to the
Counties' Direct Component (Pot #1)*

The TIFR addresses the Direct Component primarily in Subpart D, beginning with Rule 34.300. Some of the highlights include the following issues.

Formulas. The TIFR adopts the formulas approved by the Disproportionately and Non-Disproportionately affected counties for the allocation of Florida's Direct Component funds. *See, Rule 34.302.* TFIR increases each of the counties' percentage allocations which previously, because of rounding, did not add up to 100 percent. Counties should review the allocations for accuracy.

Planning Assistance Costs and Grants. The TFIR clearly establishes that grants are the mechanism for all funding. *See, e.g., Rule 34.303 and the definition of "Direct Component" in Rule 34.2.* Regarding planning costs, the TIFR provides that counties can apply for planning assistance grants to be used in developing a Multi-Year Improvement Plan. *Rule 34.201(j).* The TIFR states that it is not necessary for a county to submit a Multi-Year Improvement Plan prior to applying for a planning assistance grant.

"Planning assistance" is broadly defined in Rule 34.2 to include typical planning activities. The Preamble states that the definition of "planning assistance" is intended to include public involvement as well as one-time preparations for establishing a grant administration system, including audit functions. *See, Rule 34.2.* Planning assistance costs are outside the three percent cap on administrative costs. Further, the TIFR provides that the OMB Uniform Guidance which is applicable to all federal grants to local governments is also applicable to the administration of Direct Component grants. *See, Preamble.*

Multi-Year Implementation Plans (MYIP). Rule 34.303 enumerates the requirements for a county's MYIP. County plans can be phased and incremental, and can be amended. The only other significant change from the earlier Treasury Rule is the requirement that the MYIP be available for broad-based public comment at least 45 days prior to submittal to Treasury.

National Environmental Protection Act (NEPA). The TFIR does not expressly address NEPA requirements for a county's MYIP. However, the Preamble states that Treasury does not anticipate that its review of a MYIP or the issuance of grants will require a NEPA review, reasoning that Treasury's role in those areas is administrative and ministerial and not policy setting. *See, section III of the Preamble.* Treasury's draft directive on NEPA, published for comment on August 22, 2014, does not specifically address RESTORE Act Issues. *See, Treasury Directive 75-02 and Directive Publication 75-02, Department of the Treasury National Environmental Policy Act (NEPA) Program.* Comments on the directive are due October 21, 2014. In summary, Treasury's actions and language in both

the TIFR and the Directive indicate that NEPA will not be applied to grants or MYIPs.

Geographic Location of Projects ("Carried Out" Language in the Rule).

Rule 34.201 provides that eligible activities can be funded when the activity is "carried out" in the Gulf Coast region. An activity is considered to be carried out in the Region "when, in the reasonable judgment of the . . . [county], each severable part of the activity is primarily designed to restore or protect that geographic region." The Preamble indicates the "carried out" language is broad enough to include an upstream water quality project designed to reduce nutrient loading at the Gulf Coast. *See, Preamble, §II.*

Treasury's Direct Component Guidance and Application to Receive Federal Financial Assistance (August 2014) ("Treasury Guidance").

The Treasury Guidance document provides a road map for submittal of grant applications and the counties' MYIPs. It was published a few days after the TIFR. Regarding MYIP funding availability, the Treasury Guidance document states that a county may seek MYIP funding in an amount currently in the Trust Fund or that are known to be deposited into the Trust Fund from the Transocean settlements in March 2015. Thus, Clean Water Act fines and penalties currently being litigated cannot be considered as available for MYIP grant funding. *See, Treasury Guidance n. 4.* This Treasury Guidance document is discussed further in agenda item 6.2.

Availability of Trust Funds. Funds will be available to the 23 counties upon the finalization of the TIFR. Treasury will not accept grant applications for amounts that exceed funds available in the Trust Fund for the county as determined by the allocation formulas. The Trust Fund currently contains \$44 million for Florida's share of the Direct Component. Treasury published a chart of the amounts currently in the Trust Fund that are available to each of the 23 Florida counties. The chart is available on the FAC RESTORE website.

*Discussion of Rule Provisions Relating to the
Spill Impact Component for the Consortium (Pot #3)*

The Gulf Consortium Not Officially Recognized in the Rule. While the Preamble is replete with references to the Consortium's comments on the original Treasury Rule, neither the Preamble nor the TIFR specify that the Consortium is the entity which will receive Spill Impact Component funds. Nor does the TIFR address costs for starting up the Gulf Consortium. This issue is the only point in the Consortium's comments to the original Treasury Rule that the TIFR does not address. However, the Council Interim Final Rule does recognize the Consortium as the entity in Florida which is eligible for the Spill Impact Component. *See, RESTORE Act Spill Impact Component Planning Allocation, Council Interim Final Rule, 40 C.F.R. § 1800.20.* The Council Rule is discussed in more detail in the memorandum for Agenda Item 7.1 for this Board meeting.

Planning Assistance Costs and Grants. The TIFR clearly establishes that grants are the mechanism for all funding. For the Consortium Spill Impact Component, the TIFR provides that the Council is responsible for awarding and administering the grants. *Rule 34.501 and Rule 34.504.* Regarding planning costs, the TIFR provides that States can apply for planning assistance grants to be used in developing its State Expenditure Plan. *See, Rule 34.201(j) which is made applicable to the States by a cross reference in Rule 34.203.* The TIFR clearly states that it is not necessary for the Council to approve a State Expenditure Plan prior to the State applying for a planning assistance grant. *Rule 34.203(a).*

"Planning assistance" is broadly defined in Rule 34.2 to include typical planning type of activities. The Preamble states that the definition is intended to cover public involvement costs. *See, Preamble, §II.* It also includes one-time preparations for establishing a grant administration system, including audit functions. *See, the definition in Rule 34.2 and Preamble, §II.* Planning assistance costs are outside the three percent cap on administrative costs. The TIFR provides that the OMB Uniform Guidance which is applicable to grants to local governments also applies in the administration of Spill Impact Component grants. *See, Preamble, §II.*

Formula for Five Gulf States. The TIFR directs the Council to determine the allocations of Spill Impact Component funds among the five Gulf Coast States. *See, Rule 34.502.* Currently, there is no agreement among the five Gulf Coast States as to what data sources should be plugged into the allocation formula set forth in the RESTORE Act.

State Expenditure Plans and Procurement. Regarding the State Expenditure Plan, Rule 34.503 provides that the Plan may be phased and incremental and amended. The Rule directs the Council to address categories of Plan amendments that will not be subject to Council approval. TIFR also includes new requirements that the Plan must describe the Consortium's processes that prevent conflicts of interest in the development and implementation of the plan, and that assess the capability of third-party entities that will implement activities in the Plan. Otherwise, procurement is not directly addressed in the TIFR, although it is clear that the OMB Uniform Guidance governs procurement.

NEPA. NEPA requirements for the Consortium will be determined by the Council.

Geographic Location of Projects ("Carried Out" Language in the Rule). Rule 34.203 provides that eligible activities can be funded when the activity is "carried out" in the Gulf Coast region. An activity is considered to be carried out in the Region "when, in the reasonable judgment of the . . . [State], each severable part of the activity is primarily designed to restore or protect that

geographic region." The Preamble indicates the "carried out" language is broad enough to include an upstream water quality project designed to reduce nutrient loading at the Gulf Coast. See, page 48043.

Council Interim Final Rule

For the Consortium, the Council has issued its own Interim Final Rule on the RESTORE Act Spill Impact Component Planning Allocation. See, 40 CFR Part 1800 (published on August 22, 2014). The memorandum on Agenda Item 7.1 discusses the Council Interim Final Rule.

Consortium Comments on the Treasury Interim Final Rule

Attached to this agenda item memorandum is correspondence to the Treasury providing the Consortium's comments on the Treasury Interim Final Rule. The Executive Committee unanimously approved the correspondence, and it was filed with Treasury electronically on September 10, 2014. The comment letter primarily expresses the Consortium's gratitude for the changes accomplished in the TIFR from the original Treasury Rule. Comments were due to the Treasury on September 15th, a few days before the next meeting of the Consortium Board of Directors on September 17th.

Options:

This agenda item is informational only. No action by the Board is required.

Fiscal Impact:

None.

Recommendation:

No Board action is required.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 7.1
Comments on Restoration Council Planning Allocation Interim Final Rule**

Statement of Issue:

This memorandum describes the Interim Final Rule recently published by the Restoration Council. Comments on the Council Interim Final Rule ("CIFR") are due September 22, 2014. Draft correspondence commenting on CIFR is attached for the Board's consideration.

Background:

As detailed in the Agenda Item 6.1 memorandum, the Treasury's Interim Final Rule provides some direction to the five Gulf Coast States in the development of the State Expenditure Plans ("SEP"). The Treasury Rule allows States to apply for planning grants prior to the submission of an SEP. However, the Treasury Rule does not recognize the Consortium as the entity responsible for the development of Florida's SEP. And it is the Council, not the Treasury, which is assigned responsibility for allocating the Spill Impact Component (Pot #3) among the five Gulf Coast States.

With the Treasury's Interim Final Rule addressing grant allocations to the 23 counties, it logically followed that shortly thereafter the Council issued its own Interim Final Rules, recognizing the Gulf Consortium and addressing the amounts available for SEP development. The Gulf Coast Ecosystem Restoration Council's Interim Final Rule regarding the RESTORE Act Spill Impact Component Planning Allocation was published in the Federal Register on August 22, 2014.

Analysis:

Gulf Consortium Recognized as SEP Developer and Grant Eligible.

The Preamble and the Council Interim Final Rule ("CIFR") recognizes the Gulf Consortium as the entity that develops Florida's State Expenditure Plan and as an entity eligible to apply for and receive funds for planning purposes.

Grants Authorized for Planning.

A grant request to the Restoration Council is the mechanism for the Consortium to receive funds for planning costs. See, CIFR § 1800.20. "Planning purposes

are limited to development of a State Expenditure Plan, and includes conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects." *CIFR § 1800.20*. The Consortium comments request that the CIFR be revised to address those limitations by using the broader planning assistance provisions in the TIFR.

Pre-Award Costs Precluded.

The CIFR excludes pre-award costs for planning. *CIFR § 1800.20*. The CIFR precludes the Consortium from receiving any pre-award costs incurred prior to the CIFR taking effect on August 22, 2014. *CIFR § 1800.20*. The Preamble suggests that planning costs incurred after August 22, 2014 must be evaluated under the OMB Uniform Guidelines, which require that pre-award costs meet the authorized costs allowed in the CIFR and be approved by the Council as the granting federal agency. *Preamble § II*.

The Consortium's comments on CIFR asks that pre-award costs be allowed.

Five Percent Minimum.

The RESTORE Act requires a minimum five percent disbursement of the Spill Impact Component every fiscal year to each of the five Gulf Coast States. See, 33 USC 1321(3)(5)(3)(A)(iii). The Council Rule provides that the maximum amount available to each State and the Gulf Consortium is five percent of the amount in the Gulf Restoration Trust Fund. According to Treasury's chart, approximately \$9.4 million is available in the Trust Fund for the Spill Impact Component for each Gulf Coast State, including the Consortium.

Consortium Path to Secure Funds.

Despite the clarity provided by the Treasury Rule regarding grants, planning assistance, grant management and SEP development, and despite the Council Rule recognizing the Gulf Consortium and authorizing grants for planning, the path the Consortium must follow to secure funding for its operational costs and to submit its planning grant remain hidden.

Consortium staff has discussed the issues related to operational costs and the process for planning grant submissions with the Governor's office, the Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission. The issues were also the subjects of a conference call with the staff of the Restoration Council. Until those paths are clearly identified, the Consortium's financial ability to operate effectively and efficiently as envisioned by the RESTORE Act are blocked. This issue is addressed in the CIFR comment correspondence.

Grant Process.

The CIFR implies that the planning grant process may include the requirements associated with a State Expenditure Plan, which includes the Governor's submittal in Florida. The comments address this issue.

Consortium Draft Comments on CIFR.

The attached draft correspondence providing comments on the CIFR reflect the Consortium's desire for a clear path to securing funds to effectively accomplish what is required by the RESTORE Act.

CIFR Effective and Due Dates.

The CIFR was published in the Federal Register on August 22, 2014. It became final on August 22, 2014. Comments to the Council about the CIFR are due on September 22, 2014.

Council Guidance Document and More Council Rules.

The CIFR Preamble notes the Council will promulgate additional federal rules. One will provide the data sets for the formula allocating the Spill Impact Component among the five Gulf Coast States. *§ 1, Preamble CIFR*. It will also provide direction for applying for and administering financial assistance awards.

Additionally, it is our understanding that the Council will publish a guidance document which is anticipated will impose further requirements and provide additional directions. The Consortium comments address both the forthcoming Council rule and guidance documents, requesting an opportunity to comment on them before they are finalized.

Options:

- 1) Approve a motion adopting the formal comments on CIFR as provided in the attached correspondence.
- 2) Provide other direction.

Fiscal Impact:

There is no fiscal impact on the Consortium filing of the CIFR comment correspondence. However, to the extent that the Council Rule is not revised to provide a clear path to federal funding for the operation of the Consortium, then the funds must be found somewhere elsewhere.

Recommendation:

Approve a motion adopting the formal comments on CIFR as provided in the attached correspondence.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 12, 2014

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September ____, 2014

Via Federal eRulemaking Portal: www.regulations.gov

Gulf Coast Ecosystem Restoration Council
Justin R. Ehrenwerth
c/o US Custom House
Suite 419
423 Canal Street
New Orleans, Louisiana 70130

**Re: Comments on Gulf Coast Ecosystem Restoration Council
Interim Final Rule Regarding RESTORE Act Spill
Impact Component Planning Allocation
Docket Number: 140819111-4111-01**

Dear Mr. Ehrenwerth:

This correspondence provides the Gulf Consortium's formal comments on the Restoration Council's Interim Final Rule Regarding RESTORE Act Spill Impact Component Planning Allocation ("CIFR").

The Consortium appreciates the CIFR's recognition of the Gulf Consortium as the entity responsible for development of Florida's State Expenditure Plan ("SEP").

Regarding other aspects of the rule, the CIFR includes some issues that need revision or clarification, including the planning grant submission process, the scope of the planning grants, and allowance for pre-award costs. Other provisions should be added, including a description of the path the Consortium can follow to secure federal funding for the costs of the Consortium to accomplish the work required by the RESTORE Act. Additionally, the Consortium requests future Council guidance and rules be promulgated with a public comment period prior to finalization.

Clarification on Grant Submission Process. The process for submitting a planning grant is unclear in the CIFR. The Rule says it requires a grant, the Preamble states it requires a State Expenditure Plan. A clarification is needed to describe the process as a grant directly submitted to the Council and not the process for a SEP submission.

On August 15, 2014, the Treasury published its Regulations for the Gulf Coast Restoration Trust Fund Interim Final Rule ("TIFR") and shortly thereafter published the RESTORE Act Direct Component Guidance and Application to Received Federal Financial Assistance (August 2014) (the "Guidance Document"). The TIFR provides that planning assistance grants are available to the Florida counties and the other eligible entities to develop the Multi-Year Implementation Plans ("MYIPs"). Section 34.201(j) provides that the counties are not required to submit a MYIP prior to submitting a grant for planning assistance.

With regard to the Spill Impact Component and the planning grants for the Consortium, the TIFR clearly states that applications for planning grants can occur prior to the submission of an SEP. Specifically, TIFR provides:

State entities may apply for a grant from the total amount allocated to that state under the Spill Impact Component *before the Council has approved the State Expenditure Plan to fund eligible activities that are necessary to develop and submit that plan.*

§ 34.302(a), TIFR (emphasis added).

Shortly after the TIFR was published, the Council published the CIFR. The CIFR provides for an allocation of the Spill Impact Component to the Gulf Consortium for planning purposes for the development of Florida's State Expenditure Plan. CIFR states that planning would be requested through a grant. The specific language provides:

A Gulf Coast State or its administrative agent, or the Gulf Consortium, may apply to the Council for a grant to use the minimum allocation available in a fiscal year under the Spill Impact Component of the RESTORE Act for planning purposes.

§ 1800.20, CIFR.

However, the CIFR Preamble says planning funds would require the submission of a SEP. It states the following:

Under this regulation an amount of funds less than or equal to the statutory minimum allocation (five percent of funds available under the Spill Impact Component) would be available to a Gulf Coast State, or eligible entity for a *SEP that funds planning activities only*, an eligible activity under the Spill Impact Component. 33 U.S.C. 1321(t)(1)(B)(i)(VIII); 33 U.S.C. 1321(t)(3)(B)(i)(I).

See, § II, Preamble, CIFR (Emphasis added).

This Preamble provision implies that the application for a planning grant must be in the form of an SEP. For Florida, the submission of an SEP instead of a grant has the effect of requiring the Governor to submit the grant and not the Consortium directly. The Consortium and Governor have a formal agreement regarding Florida's SEP and a process for development by the Consortium and consideration and submittal by the Governor. See, *Memorandum of Understanding Between the State of Florida & Gulf Consortium (2013)*. Requiring an SEP as a condition of planning grant funding adds an unnecessary bureaucratic delay, when the function of the planning grant is to secure funds to develop the SEP. The Preamble SEP language also implies that the Gulf Consortium and all the other Gulf Coast States must subject the planning grant to public involvement and Council approval process required of all SEPs. The TIFR does not include these requirements for the Florida counties' planning grants. In fact, the Guidance Document states that Direct Component grants for planning costs are an exception to the requirement that all grants must be in the form of a MYIP. See, § 1.5, *Guidance Document*. The Gulf Consortium can find no sound public policy or legal reason for CIFR's requiring the submission of a grant for planning to go through the same process as an SEP containing projects and activities to be funded with the Direct Component.

The Council should clarify the nature of planning grants in the CIFR by eliminating the statement in the Preamble that requires the planning grants be submitted as a SEP. This can be accomplished by deleting the following sentence from the Preamble.

~~Under this regulation an amount of funds less than or equal to the statutory minimum allocation (five percent of funds available under the Spill Impact Component) would be available to a Gulf Coast State, or eligible entity for a SEP that funds planning activities only, an eligible activity under the Spill Impact Component. 33 U.S.C. 1321(t)(1)(B)(i)(VIII); 33 U.S.C. 1321(t)(3)(B)(i)(I).~~¹

¹ Text struck through are deletions; text added are underlined.

Scope of Planning Grants

The term "planning assistance" is broadly defined in the TIFR to include:

Planning assistance means data gathering, studies, modeling, analysis and other tasks required to prepare plans for eligible activities under § 34.201(a) through (i), including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities under § 34.201 in a Multiyear Implementation Plan or State Expenditure Plan.

Under TIFR, planning assistance costs are not administrative costs and therefore not within the three percent cap on administrative costs under the RESTORE Act. See, § 34.201(j) and (k), TIFR. The TIFR provides that the eligible activities--including planning assistance--for the Direct Component are also applicable to the Spill Impact Component through a cross reference. See, § 34.201(j), TIFR, cross-referenced in § 34.203, TIFR. Consequently, TIFR's concept of planning assistance and its definition apply to the Consortium.

The 23 county membership of the Consortium includes seven counties that are fiscally constrained, which means that the county's tax base is so low that it struggles to provide basic government services, and as a result, they cannot afford to hire staff or consultants with the expertise and educational background necessary to comply with Treasury's Proposed Rule.² In response to comments from the fiscally constrained Florida counties, the TIFR provides the following avenues to pay for such costs:

The Act also provides some latitude concerning when funds are made available. In response to these comments [from Florida counties], Treasury has revised the rule to make grants available to develop Multiyear Implementation Plans, including related public engagement activities. These grants will include funds to cover administrative costs. The Florida counties and other grant recipients may also negotiate reimbursement of pre-award costs, as described in OMB's Uniform Guidance. These measures will not reduce the counties' costs in complying with the Act, or exempt the counties from any legal requirement. Every grant recipient is

² See, § IV.A., Preamble, TIFR. Under Florida law, a county is fiscally constrained when the value of one mill of ad valorem property taxes generates no more than \$5 million in revenues in a year. See, § 218.67, Fla. Stat.

expected to comply with the Act and other Federal requirements that apply to Federal awards. However, these measures do make funding available for allowable costs.

Id.

The CIFR takes a much more restricted approach. It uses a different term for planning than the TIFR, and narrows the scope of planning grants for developing the SEP. CIFR provides:

A Gulf Coast State or its administrative agent, or the Gulf Consortium, may apply to the Council for a grant to use the minimum allocation available in a fiscal year under the Spill Impact Component of the RESTORE Act for planning purposes. *These planning purposes are limited to development of a State Expenditure Plan, and includes conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects.* It also does not include any pre-award costs incurred prior to August 22, 2014.

§ 1800.20, CIFR. (*Emphasis added*).

The CIFR planning assistance concept does not extend to any of the following planning assistance costs expressly allowed for entities eligible for the Direct Component in the TIFR: "[o]ne-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities" See, § 34.2, TIFR. Nor does the CIFR allow the grants to include public engagement costs or administrative costs, as allowed for Direct Component entities, according to the TIFR Preamble. See § IV.A., Preamble, TIFR. In fact, the CIFR contradicts TIFR's broader authorization for planning assistance that TIFR makes applicable to the Spill Impact Component in § 34.203. Nothing in the CIFR, including its Preamble, states any legal rationale for so narrowly limiting planning assistance for the Spill Impact Component and the Consortium.

Accordingly, the CIFR should be revised to replace § 1800.20's existing, restrictive language on planning to mirror the TIFR provision as follows:

A Gulf Coast State or its administrative agent, or the Gulf Consortium, may apply to the Council for a grant to use the minimum allocation available in a fiscal year under the Spill Impact Component of the RESTORE Act for planning assistance. "Planning assistance" means data gathering, studies, modeling, analysis and other tasks

required to prepare plans for eligible activities under § 34.203 and section 34.201 (a) through (k) of the Treasury Interim Final Regulation for the Gulf Coast Restoration Trust Fund, including environmental review and compliance tasks and architectural and engineering studies. Planning assistance also means one-time preparations that will allow the recipient to establish systems and processes needed to review grant applications, award grants, monitor grants after award, and audit compliance with respect to eligible activities under § 34.201 in a State Expenditure Plan. purposes.
~~These planning purposes are limited to development of a State Expenditure Plan, and includes conceptual design and feasibility studies related to specific projects. It does not include engineering and environmental studies related to specific projects. It also does not include any pre-award costs incurred prior to August 22, 2014.~~

Pre-award Costs. The CIFR expressly disallows the recoupment of pre-award costs incurred prior to August 22, 2014, although those costs are allowed under the TIFR. The TIFR Preamble discusses the fact that several of the counties which make up the Consortium are fiscally constrained, and in recognition of that fact allows Direct Allocation funds to be used for pre-award costs.³ These same fiscally constrained counties have funded the Gulf Consortium. The Gulf Consortium has been funded through donations from the 23 Gulf Coast counties to accomplish its work to date in standing up a governmental entity to meet the requirements of the RESTORE Act. The Consortium's budget for the 2014-15 fiscal year also depends on donations from the 23 counties, including the seven fiscally constrained counties which are members. The Consortium has no revenues independent of the counties contribution. Unlike some of the other Gulf Coast states, the Consortium has not received a National Fish and Wildlife Foundation grant to conduct environmental assessments or develop plans that can be used in developing a SEP. In fact, the Consortium has relied upon one county, Leon County, that is not a member of the Consortium to provide procurement services in hiring a consultant to assist in the development of the SEP. The costs associated with providing those services and the other costs borne by the 23 Gulf Coast counties, including the seven fiscally constrained counties, for standing up a government and for planning efforts to date should be recoupable from the Spill Impact Component. The CIFR should be revised to expressly allow the Consortium to recoup pre-award costs.

³ See, *Preamble and § 34.200(a)(3)*. The TIFR Preamble notes that several Florida counties had raised the scrutiny required for small entities under the Regulatory Flexibility Act in their comments on the Proposed Treasury Rule. The TIFR's allowance for pre-award costs and the broad allowance for planning grants for the Direct Component entities were relied upon as reasons the TIFR did not make other special accommodations for the small, fiscally constrained counties under the Regulatory Flexibility Act. See, *Id.*

To accomplish this, section 1800.20 should be revised to delete the following sentence:

~~It also does not include any pre-award costs incurred prior to August 22, 2014.~~

Clear Path to Funding the Consortium

The CIFR does not provide a clear path for funding the Consortium to meet the requirements of the RESTORE Act. Up to now, the Consortium has stood up a government, much like the Restoration Council has done. But unlike the Council's membership of federal agencies and States, the Consortium's members are 23 county governments, seven of which are fiscally constrained counties which financially struggle to meet the basic safety needs of their citizens. While awaiting the Treasury Rule and the Council Rule, the Consortium has provided the services to get the organization up and running through donations from the counties and the kindness of another county that is not even a member of the Consortium-Leon County. Additionally, the Interim Consortium's Manager, the Florida Association of Counties, has provided services and facilities for the Consortium in excess of the amounts reimbursed by the Consortium. Similarly, the Interim General Counsel, Nabors, Giblin & Nickerson, P.A. has provided legal services in excess of the amounts paid by the Consortium. The counties and especially the fiscally restrained counties cannot afford to continue to fund the Consortium. The Consortium should recognize and accommodate these fiscal constraints, as the TIFR does, in part because of the Regulatory Flexibility Act. See *n. 2 Infra*.

Now that the Treasury Rule and the Council Rule are published, the Consortium finds both of them lacking a clear path to funding the Consortium. Nor has the path been clearly revealed by those responsible for developing the CIFR. How can the Consortium secure RESTORE Act funds to provide the services for the Consortium to do the work necessary in developing the SEP over the next few years? The CIFR's narrow allowance for planning purposes will not even pay for the costs for developing the SEP, if the TIFR's broader definition of "planning assistance" is not carried forward into the CIFR. And nothing in the TIFR or the CIFR indicates how the Consortium can be funded by RESTORE Act grants. Among those anticipated costs are the services for the Manager, and General Counsel, and a grant writer; financial and audit services; public involvement costs; meeting space for the Consortium; communications to members; conference call capabilities and expenses; travel cost for the Consortium members and staff; copying; delivery charges and administrative expenses. The Manager has estimated it will cost between \$500,000 and \$750,000 annually to provide those services. Now is the time to address the issue, and the CIFR is the appropriate place.

The Consortium suggests revising the CIFR to specifically address how the Consortium can receive federal funds to accomplish the work required of it under the RESTORE Act. The following provision should be incorporated into the rule:

A Gulf Coast State or its administrative agent, or the Gulf Consortium may apply to the Council for a grant to use the minimum allocation available in a fiscal year under the Spill Impact Component for the costs of developing a State Expenditure Plan. Those costs include, by way of example, and not limitation, the start-up and ongoing operation costs associated with services for a Manager, General Counsel, and a grant writer; financial and audit services; public involvement costs; meeting space for the Consortium; communications to members; conference call capabilities and expenses; travel cost for the Consortium members and staff; copying; delivery charges and administrative expenses.

Council Guidance Document and Future Rules. The Consortium requests that the forthcoming Guidance Document and all future rules be promulgated in a manner that will allow comments before they are finalized. The ability to comment before finalization of an important rule is fundamental to the notion of transparency. In the case of the Consortium, its status as the only entity among those eligible for SEP grant funding that is not a State, elevates the importance of being allowed to review and comment on a document establishing processes, funding limitations and other requirements that may have a unique effect on Florida's ability to comply.

Sincerely,

Grover C. Robinson IV, Chairman
Gulf Consortium

cc: The Honorable Bill Nelson
The Honorable Marco Rubio
The Honorable Steve Southerland, II
The Honorable Jeff Miller
Ms. Mimi Drew, Governor Rick Scott's Appointee to the Restoration Council
Mr. Nick Wiley, Executive Director, Florida Fish & Wildlife Commission
Mr. Noah Valenstein, Office of Policy Budget, Governor's Office
Gulf Consortium Directors, Alternates and Governor Appointees

Mr. Justin R. Ehrenwerth
September ____, 2014
Page 9

County Managers and County Attorneys of the 23 Florida Gulf Coast Counties
Mr. Chris Holley, Executive Director, Florida Association of Counties
Ms. Sarah M. Bleakley, Interim General Counsel, Gulf Consortium

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Restoration Council Final Interim Rule_09 12 14.docx

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 8
Recommendation for Best and Final Offer (RBAFO)
for State Expenditure Plan**

Statement of Issue:

This agenda memorandum describes the Request for Best and Final Offer ("RBAFO") for procuring a consultant team to assist the Consortium in developing the State Expenditure Plan. At its September 8th meeting, the Executive Committee recommended the attached RBAFO be adopted by the full Board of Directors.

Background:

The Consortium is in the second phase of the process for hiring a consultant to assist in the development of the State Expenditure Plan. The first phase began with Leon County issuing an Invitation to Negotiate on behalf of the Consortium. The Consortium's Evaluation Team includes: Mr. Phil Coram, P.E., Administrator, Florida Coastal Office, Florida Department of Environmental Protection; Mr. Ed Gardner, PowerSouth Energy Cooperative; Mr. Roman Gastesi, County Administrator, Monroe County; Ms. Sheree Keeler, Director of Governmental Affairs, Procurement and Grants & RESTORE Act Coordinator, Wakulla County; and Dr. Karl Havens, Director, Florida Sea Grant College Programs & Professor, UF/IFAS Fisheries & Aquatic Sciences, University of Florida

The Evaluation Team evaluated and ranked the six consultants which submitted responses, recommending four of them to move forward on a short list:

- Arcadis USA
- Ecology & Environment
- Environmental Science Associates
- MWH Americas

The Executive Committee adopted the Evaluation Team's recommendation at its August 7, 2014 meeting.

On August 21 and 22 the Evaluation Team interviewed each of the four short-listed consulting firms. The purpose of the interviews was to elicit more information on each team's approach to the development of the State Expenditure Plan ("SEP"), the project evaluation process, the project nomination process, the public involvement process, the team's cost proposals, and the

additional services the firm may provide to add value to the Consortium. After completion of the interviews, the Evaluation Team drafted the RBAFO. (Copy attached.)

On September 8th, the Executive Committee unanimously adopted a motion to recommend the Board of Directors accept the RBAFO.

The Chairman of the Evaluation Team, Mr. Roman Gastesi, and the Leon County Purchasing Director, Shelly Kelley, will present the RBAFO to the Board at the September 17th meeting.

Analysis:

Effect of Short List: Piggy Backing

The four firms short listed by the Evaluation Team and approved by the Executive Committee are deemed to be qualified and will be placed on a continuing services supply status, allowing other governmental entities to hire them through cooperative purchasing policies, also known as piggy backing.

Effect of Short List: Even Playing Field

The four short listed firms proceed into the second phase of the procurement process tied with each other in terms of ranking. The Evaluation Team's interview process discovered good ideas that were included in the RBAFO. In their RBAFO responses, all four firms can describe how they can best respond to the concepts added to the RBAFO.

Revisions to the ITN in the BAFO Development

The major provisions in the RBAFO are the following:

- A) **Grants.** The RBAFO revises the terminology to clearly identify that the consultant's first task is to develop a planning grant application through which the Consortium can apply for funds to develop the SEP.
- B) **Conflicts of Interest.** The RBAFO adds a provision required by the Treasury Interim Final Rule, directing the Consortium to adopt a process for assuring there is no conflict in SEP development and implementation.
- C) **Project Solicitation.** The RBAFO provides more specific requirements about the project solicitation management process. It includes a requirement that the resulting data and data base is the property of the Consortium.

- D) **Strategies.** The RBAFO contains a more comprehensive list of elements the firms must address regarding the strategies for SEP development, including the following:

STRATEGY/STRATEGIES FOR PLAN DEVELOPMENT.

Tab B must describe a method for developing a State Expenditure Plan using the requirements of the Gulf Coast Ecosystem Restoration Council, the RESTORE Act, and the Rules promulgated by U.S. Treasury. Included in this part should be a description of and rationale for the method of grouping projects, programs, and activities to guide SEP development. Provide a visual display of the Firm's recommended grouping. The display may include a map of Florida delineating the geographical regions, and showing the location of hypothetical list of projects by categories. Firms may revise or expand upon its ITN response in this Tab. Additionally, specify how the Firm would address these elements:

1. Coordination of the planning efforts with the funds available;
2. Navigation of the changing regulatory environment;
3. Generation of broad support for the projects, programs and activities in the SEP;
4. Fostering the positive economic outcomes of the projects, programs, and activities in the SEP;
5. Assisting projects, programs, and activities that are submitted for consideration but do not make it into the Final SEP to be competitive for other funding sources; and
6. Establishing systems for management and tracking to assure compliance of legal requirements and maximization of available funds.

- E) **Project Nominations.** Regarding the project nomination process, the RBAFO requires firms to address systems for project application and tracking that can be updated as funding decisions are made. The RBAFO also includes a requirement for updating projects on existing lists, such as those in the Department of Environmental Protection data base. A specific requirement is added to assure the firms address nominations for job creation and workforce development projects as authorized in the RESTORE Act.

- F) **Project Evaluations and Advisory Groups.** The RBAFO requires firms to describe their recommendations regarding the use of technical advisory groups in the project evaluation process. The firms must also describe the make-up of the advisory groups and how they will be used to provide policy and technical inputs for each of the categories of eligible projects. A specific requirement is added to assure the firms address evaluation for

job creation and workforce development projects as authorized in the RESTORE Act.

- G) **Public Involvement.** Regarding the public involvement component, the RBAFO requires the firms to describe their proposed methods for enhancing public involvement through social media, community meetings, advertising, media plans, website, governmental entities, and for large or high-risk projects. Additionally, the firms must address the diversity of the Gulf Coast communities and customize methods for informing and interacting with the varied demographics.
- H) **Implementation.** Tab I asks firms for their qualifications and willingness to provide services necessary for implementing and managing the State Expenditure Plan.
- I) **Evaluation Criteria.** The RBAFO includes the following evaluation criteria and scoring system for the Evaluation Team's use in ranking the firms' responses:

Evaluation Criteria	Maximum Points*
a. Strategy for Plan Development	15
b. Project Nomination Process	15
c. Project Evaluation Process	25
d. Public Involvement Plan	25
e. Cost Proposal	5
f. Implementation/Management	5
g. Leveraging Resources	5
h. Value Added Services	5
i. Maximum Points Allowed	100
*Actual rating for each criteria may range from zero (lowest rating) to the maximum rating points for that criteria	

Subsequent to posting this agenda item and draft document, we received a request from the Evaluation Team to include a specific requirement that the firm's address strategies for economic development.

Options:

- 1) Approve a motion directing the Request for Best and Final Offer be submitted to the four short-listed firms.
- 2) Provide other direction.

Fiscal Impact:

N/A

Recommendation:

Approve a motion directing the Request for Best and Final Offer be submitted to the four short-listed firms.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 10, 2014

Action Taken:

Motion to: _____, Made by: _____;
Seconded by: _____.

Approved____; Approved as amended____; Defeated_____.

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 7.2
RESTORE Act Funding and Projects Update**

Statement of Issue:

Presentation by Florida's Department of Environmental Protection on RESTORE Act Funding and Projects Update

Background:

The Restoration Council and the US Treasury have released several instructive documents since the Consortium last met on August 8, 2014. The Council's Interim Final Rule, the US Treasury Interim Final Rule, and the US Treasury's Guidance Document on the Direct Allocation have been covered in other agenda items. The Council has also recently issued guidance on the process for the Council's development of the Funded Priorities List.

The Council members may submit projects for consideration of funds under the Council-Selected Restoration Component through November 17. The initial projects to be funded will focus on water quality and habitat restoration. Florida is considering many project proposals that align with these focus areas, such as watershed restoration. All the projects submitted through DEP's online portal will be considered but DEP is also requesting that any new project proposals or updates to existing proposals be submitted through the portal as soon as possible. Upcoming outreach for public input on project proposals includes the following:

- Deepwater Horizon RESTORE Act Funding and Projects Update Webinar
Date: Tuesday, September 23, 2014
Time: 1:00pm to 2:00pm EST

- Deepwater Horizon RESTORE Act Public Meeting
Location: Gulf Coast State College, Conference Center in Student Union East
5230 West U.S. Highway 98
Panama City, FL 32401
Date: Wednesday, October 22, 2014
Time: 6:00 PM - 9:00 PM CST
For more information contact:
Ashley M. Williams, Gulf Coast Public Affairs Manager
ashley.m.williams@dep.state.fl.us
850-245-2197

Mr. Phil Coram, PE, the Administrator for the Florida Coastal Office with the Department of Environmental Protection will be presenting additional information for the Consortium.

Prepared by:

Ginger Delegal

Florida Association of Counties

Interim Manager

On: September 11, 2014



**REQUEST FOR BEST AND FINAL OFFER
FOR**

**CONSULTANT SERVICES FOR THE DEVELOPMENT OF
THE GULF CONSORTIUM'S STATE EXPENDITURE PLAN
REQUIRED BY THE RESTORE ACT**

ITN NUMBER BC-06-17-14-33

I. INTRODUCTION

Leon County is issuing this Request for Best and Final Offer (RBAFO) as part of Invitation to Negotiate (ITN) BC-06-17-14-33. The RBAFO means this written request calling for responses from the four firms short-listed in the Invitation to Negotiate ("ITN") phase of the Consortium's process to procure a State Expenditure Plan ("SEP") Consultant. All requirements of the original ITN document remain in full force and effect, unless revised in this document.

Leon County is issuing this ITN and RBAFO as part of the procurement services it is providing to the Gulf Consortium (Consortium) pursuant to an Interlocal agreement between its 23 member counties. The Consortium serves as the ultimate decision making body in the selection process for this ITN.

A. FUNDING CONSTRAINTS.

The Consortium is a newly created governmental entity. At this point, the Consortium functions with modest resources provided directly by its 23 member counties. The current resources are not sufficient to fund the Scope of Services sought by this ITN. The Consortium anticipates receiving RESTORE Act funding for developing the State Expenditure Plan from the Gulf Coast Ecosystem Restoration Trust Fund (Trust Fund). Due to uncertainty associated with ongoing litigation, the ultimate amount of administrative and civil penalties that may be deposited into the Trust Fund, as well as the timing of the availability of the funds are unknown.

Subsequent to the issuance of the Consortium's ITN the United States Treasury published its Interim Final Rule (Treasury Rule) providing for the Regulation of the Gulf Coast Restoration Trust Fund. Regarding the Consortium and the SEP, the Treasury Rule provides definitions of planning assistance and imposes additional requirements regarding the SEP. The Treasury Rule clearly establishes that the mechanism through which the Consortium can receive funding for preparation of the SEP is a federal grant subject to Council Rule and OMB Uniform Guidance regarding federal grants. The Treasury Rule takes effect on October 14, 2014.

Shortly after the Treasury Rule was published, the Council promulgated an Interim Final Rule (Council Rule) regarding the Spill Impact Component Planning Allocation. The Council Rule provides that the Consortium may apply to the Council for a grant for the purposes of funding the planning and preparation of the SEP. However, it is the understanding of the Consortium that the Council intends to issue additional administrative requirements and establish a process for the planning grants. This may affect the timing of the grant process and, accordingly, the availability of funds to the Consortium to fund the development of the SEP. The Council Rule took effect on August 22, 2014.

Important Note about Conflict of Interest. The newly released Treasury Rule requires the SEP to describe the processes used to prevent conflicts of interest in the development and implementation of the SEP. See Rule section 34.503(b)(3). Accordingly, the Consortium has determined to add a provision to the contract for the SEP Consultant that prohibits the Firm it hires to develop the SEP from participating in the implementation of a project, program or activity funded in part or whole by the SEP.

B. EXHIBITS AND RESOURCES.

The following resources are listed below for informational purposes to assist firms in preparing responses and are available on the Leon County website at www.leoncountyfl.gov/purchasing/plans&specs.

1. RESTORE ACT
2. Interlocal Agreement Establishing the Gulf Consortium

3. Memorandum of Understanding between the Gulf Consortium and Florida Governor Rick Scott
4. U.S. Treasury Interim Final Rule Regarding Regulations for the Gulf Coast Restoration Trust Fund
5. The Consortium's Purchasing Policy for State Expenditure Plan Consultant
6. Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy by the Gulf Coast Ecosystem Restoration Council (August 2013)
7. Gulf Coast Ecosystem Restoration Council Interim Final Rule Regarding RESTORE Act Spill Impact Component Allocation

II. PROCUREMENT INSTRUCTIONS.

A. RESPONSE SUBMITTAL, FORMAT AND DEADLINE. Firms should prepare responses to provide a straight-forward, concise description of its ability to meet the requirements below and to allow the Consortium to properly evaluate the response. Each response shall be prepared simply and economically, providing a straightforward, concise delineation of the Respondent's capabilities to satisfy the requirements of this RBAFO.

Responses are to be submitted bound by binder clips only. No manner of plastic, comb or wire bindings, three ring binders, or staples are acceptable. All copies of proposals are to be printed double-sided, on paper with no less than 30% post-consumer recycled content. In order to expedite the evaluation of responses, it is essential that Respondents follow the format and instructions contained in the Required Submittals (Section IV).

1. Responses must be received by the date, time, and location specified in the Schedule of Events to be considered.
2. The response to the RBAFO should be submitted in a sealed envelope/package addressed in the following manner:

BC-06-17-14-33
*Leon County Purchasing Division
 1800-3 N. Blair Stone Road
 Tallahassee, FL 32308*

B. SCHEDULE OF EVENTS.

Table 1 - Schedule of Events	
Date and Time (all eastern time)	Event
Week of September 22, 2014	Release of the RBAFO
October 21, 2014 at 2:00 p.m Eastern time	OPENING DATE: Date and time by which Responses must be received by the Leon County Purchasing Division, located at 1800-3 N. Blair Stone Road, Tallahassee, FL 32308.
October 30, 2014 at 10:00 a.m.	Date of Evaluation Team Meeting to Consider and Rank Responses
November 19, 2014	Anticipated Date of Consortium Board of Directors consideration of Evaluation Team recommendation
TBD	Anticipated Date of Consortium Decision
TBD	Anticipated Contract Start Date

- C. SPECIAL ACCOMMODATION. Any person requiring a special accommodation at the RBAFO opening because of a disability should call the Division of Purchasing at (850) 606-1600 at least five (5) workdays prior to the RBAFO opening. If you are hearing or speech impaired, please contact the Purchasing Division by calling the County Administrator's Office using the Florida Relay Service which can be reached at 1(800) 955-8771 (TDD).
- D. INFORMATION, COMMUNICATION, AND ADDENDA. Any questions concerning the RBAFO process, required submittals, evaluation criteria, proposal schedule, and selection process should be directed to Shelly W. Kelley and Don Tobin at (850) 606-1600; FAX (850) 606-1601; or e-mail at kelleys@leoncountyfl.gov and tobind@leoncountyfl.gov. **Firms are requested to send such requests to both representatives of the Purchasing Division.** Email inquiries are preferred.
- E. PROHIBITED COMMUNICATIONS. All forms of communication, except for written communication with the Purchasing Division requesting clarifications or questions, shall be prohibited regarding this ITN between:
1. Any person or person's representative seeking an award from such competitive solicitation.
 2. (a) A County Commissioner or Commissioner's staff, or a county employee authorized to act on behalf of the Commission, (b) a Director, Alternate, or Ex-officio Member of the Gulf Consortium Board of Directors, the Consortium Manager or General Counsel or any employee of the Manager or General Counsel, or (c) a member of the Evaluation Team or Negotiation Team.
 - (b) For the purpose of this section, a person's representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.
 - (c) The prohibited communication restriction shall be in effect commencing as of the release of the ITN and terminate at the time the Consortium awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.
 - (d) The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before the Evaluation Teams, contract negotiations during any public meetings, presentations made to the Consortium, and protest hearings. Further, the provisions of this section shall not apply to contract negotiations between the Consortium Manager and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and the Consortium Manager.
 - (e) The penalties for an intentional violation of this article shall be those specified in §125.69(1), Florida Statutes, as amended, and shall be deemed supplemental to the penalties set forth in Section 1-9 of the Code of Laws, Leon County, Florida.
- F. RECEIPT AND OPENING OF FIRM/VENDOR RESPONSES. Firm responses will be opened publicly at the date and time identified in the Schedule of Events as the Opening Date. A tabulation sheet of timely received Responses will be made public and will be posted on the Purchasing Division website at: <http://www.leoncountyfl.gov/Purchasing/TabulationSheets>.

Responses to the **RBAFO** received prior to the time of opening will be secured unopened. The Leon County Purchasing Agent, whose duty it is to open the responses, will decide when the specified time has arrived and no responses received thereafter will be considered. The Purchasing Agent will

not be responsible for the premature opening of a response not properly addressed and identified by Response number on the outside of the envelope/package.

- G. PUBLIC RECORDS. Sealed bids, proposals, responses, replies and Best and Final Offers received by the County pursuant to a competitive solicitation are exempt from public records disclosure until such time as the County posts an intended decision or until 30 days after opening of the documents, whichever is earlier.
- H. TIMELY DELIVERY. It is the Firm's responsibility to assure that the response is delivered at the proper time and location. Responses received after the scheduled receipt time will be marked "TOO LATE." Late responses may be returned unopened to the firm.
- I. INTERVIEWS. Firms responding to this RBAFO must be available for interviews by the Evaluation Team or the Consortium, if interviews are necessary.
- J. PREPARATION AND CHANGES. Response must be typed or printed in ink. All corrections made by the Firm prior to the opening must be initialed and dated by the Firm. No changes or corrections will be allowed after responses are opened.
- K. RESERVATION OF RIGHTS. The County and the Consortium reserves the right to reject any and all responses, in whole or in part, when such rejection is in the best interest of the County. Further, the County and the Consortium reserves the right to withdraw this solicitation at any time prior to final award of contract.
- L. REQUIRED FORMS. In the submittal of the RBAFO, a Respondent is not required to re-submit the required forms submitted with the firm's initial ITN response unless a Respondent's circumstances have changed causing the forms to be incorrect or in the event that a Respondent adds a new member to its Team, then it must resubmit all of the forms. Detailed descriptions of the forms are available in the original ITN document.

Failure to provide the above required documentation may result in the response being determined as non-responsive.

- M. CONTRACTING WITH SMALL MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS. Through the purchase of those goods or services when opportunities are available each Respondent is encouraged to secure participation by contracting with small and minority businesses, women's business enterprises and labor surplus area firms in accordance with OMB Uniform Guidance §200.321 and other applicable provisions of law.

Equal Opportunity/Affirmative Action Requirements. The contractors and all subcontractors shall agree to a commitment to the principles and practices of equal opportunity in employment and to comply with the letter and spirit of federal, state, and local laws and regulations prohibiting discrimination based on race, color, religion, national region, sex, age, handicap, marital status, and political affiliation or belief.

For federally funded projects, in addition to the above, the contractor shall agree to comply with Executive Order 11246, as amended, and to comply with specific affirmative action obligations contained therein.

The Respondent shall include a copy of any affirmative action or equal opportunity policies of the Firm in effect at the time of submission.

N. ERRORS AND OMISSIONS. Neither the County and its representatives nor the Consortium and its representatives shall be responsible for any errors or omission in the RBAFO. Due care and diligence has been exercised in the preparation of this RBAFO, and all information contained herein is believed to be substantially correct.

III. REVISED SCOPE OF SERVICES

The Gulf Consortium seeks to hire a consultant to provide assistance in the preparation of Florida’s State Expenditure Plan required by the RESTORE Act. The scope of services encompasses the broad range of activities outlined below.

A. APPLICATION FOR A PLANNING GRANT.

The Consultant will develop an Application for a Planning Grant that meets the requirements of the RESTORE Act, the U.S. Department of Treasury's Interim Final Rule Regarding Regulations for the Gulf Coast Restoration Trust Fund (31 CFR Part 34) and the Gulf Coast Ecosystem Restoration Council's Rule Regarding the RESTORE Act Spill Impact Component Planning Allocation, which the Consortium can submit to the Council for the purpose of securing federal funds from the RESTORE Act Trust Fund for the development of a State Expenditure Plan.

Deliverable. The Consultant shall deliver an Application for a Planning Grant to the Consortium within 90 days after the execution of an agreement for services with the Consortium.

B. DRAFT STATE EXPENDITURE PLAN.

After the Application for a Planning Grant is submitted to the Council and approved by the Council, the Consultant shall develop a Draft State Expenditure Plan that meets the applicable requirements of the RESTORE Act, the U. S. Treasury Interim Final Rule, the Council Initial Comprehensive Plan, the Council Interim Final Rule and other federal and state law. The Draft SEP shall consider and include at a minimum:

1. **Existing Plans.** An inventory, compilation, and summary of Florida’s Gulf Coast existing community, stakeholder and government plans and programs addressing projects eligible for RESTORE Act funds, including but not limited to the plans being developed by The Nature Conservancy, the existing National Estuary Plans, and the following agency plans:

Agency	Existing Plans
Florida Department of Environmental Protection	<ul style="list-style-type: none"> ▪ Aquatic Preserves Management Plans (20) ▪ National Estuarine Research Reserves Management Plans (2) ▪ Florida Keys and Tortugas National Marine Sanctuary Plans (2) ▪ Coastal Management Program Reports (as relevant) ▪ Outer Continental Shelf Program Reports (as relevant) ▪ State Parks, Preserves & Trail Management Plans ▪ State Outdoor Recreation Plan ▪ State Land Management & Acquisition Plans ▪ Basin Action Management Plans (watershed specific)

Agency	Existing Plans
Florida Fish & Wildlife Conservation Commission	<ul style="list-style-type: none"> ▪ State Artificial Reef Management Plans ▪ State Wildlife Management Area Plans ▪ Protected Species and Habitat Management Plans ▪ NFWF Project plans ▪ Invasive Species Management Plans ▪ Red Tide and other Harmful Aquatic Algal Bloom Management Plans ▪ Florida Fishery Independent Monitoring Management Plans ▪ Florida Marine Fishery Regulations & Management Plans ▪ Florida FWRI Research Plan
Florida Department of Agriculture & Consumer Services	<ul style="list-style-type: none"> ▪ State Sea Food Marketing Plan ▪ State Aquaculture Plan ▪ State Plans for Best Agricultural Practices ▪ State Water Policy Plan (In progress)
Florida Department of Economic Opportunity	<ul style="list-style-type: none"> ▪ Developments of Regional Impact ▪ Areas of Critical State Concern ▪ Post-disaster Redevelopment ▪ Hazard mitigation planning ▪ Waterfronts Florida Program ▪ Coastal High Hazard Area ▪ Adaptation Planning ▪ Florida Job Creation Plan ▪ Florida Five Year Strategic Plan
Florida Water Management Districts (Northwest Florida, Suwanee River, Southwest Florida, South Florida)	<ul style="list-style-type: none"> ▪ Strategic Water Management Plan Annual Work Plan Report; ▪ Minimum Flows and Levels Annual Priority List; ▪ Annual Five-Year Capital Improvement Plan; ▪ Five-Year Water Resource Development Work Program; ▪ Alternative Water Supplies Annual Report; ▪ Florida Forever Five-Year Work Plan Annual Report; ▪ Mitigation Donation Annual Report; and ▪ SWIM Program Summary Report
Florida Regional Planning Councils (Northwest, Apalachee, North Central, Tampa Bay, Southwest Florida, South Florida)	<ul style="list-style-type: none"> ▪ Comprehensive Regional Policy Plan ▪ Regional Economic Development Plans ▪ Regional Transportation Plans

- 2. Law.** A list and compilation of federal and state law or guidance regarding planning and project implementation requirements and a strategy for compliance including, but not limited to:
- a. Florida's Public Records and Open Meetings Laws
 - b. Chapter 373, Florida Statutes
 - c. National Environmental Policy Act
 - d. Clean Water Act
 - e. Council Initial Comprehensive Plan
 - f. The Gulf Coast Ecosystem Restoration Council Interim Final Rule regarding the RESTORE Act Spill Impact Component Planning Allocation.
 - g. Guidance documents developed by the Gulf Coast Ecosystem Restoration Council concerning the State Expenditure Plan or Spill Impact Component.
 - h. United States Department of Treasury Interim Final Rule regarding the Regulation for the Gulf Coast Restoration Trust Fund

3. **Project Management Process.** The design and creation of a project solicitation and management process and data base, including the development of on-line forms and systems for project application, review, public comment and tracking that can be updated to be consistent with funding decisions by any funding source. The Consultant will develop the project format in consultation with the Florida Department of Environmental Protection (FDEP). While the on-line form should include data fields similar to those FDEP's on-line form, it may contain additional fields as needed to solicit project information necessary for development of the SEP. The format must include precise Geographic Information System (GIS) location information for mapping purposes and provide an ability to evaluate the submittals with various GIS applications. This task requires the creation of a database of all projects, programs and activities in Florida contemplated or undertaken with any RESTORE Act funds. Upon request, termination or completion of project, all data must be provided in a format acceptable to the Consortium. The database and data shall be the property of the Consortium.
4. **Strategy.** A strategy for a grouping projects, programs, and activities that can guide SEP development consistent with the goals and objectives of the Council's Initial Comprehensive Plan and other requirements of law. These categories of grouping may include, but are not limited to, economic corridors and watershed planning.
5. **Feasibility.** An analysis of the feasibility of nominated projects and their projected benefits, including an analysis of the projects' return on investment of RESTORE Act Funds.
6. **Cost.** The amount of funding for each project, program and activity.
7. **Timeframe.** The proposed start and completion date for each project, program and activity including any necessary phasing, sequencing or relationships between projects.
8. **Science.** A method to determine how best available science was used for each natural resource or restoration project, program and activity.
9. **Eligibility** A method to confirm that each project, program and activity is an eligible activity under the RESTORE Act.
 - a. A method to confirm that each project, program and activity does not exceed the 25 percent (25%) limit for infrastructure **OR** a method to document an exception as allowed by the RESTORE Act.
 - b. A method to determine that the project, program or activity falls within the geographic scope of the RESTORE Act and Rule and Regulation.
10. **Consistency.** A spreadsheet matrix, or other appropriate tool, for demonstrating projects, programs and activities are consistent with the Goals and Objectives of the Gulf Coast Ecosystem Restoration Council's Comprehensive Plan.
11. **Evaluation Criteria.** Development of metrics and evaluation criteria that will be used in individual project, program and activity evaluation and ranking.
12. **Return on Investment.** A method to estimate and the performance of a calculation to determine the amount that each project, program and activity contributes to the overall economic or ecosystem recovery of the Gulf Coast.

13. **Collaborative Funding.** A description of funding and leveraging collaborations, partnering or other matching funds from NRDA, NFWF, and other RESTORE Act funds that may greatly enhance a particular project, program or activity.
14. **Public Engagement.** A public involvement plan that includes:
 - a. A strategy for robust public engagement that ensures the public’s right to know and public participation in the nomination and selection process for projects, activities and programs included in the State Expenditure Plan.
 - b. A strategy and system that keeps local, state, and federal governments involved and informed throughout the decision making, project selection and plan development process.
15. **Memorandum of Understanding.** A strategy for a Consortium project selection process that includes Florida Department of Environmental Protection Coordinated Review and compliance with the Memorandum of Understanding (MOU) between Florida’s Governor and the Gulf Consortium.

Deliverable: The Consultant shall deliver a Draft Final State Expenditure Plan to the Consortium with recommendations.

C. DRAFT STATE EXPENDITURE PLAN, REVISION, APPROVAL AND SUBMISSION.

- a. The Consultant will participate in the formal, public process of approval of the State Expenditure Plan (SEP) by the Consortium and the Governor of Florida. The Consultant will incorporate revisions to the Draft SEP as directed by Gulf Consortium, the FDEP Coordinated Review process and the Governor to finalize the SEP Plan to be submitted to the Council for consideration.
- b. The Consultant shall remain available to provide services to amend the SEP as circumstances and funding require in accordance with the Consortium’s direction for re-submission to the Governor and ultimately to the Council.

Deliverable: State Expenditure Plan submitted to the Council and any revisions thereto.

IV. **REQUIRED SUBMITTALS**

One ORIGINAL, five (5) copies and one electronic copy of the BAFO Response must be furnished on or before the deadline. Responses will be retained as property of the County/Gulf Consortium. **The ORIGINAL of the reply must be clearly marked “Original” on its face and must contain an original, non-electronic signature of an authorized representative of the responding vendor (firm or individual)**, all other copies may be photocopies and should be printed double-sided. The contents of the response of the successful Firm will become part of the contractual obligations.

Each Applicant shall provide the following information using the same numbering/lettering scheme as the format below.

A. TAB A - EXECUTIVE SUMMARY

The Executive Summary shall consist of a narrative synopsis of the firm’s method of delivering the required services in compliance with the requirements and scope of services outlined in this RBAFO.

The synopsis shall contain sufficient detail addressing all elements of the required service delivery and shall be prepared in such a manner that will clearly indicate the Firm's understanding of the Scope of Services, and intent to comply with, the requirements set forth in this RBAFO. It is contemplated that the Executive Summary will be provided to the Consortium Directors, Alternates and Ex-officio Members at the conclusion of the initial RBAFO in conjunction with the list and ranking of responsive firms. **The Executive Summary provided in the initial ITN response may either be resubmitted in its original form or revised as appropriate for the BAFO response.**

Tab A shall also contain the following information:

1. Request for Best and Final Offer (RBAFO) Coversheet.
2. Firm name or Joint Venture, business address and office location, telephone number and website address.
3. A listing of the prime contractor and all subcontractors/team members. Please include the specific areas of responsibility of each firm.
4. If a change has been made to the team subsequent to the firm's response to the ITN, indicate that and provide the names of the additional and/or deleted firm or personnel. For firms not included in the original ITN response, please include a brief description of the firm's qualifications and experience as more fully requested in TAB F of the original ITN regarding the development of complex, long-range plans like the State Expenditure Plan.
5. Address of the office that is to perform the work.
6. Respondent shall include a signed statement acknowledging acceptance of the minimum specifications and its intent to comply with all terms and conditions indicated in the ITN, Respondent's Initial Response, the Request for Best and Final Offer and Respondent's Best and Final Offer.

When a contract is established between the Consortium and the successful Respondent, all of the above-mentioned documents shall be incorporated and thereby become a part of the resulting contract. If there is a conflict in language, the Consortium's contract will govern.

B. TAB B - STRATEGY/STRATEGIES FOR PLAN DEVELOPMENT.

Tab B must describe a method for developing a State Expenditure Plan using the requirements of the Gulf Coast Ecosystem Restoration Council, the RESTORE Act, and the Rules promulgated by U.S. Treasury. Included in this part should be a description of and rationale for the method of grouping projects, programs, and activities to guide SEP development. Provide a visual display of the Firm's recommended grouping. The display may include a map of Florida delineating the geographical regions, and showing the location of hypothetical list of projects by categories. Firms may revise or expand upon its ITN response in this Tab. Additionally, specify how the Firm would address these elements:

1. Coordination of the planning efforts with the funds available;
2. Navigation of the changing regulatory environment;
3. Generation of broad support for the projects, programs and activities in the SEP;
4. Fostering the positive economic outcomes of the projects, programs, and activities in the SEP;
5. Assisting projects, programs, and activities that are submitted for consideration but do not make it into the Final SEP to be competitive for other funding sources; and
6. Establishing systems for management and tracking to assure compliance of legal requirements and maximization of available funds.

C. TAB C - PROJECT NOMINATION PROCESS.

Tab C should describe how the Firm proposes to address the project nomination process, including systems for project applications, review, and tracking that can be updated with current funding decisions by any funding source. Specifically, Tab C should include descriptions of the processes for solicitation and nomination of a new project and an allowance for refreshing or updating an existing project. Include a description of the methods for soliciting projects in each of the categories of eligible projects. Be sure to describe solicitation for job creation projects and workforce development projects. Describe the critical information to be included on the electronic and alternative hard copy nomination form.

D. TAB D - PROJECT EVALUATION PROCESS.

Tab D should describe how the Firm proposes to address the project evaluation process. Specifically, provide a detailed description of each of the steps in the evaluation process. Discuss the merits and advisability of using different technical advisory groups for different types of projects or geographic locations or other recommended approaches. Describe the makeup of these advisory groups and how they will be utilized to provide both policy and technical inputs for each of the categories of eligible projects. Describe the methods to be utilized to make the process transparent and understandable to the public and stakeholders. Discuss the evaluation processes for all types of eligible activities in the RESTORE Act, being sure to discuss job creation projects and workforce development projects.

E. TAB E - PUBLIC INVOLVEMENT PLAN.

Tab E should describe the Firm's proposed plan and methods for enhancing public involvement.

1. Provide detailed plans and methods for enhancing public involvement through the following:
 - Social media
 - Community meetings
 - Community leaders
 - Citizens
 - Advertising
 - Media plan
 - Website
 - Governmental entities (communication & interaction between legislature, state, cities, counties, municipalities, etc.)
 - Communication plan for specific large or high-risk projects
2. Describe how these plans consider and address the diversity of the 23 Gulf Coast counties. Specify how the information gathered from these diverse groups will be utilized or incorporated into the evaluation process. Address different types of communications and how they will be customized for interaction with various demographics. Describe how the public engagement and outreach processes will comply with the RESTORE Act and Treasury Rule. Specify how the public involvement plan provides transparency and solicits comments and feedback from the public.

F. TAB F – QUALIFICATIONS, EXPERIENCE AND REFERENCES OF PROPOSER AND TEAM.

Tab F should include a description of the qualifications and experience in developing complex, long-range plans like the SEP only for the new members of the Respondent's team, if any have been added subsequent to the Firm's ITN response. For new team members, please provide the detailed

information described in Tab F of the original ITN document.

- G. TAB G - COST PROPOSAL – Describe the anticipated cost to the Consortium for performing the Scope of Services, including the individual cost components and pricing methodology. The Consortium may enter into a Master Services Contract with task order assignments that may be negotiated as lump sum-fixed price or a time and materials contract, or a combination of both. Provide a rate sheet listing hourly rates for each staff member to be assigned to this project on behalf of the Joint Venture. Also, provide pricing for a Master Services arrangement with a lump sum for task orders, as the Firm would recommend to the Consortium.
- H. TAB H – LEVERAGING RESOURCES. Describe methods to be utilized to leverage the resources for this project to receive the overall best value from the multiple funding sources that may be available.
- I. TAB I – IMPLEMENTATION AND MANAGEMENT. In the event that the Consortium is the implementing entity for the SEP, which of the following services would the Firm be qualified and willing to provide:
 - 1. Project Management
 - 2. Contract Management
 - 3. Grant Management and Financial Compliance and
 - 4. Other services deemed necessary for implementation.

Describe the Firm’s approach in assisting the Consortium in implementing the SEP, and the Firm’s qualification and experience in similar large scale projects. Provide a cost estimate for these services separate from the pricing of the SEP development costs. Discuss how the Consortium’s use of the Firm in implementing the SEP would comply with the Treasury Interim Final Rule section 34.503(b)(3) to “prevent conflicts of interest in the development and implementation of the . . . [SEP].

- J. TAB J – VALUE ADDED SERVICES. Provide a list and description of value added services necessary or convenient to the Consortium in the development of the SEP that the Firm would suggest and provide.
- K. REQUIRED FORMS. In response to the ITN, each Firm completed and submitted the following forms: Proposal Response Cover Sheet; Insurance Certification Form; Equal Opportunity/Affirmative Action Statement; Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Primary Covered Transactions; Affidavit Certification Immigration Laws. If any information on those forms has changed since the submission of the initial response, , complete and re-submit the forms as required in the original ITN.

V. SELECTION PROCESS

- A. EVALUATION TEAM MEETINGS. The Consortium Manager shall appoint an Evaluation Team who will review and evaluate all responses received on time.

Meetings of Evaluation Team subsequent to the opening of the solicitation shall be subject to state law regarding public meeting requirements, including, but not limited to, those regarding a meeting at which a negotiation with a firm is conducted pursuant to a competitive solicitation, at which a firm makes an oral presentation as a part of the competitive solicitation, or at which a firm answers questions as a part of a competitive solicitation.

Notice of all meetings shall be posted on the Leon County Purchasing Division website at: www.leoncountyfl.gov/Purchasing/notices/index.asp and in the Leon County Purchasing Division

Offices no less than 72 hours (excluding weekends and holidays).

- B. STEPS IN THE EVALUATION PROCESS. The Evaluation Team will continue with its selection process as follows:

The Consortium reserves the right to negotiate concurrently or separately with competing firms, as set out below. The participating firms should be cognizant of the fact that the Consortium reserves the right to finalize the negotiation process at any time in the proposed process that the Consortium determines such selection would be in the best interest of the Consortium.

Steps 1 – 4 Completed prior to the release of the RBAFO document.

Step 5 The Consortium Board of Directors shall consider a revised Scope of Services to be included in a Request for Best and Final Offer (RBAFO).

Step 6 All participating short listed firms will be sent the RBAFO which includes, at a minimum, a revised Scope of Services and Pricing Options. The firm's Best and Final Offer (BAFO) shall contain the best pricing option the Firm is prepared to offer; however, after submission of Best and Final Offers, the Consortium reserves the right to clarify any element of required service delivery or further negotiate pricing with a single or all qualified Firms prior to final award.

Step 7 The Evaluation Team will complete a written summary evaluation of each Firm's approach, capabilities, and price proposal.

Step 8 The Evaluation Team will review the summary evaluations and rank the firms, in order of preference, based upon their approach and capabilities. The Evaluation Team may require oral presentation and may suggest further revisions to the scope or other aspects of the RBAFO to the Consortium Board of Directors as necessary.

Step 9 The Consortium Board of Directors shall consider the highest firms on the ranked list.

Step 10 The ranking will be posed as stated herein, stating the Consortium's intent to negotiate and award a contract to the first-ranked firm until an acceptable contract price is established or it is determined an acceptable agreement cannot be achieved with such firm.

If the Manager is unable to negotiate a satisfactory contract with the first-ranked firm considered to be fair, competitive and reasonable, negotiations with that firm shall be formally terminated. The Manager shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm the Manager shall terminate negotiations. The Manager shall then undertake negotiations with the third most qualified firm. Should the Consortium be unable to negotiate a satisfactory contract with any of the selected firms, the Manager or Consortium Board of Directors may select additional firms to continue negotiations.

The Manager's recommendation of an acceptable negotiated contract will be presented to the Gulf Consortium for approval and execution.

- C. EVALUATION CRITERIA. Initial Proposals will be evaluated and ranked on the basis of the following considerations:

Evaluation Criteria	Maximum Points*
a. Strategy for Plan Development	15
b. Project Nomination Process	15
c. Project Evaluation Process	25
d. Public Involvement Plan	25
e. Cost Proposal	5
f. Implementation/Management	5
g. Leveraging Resources	5
h. Value Added Services	5
i. Maximum Points Allowed	100
*Actual rating for each criteria may range from zero (lowest rating) to the maximum rating points for that criteria	

D. ORDINAL SCORING.

Each response will be reviewed by the Evaluation Team. Each of the evaluators will work independently using the evaluation criteria above. Each Team member will use the total point scores to rank the responses (i.e. highest point total = 1, 2nd highest = 2). The Purchasing Director will calculate an average rank for each response, combining all rankings of the reviewers, and present them to the Evaluation Team, without accompanying respondent names, who will then determine the recommended short list of firms to participate in oral discussions for the BAFO.

For example:

<u>Firm</u>	<u>Raw Points Received</u>	<u>Rank</u>
Company A	200	2
Company B	210	1
Company C	180	3.5*
Company D	175	5
Company E	180	3.5*

*In the event that multiple firms have the same raw point score point, the rank positions needed to cover those firms are averaged and each firm receives that rank. In this case the third and fourth ranks are tied at 180 raw points, so $3 + 4 = 7$; 7 divided by $2 = 3.5$. Each of the tied firms receives a rank of 3.5.

RBAFO RESPONSE COVER SHEET

This page is to be completed and included as the cover sheet for the Firm's response to the Invitation to Negotiate. Failure to submit this form may result in the response being determined non-responsive.

The Gulf Consortium, reserves the right to accept or reject any or all bids in the best interest of the Consortium.

Shelly W. Kelley, Leon County Purchasing Director

Christopher L. Holley, Interim Manager
Gulf Consortium

This solicitation response is submitted by the below named firm/individual by the undersigned authorized representative.

(Firm Name)

BY _____
(Authorized Representative)

(Printed or Typed Name)

ADDRESS _____

CITY, STATE, ZIP _____

E-MAIL ADDRESS _____

TELEPHONE _____

FAX _____

ADDENDA ACKNOWLEDGMENTS: (IF APPLICABLE)

Addendum #1 dated _____ Initials _____

Addendum #2 dated _____ Initials _____

Addendum #3 dated _____ Initials _____

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 9.1
Consortium 2015 Meeting Calendar**

Statement of Issue:

This agenda item presents the meeting calendar for the Gulf Consortium Board of Directors during 2015.

Background:

The Executive Committee approved the 2015 Meeting Calendar at its September 8, 2014 meeting. That calendar is as follows:

JANUARY

Wednesday the 21st 10:00 am – 2:00 pm, Eastern
Leon County
Annual Election of Executive Committee Members

FEBRUARY

Open

MARCH

Wednesday the 25th 10:00 am – 2:00 pm, Eastern
Leon County
In conjunction with FAC Legislative Day

APRIL/MAY

Open

JUNE

Friday the 19th 10:00 am – 12:00 pm, Eastern
St. John's County, Sawgrass Marriott
In conjunction with FAC Annual Conference

JULY

Open

AUGUST

Thursday TBD 10:00 am – 12:00 pm
In conjunction with FAC Leadership Summit

SEPTEMBER

Wednesday the 23rd 10:00 am – 12:00 pm, Eastern
Pinellas County, Hilton St. Petersburg
In conjunction with FAC Policy Conference

NOVEMBER

Wednesday the 18th 10:00 am – 12:00 pm, Eastern
Nassau County, Omni Amelia Island
In conjunction with FAC Legislative Conference

Recommendation:

No action required.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 9.2
Budget Overview for 2014/15**

Executive Summary:

Seeking approval of the 2014/15 Budget for the Gulf Consortium and the county allocations for 2014/15.

Background:

The proposed budget for 2015/15 will be a continuation of the transition budget that was adopted for 2013/14 by the Gulf Consortium. This budget is intended to provide the Interim Manager (Florida Association of Counties) and the Interim General Counsel (Nabors, Giblin & Nickerson, P.A.), some resources to support the start-up and initial operation of the Gulf Consortium.

Analysis:

Both U.S. Treasury and the Restoration Council have recently released significant guidance and regulations as to how the RESTORE Trust Fund will be administered through the Direct Component (Pot 1), the Comprehensive Plan Component (Pot 2), and the Spill Impact Component (Pot 3). However, as of September 1, 2014, no complete process for accessing operating and planning grants has yet been made available to the Gulf Consortium. In addition, while Gulf Consortium staff understands that that operating and planning grant process will be finalized in the next several months, there is still no credible way for staff to predict when operational funds will be made available for use by the Gulf Consortium. Accordingly, the Interim Manager is proposing a continuation of the transition budget from 2013/14, with very minor changes.

- The county allocations will remain the same. That spreadsheet is attached hereto. The counties will be invoiced, in two equal installments in October 2014 and in March 2015.
- The \$7500 grants writer budget item from 2013/14 will roll over to 2014/15 and be added to an additional \$7500 for 2014/15, amounting to a full \$15,000 item for the hiring of a grants writer to assist in obtaining operating and planning grants for the Gulf Consortium's work in developing the State Expenditure Plan.
- All other revenue and expenditure items remain the same as 2013/14.

The Board should anticipate that when the process for obtaining operating and planning moneys is finalized that a budget amendment may be necessary during FY 2014/15. The Executive Committee voted on September 8, 2014 to recommend to the Board adoption of the proposed 2014/15 budget (as attached) and the county allocations for 2014/15 (also as attached).

Options:

- (1) Recommendation approval of the 2014/15 proposed budget and county allocation amounts;
- (2) Provide other direction

Fiscal Impact:

As indicated in the county allocations and proposed budget that is attached for 2014/15. The total proposed budget is \$147,550.

Recommendation:

Board approval of the proposed 2014/15 budget and county allocation amounts.

Submitted By:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

Action Taken:

Motion to: _____, Made by: _____;
Seconded by: _____.

Approved____; Approved as amended____; Defeated_____.

Gulf Consortium
Proposed Annual Budget
October 1, 2014 - September 30, 2015

	Proposed Budget FY2015	Adopted Budget FY2014	Projected Actuals FY2014
Revenues			
Interim County Funding	140,050	140,053	140,050
Cash Carryforward*	7,500	-	-
Total Revenues	147,550	140,053	140,050
Disbursements			
Consulting-Administration	60,000	60,000	60,000
Consulting-Legal & Expenses	60,000	60,000	60,000
Meeting and Travel Expense	8,550	8,000	8,000
Miscellaneous	1,000	1,000	1,000
Annual Audit	3,000	3,000	3,000
Grant Writer*	15,000	7,500	-
Total Disbursements	147,550	139,500	132,000
Revenues Over (under) Disbursements	-	553	8,050

**Proposed budget includes a line to carryforward unused Grant Writer Funds from FY2014 to FY2015*

**GULF CONSORTIUM
FY2014/15 ALLOCATIONS**

County	Total Amount	October 2014 Invoice 1	April 2015 Invoice 2
Bay	8,270	4,135	4,135
Charlotte	8,270	4,135	4,135
Citrus	8,270	4,135	4,135
Collier	8,270	4,135	4,135
Dixie	2,000	1,000	1,000
Escambia	8,270	4,135	4,135
Franklin	2,000	1,000	1,000
Gulf	2,000	1,000	1,000
Hernando	8,270	4,135	4,135
Hillsborough	8,270	4,135	4,135
Jefferson	2,000	1,000	1,000
Lee	8,270	4,135	4,135
Levy	2,000	1,000	1,000
Manatee	8,270	4,135	4,135
Monroe	8,270	4,135	4,135
Okaloosa	8,270	4,135	4,135
Pasco	8,270	4,135	4,135
Pinellas	8,270	4,135	4,135
Santa Rosa	8,270	4,135	4,135
Sarasota	8,270	4,135	4,135
Taylor	2,000	1,000	1,000
Wakulla	2,000	1,000	1,000
Walton	2,000	1,000	1,000
	140,050.00	70,025	70,025

Amounts to be invoiced in equal installments

Gulf Consortium
Adopted Budget to Actual
October 1, 2013 - August 31, 2014

	<u>FY14 Budget</u>	<u>FY14 Year To Date Actual*</u>
Revenues		
Interim County Funding	140,053.00	140,050.00
Interest Income	-	27.00
Total Revenues	<u>140,053.00</u>	<u>140,077.00</u>
 Disbursements		
Consulting-Administration	60,000.00	55,000.00
Consulting-Legal & Expenses	60,000.00	45,000.00
Meeting and Travel Expense	8,000.00	7,019.17
Miscellaneous	1,000.00	237.94
Audit Expense	3,000.00	3,000.00
Grant Writer Expense	7,500.00	-
 Total Disbursements	<u>139,500.00</u>	<u>110,257.11</u>
 Revenues Over (under) Disbursements	<u>553.00</u>	<u>29,819.89</u>

**Cash Basis of Accounting for Interim Reporting*

Gulf Consortium
Cash Flows Statement
October 1, 2013 -August 31, 2014

Beginning Cash Balance	9/30/2013	32,080.87
Deposits- FY13 FAC Contribution	2,634.50	
Deposits- FY14 County Funding	140,050.00	
Deposits- Interest	27.00	
Net Cash Provided		<u>142,711.50</u>
Expenses- FY 13 Expenses	(34,642.92)	
Expenses- FY 14 Expenses	(110,257.11)	
Net Cash Used		<u>(144,900.03)</u>
Ending Cash Balance	8/31/2014	29,892.34

**Gulf Consortium
Expense Register Detail
October 1, 2013 to August 31, 2014**

Check #	Payee	Date	Total Amount	FY2014 Expenses					FY2013 Expenses				Description	
				Consult-Admin	Consult-Legal	Meeting & Travel	Misc	Audit	Consult-Admin	Consult-Legal	Meeting & Travel	Misc		
1026	FL Dept of State	10/09/13	43.70									43.70		FY2013 EXP: Meeting Notice Sept 11, 2013
1027	FL Dept of State	10/30/13	50.16									50.16		FY2013 EXP: Meeting Notice Sept 25, 2013
1028	FL Dept of State	10/30/13	92.53			92.53								Meeting Notice Oct 17, 2013 \$48.07, Meeting Notice Oct 18, 2013 \$44.46
1029	FAC	10/30/13	18,400.38							15,000.00		3,400.38		\$386.48 DD travel, 6/25 \$1816.64 Fac Ann Con Travel, 6/7 \$816.31 DR DC Travel
1030	FL Dept of State	12/05/13	43.13			43.13								Meeting Notice Nov 6, 2013
1031	VOID													VOIDED CHECK
1032	FL Dept of State	01/15/14	48.45			48.45								Meeting Notice Dec 4, 2013
1033	FL Dept of State	02/06/14	45.22			45.22								Meeting Notice Jan 17, 2014
1034	FAC	02/06/14	5,852.96	5,000.00		852.96								Oct 13 Consulting and Expenses (\$5000 & 852.96)
1035	FAC	02/28/14	17,630.84	15,000.00		2,630.84								Nov, Dec & Jan Consulting \$15000, Meeting @ Leg - \$1264.21, Travel - Nov \$272.66, Dec - \$192.33, Jan - \$901.40
1036	City of Tallahassee	03/11/14	191.53			191.53								Room Rental 3/26/14
1037	FL Dept of State	03/11/14	48.64			48.64								Meeting Notice February 28 2014
1038	VOID													VOIDED CHECK
1039	FL Dept of State	03/25/14	39.90			39.90								Meeting Notice March 13, 2014
1040	FAC	03/24/14	5,000.00	5,000.00										February Consulting
1041	FAC		5,000.00	5,000.00										March Consulting
1042	Law Redd Crona Monroe	04/29/14	3,000.00					3,000.00						Consulting - Audit
1043	FAC	05/21/14	5,000.00	5,000.00										April Consulting
1044	FL Dept of Economic Opp	06/03/14	175.00				175.00							2013-14 Annual Special District Fee
1045	FAC	06/12/14	5,000.00	5,000.00										May Consulting
1046	FL Department of State	06/12/14	47.50			47.50								Meeting Notice May 22, 2014
1047	FL Department of State	07/25/14	48.83			48.83								Meeting Notice June 11, 2014
1048	Nabors Giblin Nickerson	07/25/14	63,304.64		45,000.00	2,093.02	62.94				16,148.68			FY2013EXP:Jul13(5116.12),Aug13(5387.99),Sep13(5644.57); FY2014EXP:Oct13(5516.56),Nov13(5493.90),Dec13(5272.60),Jan14(5183.20), Feb14(5209.60),Mar14(5266.80),Apr14(5113.90),May14(5017.80),Jun14(5081.60)
1049	Nabors Giblin Nickerson	08/12/14	5,436.92	5,000.00		436.92								June Consulting and Expenses
1050	FL Department of State	08/12/14	42.00			42.00								Meeting Notice July 3, 2014
1051	FAC	08/12/14	5,290.92	5,000.00		290.92								June Consulting and Expenses
1052	FL Department of State	08/25/14	66.78			66.78								Meeting Notice July 30, 2014
1053	FAC	08/25/14	5,000.00	5,000.00										July Consulting
TOTAL EXPENSES			144,900.03	55,000.00	45,000.00	7,019.17	237.94	3,000.00		15,000.00	16,148.68	3,494.24	-	

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 9.3
Report on Deepwater Horizon Restoration Partnerships**

Statement of Issue:

This agenda item provides a brief report on the activities of Gulf Consortium staff and representatives of other Deepwater Horizon Restoration Partners.

Background:

Since the August 7, 2014 meeting of the Executive Committee and Board of Directors of the Gulf Consortium, several meetings have occurred that are of note.

Florida DEP and FWC: Consortium staff met with representatives of Florida's Department of Environmental Protection and Fish and Wildlife Commission, the weeks the U.S. Treasury Interim Final Rule and the Council Interim Final Rule were released. Quarterly meetings between Gulf Consortium and Florida DEP/FWC staff have been set, beginning in October 2014.

Restoration Council: Consortium staff held a phone call meeting with two key staff persons from the Restoration Council soon after the Council's Interim Final Rule was released.

Governor's Office: Consortium staff met with representatives of the Governor's Office, providing an update on the State Expenditure Plan consultant team selection process and discussing the impact of the two Interim Final Rules released the last two weeks of August. Monthly meetings between the Governor's Office and the Gulf Consortium staffs have been set, beginning in late September, 2014.

Fiscal Impact:

None.

Recommendation:

No action required.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 9.4
Report on Counties' Multi Year Implementation Plans (Pot 1)**

Statement of Issue:

This agenda item provides a brief report on the request of several of the Gulf Consortium Directors for information on Florida counties' Multi Year Implementation Plans.

Background:

Since the August 7, 2014 meeting of the Board of Directors, several counties have begun to undertake significant activity related to the development of their individual Multi Year Implementation Plans for Pot 1. Some of this activity can be attributed to the anticipated finalization of the U.S. Treasury Interim Final Rule on October 14, 2014.

Several members of the Gulf Consortium Board of Directors had expressed a desire for the Consortium to assist in providing an exchange of information on individual counties' Multi Year Implementation Plans.

Jim Muller, the Bay County RESTORE Act Coordinator, has been actively keeping the counties in communication with each other on the Multi Year Implementation Plan process. Chris Holley, the Interim Manager of the Consortium, has asked Mr. Muller to provide a presentation at the November 19th meeting of the Consortium on individual counties' experiences in developing these plans. It is the intent of staff for the Gulf Consortium to continue periodic updates for the Consortium Board on this issue.

Fiscal Impact:

None.

Recommendation:

No action required.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 10.1
Officer Elections in January 2015**

Executive Summary:

This agenda item provides information about the election process for the 2015 calendar year. It does not require Board action; rather it serves as a reminder about the process the Consortium has used in the past and will use for the election of officers for 2015.

The election will be held at the first meeting in 2015, scheduled for Wednesday, January 21st, in Tallahassee. The three elected offices include a Chairman, Vice-Chairman and Secretary-Treasurer. The following is a summary of the election process as adopted by the Board:

- Self-nomination for one or more of the offices sought,
- Notification to the Interim Manager by December 15, 2014,
- Written approval by the respective Board of County Commissioners of the Director's candidacy provided to the Manager prior to the election,
- Re-election of an incumbent officer allowed,
- Election by written ballot, with a majority vote required of the Directors present and voting, and
- Newly elected officers take office immediately and serve until the election of new officers in 2016.

After the election of the officers, the three elected officers are required to select two additional Directors to serve as "at large," voting members of the Executive Committee. In 2013 and 2014, the Chairman called a special conference call meeting of the three elected officers to select the two at large members of the Executive Committee.

Background:

The Interlocal Agreement establishes the following elected officers: Chairman, Vice-Chairman and Secretary-Treasurer. These officers must be Directors and shall each serve a one year term, unless reelected. The duties of the Chairman include signing documents, calling meetings of the Board and taking such other actions and having such other powers as provided by the Board. See, Sec. 3.04, 3.05, 3.07. The Vice-Chairman is authorized to act in the absence or otherwise inability of the Chairman to act. Sec. 3.05. The Secretary-Treasurer is responsible for the minutes of the meetings and shall have other powers

approved by the Board. Sec. 3.05. The Interlocal Agreement also provides that the Chairman, Vice-Chairman and Secretary-Treasurer shall select two other Directors who, together with the elected officers, shall constitute an Executive Committee.

Pursuant to the procedure adopted by the Board in November 2012, the Board is required to annually elect three officers from among the Directors at the first meeting of the year. The Board's adopted election procedure is printed below.

Analysis:

This agenda item does not require Board action. It provides information to the Directors and the public of the election process and that qualification for election to the Executive Committee remains open until December 15, 2014, the closing date as established by the Interim Manager pursuant to the election procedure.

Options:

This agenda item is informational only. No action by the Board is required.

Fiscal Impact: None.

Recommendation:

No Board action is required.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014

Gulf Consortium Process for Election of the Chairman, Vice Chairman and Secretary-Treasurer

Adopted by the Board of Directors in November 2012.

Commencing with the elections in 2013 and applicable annually thereafter, the following election process is approved:

- **Date of Election.** Election of officers shall be held annually at the Board's first meeting of the calendar year (the "Election Meeting").
- **Term of Office.** An officer shall take office immediately upon election. The term of office shall end upon the election of the officer at the following year's Election Meeting of the Board
- **Self Nomination and Notification; Timelines.--** Any Director wishing to run for an elected office shall formally declare his/her candidacy by the Qualifying Date which is either December 15 of the year before the term begins, or such other date, as set by the Manager, that is not less than 20 days prior to the Election Meeting. The Manager shall provide notice to each Director of the Qualifying Date at least 45 days before the Election Meeting. The Director's declaration of candidacy must be in writing, stating the office or offices sought, and be received by the Manager on or before the Qualifying Date. The Director shall send the declaration of candidacy to the Manager by either (a) express delivery, return receipt requested, or (b) via electronic mail (email). The Manager shall acknowledge receipt of emails declaring candidacy within 24 hours of receipt. However, it shall be the responsibility of the Director declaring his or her candidacy to assure that the email has been received by the Manager on or before the qualifying date.
- **Board of County Commissioners Approval.--** On or before the Election Meeting, a Director who is a candidate for office shall cause to be delivered a letter or resolution to the Manager from that Director's board of county commissioners stating its support for that Director's candidacy for an officer of the Gulf Consortium.
- **Order of Election and Written Ballot.--** At the Election Meeting of the Board of Directors, the Manager shall conduct the election of the offices for the Chairman, Vice-Chairman and Secretary-Treasurer in that order. Qualified candidates shall be given an opportunity to address the Directors for three minutes each. After the candidates' presentation for the respective office, the Interim Manager shall issue a written ballot for each Director to vote his or her preference for that office.

- **Majority Vote Requirements.**-- A majority vote of the Directors present shall be required for the election of the officer. Voting shall continue until a majority vote of the Directors present is achieved for a candidate for the office. In case of a tie, the Interim Manager shall call for another vote for those tied until the office is filled by a majority vote of the Directors present.

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 10.3
Procurement Policy: Approval of Process for
Securing Independent Auditor**

Executive Summary:

The attached resolution establishes a competitive process required by State law for the procurement of an independent financial auditor for the 2013-14 fiscal year. The resolution authorizes the Consortium Chairman to appoint the statutorily required audit selection committee, which is responsible for the procurement process, including the development of the solicitation document, and ranking and recommending qualified audit firms to the full Board of Directors at the November 19, 2014 meeting. The Policy directs the Manager to negotiate the auditor's contract thereafter.

Background:

State law requires entities such as the Gulf Consortium to submit an annual audit to the Chief Financial Officer. Regarding hiring an auditor, section 218.319, Florida Statutes, requires a specific audit selection procedure be followed, including the establishment of an audit committee to develop evaluation factors, to provide for the public announcement of the request for proposals, and to evaluate and rank the proposals for the governing body's consideration. The statute does not limit the make-up of the committee to Consortium Directors.

The Interlocal Agreement establishing the Consortium (ILA) authorizes the Board to establish committees. *See, section 4.01(18), ILA.*

Pursuant to an interlocal agreement between Leon County and the Consortium, the County has been providing procurement services to the Consortium for the process currently underway to hire a State Expenditure Plan consultant. Discussions are underway with Leon County officials about expanding the interlocal agreement to include procurement services for the Consortium's broader procurement needs. *See, agenda item 10.4.* However, the timing requirements related to accomplishing the required audits are such that it is necessary for the Consortium to begin the statutorily required process so that the Board of Directors can approve the Audit Selection Committee's recommendation at the November 19, 2014 meeting and the audit can be conducted in a timely fashion.

The Consortium's audit for 2012-13 was conducted by Law, Redd, Crona, and Munroe, P.A. It was competitively procured by the Florida Association of

Counties on behalf of the Consortium prior to the Consortium being declared a special district which triggered the statutory committee process described above. The Consortium paid \$3,000 for the 2012-13 audit for the services of the independent financial auditor.

Analysis:

The attached draft resolution 2014-02 establishes a procurement policy for the competitive selection of an independent financial auditor to prepare the Consortium's audit for the 2013-14 fiscal year. Under the draft resolution, renewals of the financial auditor may be approved by the Executive Committee.

The procedure calls for the Chairman to appoint an Audit Committee. As provided in section 218.319, Florida Statutes, the Audit Committee is responsible for the following:

1. Establishing evaluation factors, including qualifications and cost.
2. Publicly announcing and issuing the request for proposals.
3. Evaluating the proposals provided by the qualified firms.
4. Ranking and recommending firms to the Board of Directors.

The resolution provides that the Board of Directors shall make the final selection of the firm for the 2013-14 audit. The resolution assigns negotiating a contract to the Consortium Manager. Renewals of the contract may be approved by the Executive Committee.

The anticipated time line for the 2013-14 audit is as follows:

A. Approval of Independent Financial Auditor Policy	September 17, 2014
B. Consortium Chairman Appointment of Audit Selection Committee	September 17, 2014
C. Consortium Year End	September 30, 2014
D. Audit Selection Committee Meeting and Issuance of a Procurement Solicitation Document for the Independent Financial Auditor	First Week in October

E. Responses Due from Responding Audit Firms	First Week in November
F. Audit Selection Committee Meeting to review and rank responses and make a recommendation to the Board of Directors	First Week in November
G. Approval by the Consortium Board of Directors of the Audit Committee Report Regarding Ranking and Recommendation of Firms Responding to Solicitation Document	November 19, 2014 Board Meeting
H. Manager negotiates a contract with the Independent Auditor	December 2014 - January 2015
I. Anticipated period that the audit would be performed	January 2015 – April 2015
J. Anticipated date audit completion	May 2015
K. The Consortium consideration of the Audit Report	June 19, 2015
L. Audit Filing Deadline	June 30, 2015

(Note: the Consortium has 45 days after date of delivery of the audit to have the report presented to the Consortium and filed with State.)

Options:

- (1) Approve the Financial Auditor Resolution 2014-02 as presented in the agenda package; or
- (2) Provide other direction.

Fiscal Impact:

The Consortium paid \$3,000 for the 2012-13 audit. The proposed 2014-15 budget includes the same amount for the 2013-14 independent financial audit.

Recommendation:

Approve Resolution 2014-02 as included in the agenda package.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014

Action Taken:

Motion to: _____, Made by: _____;
Seconded by: _____.

Approved____; Approved as amended____; Defeated_____.

F:\General Data\WPDATA\PROJECTS\Gulf Consortium - 922-12178\Meetings\September 17 2014 BOD\10-3
Procurements Policy_Approval of Process for Securing Independent Auditor.docx



**PROCESS FOR
SECURING INDEPENDENT AUDITOR**

Resolution 2014-02

As adopted on September 17, 2014

**GULF CONSORTIUM
PROCESS FOR
SECURING INDEPENDENT AUDITOR**

TABLE OF CONTENTS

SECTION 1.	PURPOSE.	3
SECTION 2.	APPLICATION OF POLICY.	4
SECTION 3.	DEFINITIONS AND CONSTRUCTION.	4
SECTION 4.	AUTHORITY OF CONSORTIUM MANAGER.	5
SECTION 5.	BIDS.	5
SECTION 5.01.	5
SECTION 5.02.	PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.	9
SECTION 5.03.	CONTRACT CLAIMS.	15
SECTION 5.04.	REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.	16
SECTION 6.	CONTRACT ADMINISTRATION.	17
SECTION 6.01.	CONTRACT PROVISIONS.	17
SECTION 6.02.	ASSIGNMENTS OF CONTRACTS.	17
SECTION 6.03.	RIGHT TO INSPECT PLANT.	18
SECTION 7.	RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM.	18
SECTION 8.	GULF CONSORTIUM PROCUREMENT RECORDS.	18
SECTION 9.	SPECIFICATIONS.	18
SECTION 9.01.	MAXIMUM PRACTICABLE COMPETITION.	18
SECTION 10.	ETHICS IN PUBLIC CONTRACTING.	18
SECTION 10.01.	CRIMINAL PENALTIES.	18
SECTION 10.02.	EMPLOYEE CONFLICT OF INTEREST.	18
SECTION 10.03.	CONTEMPORANEOUS EMPLOYMENT PROHIBITED.	19
SECTION 10.04.	USE OF CONFIDENTIAL INFORMATION.	19
SECTION 10.05.	WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST.	19
SECTION 10.06.	GRATUITIES AND KICKBACKS.	19
SECTION 10.07.	SANCTIONS.	20
SECTION 10.08.	RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.	20
SECTION 11.	INSURANCE REQUIREMENTS.	20
SECTION 12.	BONDS AND DEPOSITS.	21
SECTION 13.	PAYMENT TO VENDORS.	21
SECTION 14.	PAYMENT DISPUTE RESOLUTION.	21
SECTION 15.	AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.	23
SECTION 15.01.	APPEAL OF DECISION TO DEBAR OR SUSPEND.	24
SECTION 16.	SEVERABILITY.	24
SECTION 17.	EFFECTIVE DATE.	24

GULF CONSORTIUM RESOLUTION NO. 2014-____

A RESOLUTION OF THE GULF CONSORTIUM ADOPTING THE PROCESS FOR SECURING INDEPENDENT AUDITOR, PROVIDING FOR DEFINITIONS AND CONSTRUCTION; PROVIDING FOR AUTHORITY OF THE CONSORTIUM MANAGER AND THE LEON COUNTY PURCHASING DIRECTOR; PROVIDING FOR THE CONTENT, ISSUANCE, RESPONSE AND EVALUATION OF SOLICITATION DOCUMENTS; PROVIDING FOR COOPERATIVE PURCHASING; PROVIDING FOR PROTESTS OF INTENDED DECISIONS AND PROCUREMENT AWARDS; PROVIDING FOR CONTRACT CLAIMS; PROVIDING FOR REMEDIES; PROVIDING FOR CONTRACT ADMINISTRATION AND RIGHTS OF THE BOARD OF DIRECTORS; PROVIDING FOR PUBLIC RECORDS; PROHIBITING UNETHICAL CONDUCT; PROVIDING OTHER REQUIREMENTS, INCLUDING PAYMENT DISPUTES RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM:

SECTION 1. PURPOSE.

This policy is adopted to promote the following purposes:

- A. To establish the process and procedure for procuring the services for conducting an independent financial audit of the Gulf Consortium as required by section 218.391, Florida Statutes, to conduct the annual financial audit required in section 218.39, Florida Statutes, for the 2013-14 fiscal year and for renewals thereafter.
- B. To establish the procurement responsibilities of the Manager.
- C. To promote public confidence in the purchasing procedures followed by the Gulf Consortium.
- D. To ensure the fair and equitable treatment of all people who deal with the procurement system of the Gulf Consortium.
- E. To maximize economy in the Gulf Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Gulf Consortium.

- G. To provide safeguards for the maintenance of a procurement system of high quality and integrity for the Gulf Consortium.

SECTION 2. APPLICATION OF POLICY.

- A. **Contracts:** This policy shall apply to Independent Financial Auditor contracts to prepare the annual financial audit required by section 218.39, Florida Statutes, that are solicited or entered into after the effective date of this policy and subsequent amendments or revisions to those contracts.
- B. **Exemptions:** The following are exempted from this Policy:
1. All Independent Financial Auditor services for auditing federal funds where such services are purchased pursuant to another policy adopted by the Gulf Consortium for that purpose.
 2. All services purchased from another unit of government not otherwise limited or prohibited by law.

SECTION 3. DEFINITIONS AND CONSTRUCTION. In all circumstances, where the RESTORE Act or other Federal Law imposes a requirement on the Consortium that conflicts with this Policy, Federal Law takes precedence.

In construing this policy, and each and every word, phrase, or part thereof, where the context will permit:

- A. The singular includes the plural and vice versa.
- B. Gender-specific language includes the other gender and neuter.
- C. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
1. "Audit Committee" means the committee required by section 218.391, Florida Statutes.
 2. "Board" means the Board of Directors of the Consortium.
 3. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.
 4. "General Counsel" means the general counsel or interim general counsel, or her designee of the Gulf Consortium.
 5. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the recipient.

6. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
7. "Person" means any Firm, individual, committee, club, other organization, or group of individuals.
8. "Procurement Award" is an award of a contract for services resulting from a solicitation through action by the Board of Directors of the Consortium in a public meeting.
9. "Procurement Solicitation Document" means the document soliciting qualifications or bids for independent auditor services as required by Florida law.
10. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any services. It also includes all functions that pertain to the obtaining of any services, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
11. "RESTORE Act" means the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 adopted by the United States Congress in Public Law 112-141 and signed by the President.

SECTION 4. AUTHORITY OF CONSORTIUM MANAGER. The Manager shall purchase or supervise the purchase of all Independent Financial Auditors to prepare the state required audit for the 2013-14 fiscal year. In executing those duties, the Manager may rely upon Leon County's Purchasing Director, if available, and her technical and strategic procurement support, including, but not limited to, preparing the solicitation document, advertising and disseminating a solicitation document, and advising the Manager, the Audit Committee and the Board in the selection of the most qualified firm.

SECTION 5. BIDS.

SECTION 5.01. Utilizing the procurement services of Leon County, if available, and at the direction of the Audit Committee, the Manager shall issue a written solicitation in the form required by section 281.391, Florida Statutes. The written solicitation shall solicit qualified Firms to offer bids that meet the requirements of Florida law for securing an independent financial auditor to prepare the 2013-14 fiscal year audit of the Consortium. After the bids are submitted, an Audit Committee shall evaluate the responses and determine which are responsive. The Audit Committee may rank the firms based on the evaluation criteria. The Audit Committee may recommend an additional procurement solicitation if it deems it necessary to procure more competitive bids. The Manager shall apprise the Board of the result and recommendation of the Audit Committee.

- A. Public Notice. The Procurement Solicitation Document shall include the place, date, and time for submitting and opening the bids. If the location, date, or time of the bid opening changes, written notice of the changes shall be given in the form of an addendum, as soon as practicable after the change. Notices shall be posted on the Consortium website and may be posted on the Leon County Purchasing Website.
- B. Cancellation of Procurement solicitation. A Procurement Solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the Consortium. Notice of cancellation shall be provided to all planholders and posted on the Consortium websites and may be posted on the Leon County website, if available. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.
- C. Bid Opening. Bids shall be opened publicly. The Manager shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Negotiate. The name of each bidder, and all witnesses shall be recorded.
- D. Correction or Withdrawal of Bids; Cancellation of Awards. After the publicized submission time and date, any proposal received shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Manager at any point in the process prior to contract negotiations.
 1. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the Manager.
 2. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Consortium or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b. the bidder submits evidence that clearly and convincingly

demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Manager.

- E. Conferences. The Manager may hold a Pre-Proposal Conference or a Pre-Bid Conference, or both.
- F. Audit Committee—Duties and Appointment.
 - 1. The Audit Committee is hereby established consisting of the Consortium Secretary/Treasurer, and at least two other members as appointed by the Consortium Chairman. The Consortium Secretary/Treasurer shall serve as the Chairman of the Audit Committee.
 - 2. The Audit Committee shall develop the Procurement Solicitation Document, evaluate the bids, and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the services.
 - 3. Public Meetings. The Audit Committee meetings shall be conducted in accordance with the public meeting and closed meeting requirements of Section 286.011, Florida Statutes. The Manager shall provide reasonable notice of all meetings and ensure compliance with public meeting requirements.
 - 4. Contact with the Audit Committee. Members of the Audit Committee are prohibited from discussing a solicitation with any person that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the Audit Committee must be done in a public meeting only.
 - 5. Evaluation of Proposals. Bids shall be evaluated by the Audit Committee based on the requirements and criteria set forth in the Procurement Solicitation Document. No criteria may be used in bid evaluation that is not set forth in the Procurement Solicitation Document or in this Policy.
 - 6. Presentations/Interviews. The Audit Committee may choose to conduct formal presentations/interviews with firms prior to final ranking.
 - 7. Final Ranking. The Audit Committee may utilize an Ordinal Process Rating System to rank the firms. The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the Board, as determined in the Procurement Solicitation Document.

- G. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the Manager who shall prepare the recommendation in the appropriate format to the Board.
- H. Award. The Consortium reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of the Consortium. Every procurement of contractual services shall be evidenced by a written contract.
 - 1. Notice of Intended Decision. The Intended Decision shall be posted on the Consortium website and may be posted on the website and public notice board in the Leon County Purchasing Division, if available. This written notice shall state the Firm to whom the Consortium intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
 - 2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the Consortium's policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Manager within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). A Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall constitute a waiver of all rights provided under this purchasing Policy.
- I. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Manager for the following reasons:
 - 1. Failure to materially perform according to contract provisions on prior contracts with the County or the Consortium.
 - 2. Conviction in a court of law of any criminal offense in connection with the conduct of business.
 - 3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 - 4. Clear and convincing evidence that the vendor has attempted to give an employee of the County, the Manager or the General Counsel a Gratuity

- of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
5. Failure to execute a Public Entity Crimes Statement as required by Section 287.133(3)(a), Florida Statutes.
 6. Other reasons deemed appropriate by the Board.
- J. If less than three responsive bids are received, or all bids received exceed the anticipated budget identified for the contractual service, the Manager may negotiate on the best terms and conditions upon recommendation by the Audit Committee and approval by the Board.

SECTION 5.02. PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to a Procurement Solicitation Document and who is aggrieved with an Intended Decision of the Gulf Consortium or a Procurement Award rendered by the Board of Directors of the Gulf Consortium shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.
1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.
 2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.
- B. Filing a Protest. A Protestor shall file with the Consortium a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the Gulf Consortium. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section. A notice of intent to protest and the formal written protest are deemed filed with Leon County when it is received by the Purchasing Division.
1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.

2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
 3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$1,000, whichever is greater. If after completion of the bid protest process and any court proceedings, the Gulf Consortium prevails, the Gulf Consortium shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the Gulf Consortium all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Manager.
- C. General Provisions.
1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the Gulf Consortium, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.

2. Time Limits. The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the Procurement Solicitation Document or upon the mutual written consent of the Protestor and the Gulf Consortium.
 3. Entitlement to Costs. In no case will the Protestor or Intervenor be entitled to any costs incurred with the Procurement Solicitation Document, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. After a formal written protest has been filed with the Manager, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.
 5. Stay of Procurement During Protests. In the event of a timely protest, the Manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Consortium Manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the Gulf Consortium.
- D. Protest of Intended Decisions; Procurement Appeal Board Proceeding.
1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
 2. Upon timely receipt of a formal written protest of an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
 3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the Manager. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the Manager shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed

for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.

- a. Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Manager.
- b. Procurement Appeals Board Proceeding Procedures.
 - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or Firms, including the Protestor, and any Intervenor.
 - ii. At or prior to the protest proceeding, the Protestor and Intervenor or both, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
 - iii. In the protest proceeding, the Protestor, and Intervenor, or both, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
 - iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
 - v. Within seven working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the Gulf Consortium.

- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Award; Special Master Proceeding.

1. Upon timely receipt of a notice of intent to protest a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
2. Upon timely receipt of a formal written protest of a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the General Counsel of the protest. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to a Procurement Solicitation Document.
3. Appointment of a Special Master. The Consortium Manager shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the Gulf Consortium shall serve at the pleasure of the Consortium Manager and shall be compensated at a rate or rates to be fixed by the Consortium Manager. The expense of each special master proceeding shall be borne equally by the Protestor and the Gulf Consortium.
4. Ex parte communication.
 - a. No Gulf Consortium employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and Gulf Consortium staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
 - b. If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the

substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

5. Powers of special masters. The special masters who conduct hearings pursuant to this Section shall have the powers of hearing officers enumerated in Section 120.569(2)(f), Florida Statutes, as amended.
6. Prehearing requirements. At least fourteen days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the evidentiary hearing.
7. Hearings.
 - a. All hearings shall be commenced within 45 days of the date of the filing of the formal written protest. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.
 - b. All hearings shall be open to the public.
 - c. The participants before the special master shall be the Protestor, the Protestor's witnesses, if any, Gulf Consortium staff and witnesses, and any Intervenor. The participation of Intervenors shall be governed by the terms of the order issued by the special master in response to a petition to intervene. Intervention may only be permitted to any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Procurement Award.
 - d. Testimony and evidence shall be limited to matters directly relating to the formal written protest. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.
 - e. All testimony shall be under oath. The order of presentation of testimony and evidence shall be as set forth by the special master.

- f. To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.
- g. The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

SECTION 5.03. CONTRACT CLAIMS.

- A. Authority to Settle Contract Controversies. This Section applies to controversies between the Gulf Consortium and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and Gulf Consortium agree to utilize the provision of this Section.
 - 1. The Manager is authorized to settle any controversy arising out of the performance of a Gulf Consortium contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value. Approval of the Board of Directors is required to settle any controversy in excess of \$10,000 in value.
 - a. If such a controversy is not resolved by mutual agreement, the Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - i. State the reason for the action taken; and,
 - ii. Inform the Contractor of its right to administrative review as provided in this Section.
 - b. If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

- c. The decision of the Manager may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Manager within five calendar days of receipt of the Manager's decision.
2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Manager or to hear any contract controversy in excess of \$10,000.
3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the proceeding procedures contained in Section 5.03(D)(3). Any prior determination by administrative officials shall not be final or conclusive.

SECTION 5.04. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Consortium Manager, after consultation with the General Counsel, determines that a solicitation is in violation of federal, state, or local law or ordinance or the Interlocal Agreement, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Manager, after consultation with the General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Manager, after consultation with the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Gulf Consortium; or
 - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or

2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Gulf Consortium.

SECTION 6. CONTRACT ADMINISTRATION. The Manager shall serve as the chief contract administrator for the Gulf Consortium.

SECTION 6.01. CONTRACT PROVISIONS.

- A. All Contracts for an Independent Financial Auditor shall be subject to approval by the Board. Renewals of such contracts may be approved by the Executive Committee.
- B. Contract Clauses. All Gulf Consortium contracts for independent auditor services shall include provisions necessary to define the responsibilities and rights of the parties to the contract and shall be in accordance with Section 218.319, Florida Statutes, and other applicable provisions of Florida law. The Manager, after consultation with the General Counsel, may propose provisions appropriate for service contracts, addressing among others the following subjects:
 1. the unilateral right of the Gulf Consortium to order, in writing, changes in the work within the scope of the contract;
 2. the unilateral right of the Gulf Consortium to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 3. variations occurring between estimated quantities or work in contract and actual quantities;
 4. defective pricing;
 5. time of performance and liquidated damages;
 6. specified excuses for delay or nonperformance;
 7. termination of the contract for default which shall require Board approval; and
 8. termination of the contract in whole or in part for the convenience of the Gulf Consortium.

SECTION 6.02. ASSIGNMENTS OF CONTRACTS. No contract made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the Gulf Consortium nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Gulf Consortium.

SECTION 6.03. RIGHT TO INSPECT PLANT. The Gulf Consortium may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by the Gulf Consortium. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Gulf Consortium.

SECTION 7. RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM. Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board in accordance with Florida law and in the best interests of the Gulf Consortium, to reject all bids/proposals received in response to a solicitation, to determine in its sole discretion the responsiveness and responsibility of any bidder/proposer, to approve and authorize or to enter or not to enter into any contract as it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

SECTION 8. GULF CONSORTIUM PROCUREMENT RECORDS.

- A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Gulf Consortium in appropriate files by the Manager.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the Gulf Consortium in accordance with records retention guidelines and schedules established by the State of Florida.

SECTION 9. SPECIFICATIONS.

SECTION 9.01. MAXIMUM PRACTICABLE COMPETITION. All specifications shall be drafted to promote overall economy and encourage competition in satisfying the Gulf Consortium's needs and shall not be unduly restrictive. All specifications shall meet the applicable requirements of Florida law, including Section 218.319, Florida Statutes.

SECTION 10. ETHICS IN PUBLIC CONTRACTING.

SECTION 10.01. CRIMINAL PENALTIES. To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

SECTION 10.02. EMPLOYEE CONFLICT OF INTEREST.

- A. Participation. It shall be unethical for the Manager and the General Counsel and the employees of either to participate directly or indirectly in a procurement contract when the Manager and the General Counsel and the employees of either knows that:

1. the Manager and the General Counsel and the employees of either or any member of the immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
2. any other person, Firm, or organization with whom the Manager and the General Counsel and the employees of either or any member of a Gulf Consortium employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

SECTION 10.03. CONTEMPORANEOUS EMPLOYMENT PROHIBITED. It shall be unethical for the Manager and the General Counsel and the employees of either who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the Gulf Consortium.

SECTION 10.04. USE OF CONFIDENTIAL INFORMATION. It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SECTION 10.05. WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST. The Consortium Manager may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- A. the contemporaneous employment or financial interest of the Manager's or General Counsel's employee has been publicly disclosed;
- B. the Manager's or General Counsel's employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the Gulf Consortium.

SECTION 10.06. GRATUITIES AND KICKBACKS.

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, or for any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

SECTION 10.07. SANCTIONS. The Board may impose any one or more of the following sanctions for violation of the ethical standards:

1. written warnings;
2. termination of contracts; or
3. debarment or suspension as provided in Section 16.

SECTION 10.08. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by the Manager or General Counsel's employee or a non-employee may be recovered from both Gulf Consortium employee and non-employee.
- B. Recovery of Kickbacks by the Gulf Consortium. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Gulf Consortium and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION 11. INSURANCE REQUIREMENTS.

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.
- B. Certificates of Insurance. Certificates of Insurance acceptable to the Gulf Consortium shall be filed with the Purchasing Division prior to the

commencement of the work and periodically thereafter upon any renewals during the term of the contract.

- C. Change of Insurance Requirements. The Gulf Consortium reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the Gulf Consortium.

SECTION 12. BONDS AND DEPOSITS. When any of the bonds are required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond is accepted by the Gulf Consortium.

SECTION 13. PAYMENT TO VENDORS. It is the policy of the Gulf Consortium that payment for all purchases by the Gulf Consortium be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," Sections 218.70-218.79, Florida Statutes.

SECTION 14. PAYMENT DISPUTE RESOLUTION.

- A. In the event a dispute occurs between a contractor/vendor, herein referred to as "vendor", and the Gulf Consortium concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Manager. If the dispute cannot be resolved between the vendor and the Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the Gulf Consortium, under this procedure in accordance with Section 218.76, Florida Statutes.
- B. Filing a Dispute. Any vendor shall file with the Manager in a formal notice of payment dispute in writing within two business days of the dispute first being raised.
1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.
 2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this Section.
 3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.

C. General Provisions.

1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request or proper invoice (as specified in the contract document) was received by the Gulf Consortium and shall be concluded by final decision of the Gulf Consortium not later than 60 calendar days after the date on which the payment request or proper invoice was received by the Gulf Consortium.
2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.
3. Interest. If the dispute is resolved in favor of the Gulf Consortium, then interest charges shall begin to accrue 15 calendar days after the Gulf Consortium's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.
4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

D. Payment Dispute Resolution Proceeding Process.

1. All formal payment disputes shall be presented to the Payment Dispute Resolution Committee. The committee shall be comprised of the members designated by the Manager.
2. Within three (3) business days of timely receipt of a formal notice of payment dispute, the Contract Manager shall schedule a proceeding before the Payment Dispute Resolution Committee to include all substantially affected persons or Firms, including the vendor and Gulf Consortium project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.
3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.
4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment

Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.

- a. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
- b. Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the Gulf Consortium project manager. The decision of the Payment Dispute Resolution Committee shall be final and conclusive for all disputes valued less than \$100,000.
- c. For those disputes valued above \$100,000, the Payment Dispute Resolution Committee shall file a Recommended Order for approval by the Manager.

SECTION 15. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.

- A. **Suspension.** After consultation with the General Counsel, the Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three months, and the Manager shall immediately inform the Board and provide notice to the affected person.
- B. **Debarment.** After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three years.
- C. **Causes for Debarment.** The causes for debarment include:
 1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty

- which currently, seriously, and directly affects responsibility as a Gulf Consortium contractor;
3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
 - a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and
 5. any other cause the Manager or Board determines to be as serious and compelling as to affect responsibility as a Gulf Consortium contractor, including debarment by another governmental entity.
- D. Notice of Decision. The Manager shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

SECTION 15.01. APPEAL OF DECISION TO DEBAR OR SUSPEND. The Board's decision to debar or suspend a person or Firm shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

SECTION 16. SEVERABILITY. The provisions of this Resolution are severable and it is the intention to confer the whole or any part of the Powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Resolution. It is hereby declared to be the legislative intent that this Resolution would have been adopted had such unconstitutional provision not been included therein.

SECTION 17. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by _____ who moved its adoption. The motion was seconded by _____. The motion was adopted by a majority vote of the Board of Directors.

Duly passed and adopted this 17th day of September, 2014.

Chairman

Attest: Secretary-Treasurer

Approved as to form:

Sarah M. Bleakley, Esq.
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 10.2
Procurement Policies Update for Grants Writer, General Counsel, Manager**

Statement of Issue:

This agenda item provides an update regarding procurement policies for the procurement of a grants writer, a general counsel and a manager. It is provided for the Board's information. No Board action is required at this time.

Background

The Consortium currently has no employees. Since its inception, the Consortium has contracted with the Florida Association of Counties, Inc. to provide management services and with Nabors, Giblin & Nickerson, P.A. to provide general counsel services. Funding for those services has been provided by the 23 counties which are members of the Consortium. The Consortium has struggled to fund the services necessary for an efficient and effective Consortium and has explored several alternatives to funding it by contributions from the member counties.

The Consortium has not engaged the services of a grants writer to provide assistance in drafting grant proposals and securing federal funding for the Consortium. The proposed 2014-15 budget includes a \$15,000 line item for that purpose. *See, Agenda Item 9.2.*

Analysis:

With the publication of the Treasury Interim Final Rule and the Council Interim Final Rule, the Consortium has moved closer to understanding the path for securing federal funds for the work required of the Consortium under the RESTORE Act. For example, the Treasury Interim Final Rule makes clear that funding for the Consortium is provided by federal grants governed by the two Interim Rules and the OMB Uniform Guidance which is applicable to all federal agencies' grant administration. The OMB Uniform Guidance provides procurement standards and generally requires competitive procurement.

At this point, what is still not clear is the process for securing federal funds for standing up and administering the Consortium as a new governmental entity. Consortium staff has discussed this problem with our Restoration Partners,

including the Governor's office, the Department of Environmental Protection, the Florida Fish and Wildlife Conservation Commission and the Restoration Council. But no clear path to funding was imparted during those discussions. More direction is needed from the Restoration Council as to the application of the OMB Circular and the two Interim Final Rules for securing necessary federal funding for the Consortium's current structure of using contract providers instead of employees.

The memorandum for Agenda Item 7.1 and its attached draft comments on the Council Interim Final Rule provide more detail about the lack of clarity for securing funding for the work of the Consortium. Until better direction is presented, it would be premature to proceed with procuring a permanent manager or a general counsel. Similarly, it is not practical to hire a grant writer until there is a clearer process for securing federal funding for those services.

Consortium staff hopes to resolve this issue soon, so the Board can move forward at its November 19th meeting.

Options:

This agenda item is informational only. No action by the Board is required.

Fiscal Impact:

None.

Recommendation:

No Board action is required.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014



PROCESS FOR SECURING INDEPENDENT AUDITOR

Resolution 2014-02

As adopted on September 17, 2014

**GULF CONSORTIUM
PROCESS FOR
SECURING INDEPENDENT AUDITOR**

TABLE OF CONTENTS

GULF CONSORTIUM RESOLUTION NO. 2014-____

A RESOLUTION OF THE GULF CONSORTIUM ADOPTING THE PROCESS FOR SECURING INDEPENDENT AUDITOR, PROVIDING FOR DEFINITIONS AND CONSTRUCTION; PROVIDING FOR AUTHORITY OF THE CONSORTIUM MANAGER AND THE LEON COUNTY PURCHASING DIRECTOR; PROVIDING FOR THE CONTENT, ISSUANCE, RESPONSE AND EVALUATION OF SOLICITATION DOCUMENTS; PROVIDING FOR COOPERATIVE PURCHASING; PROVIDING FOR PROTESTS OF INTENDED DECISIONS AND PROCUREMENT AWARDS; PROVIDING FOR CONTRACT CLAIMS; PROVIDING FOR REMEDIES; PROVIDING FOR CONTRACT ADMINISTRATION AND RIGHTS OF THE BOARD OF DIRECTORS; PROVIDING FOR PUBLIC RECORDS; PROHIBITING UNETHICAL CONDUCT; PROVIDING OTHER REQUIREMENTS, INCLUDING PAYMENT DISPUTES RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM:

SECTION 1. PURPOSE.

This policy is adopted to promote the following purposes:

- A. To establish the process and procedure for procuring the services for conducting an independent financial audit of the Gulf Consortium as required by section 218.391, Florida Statutes, to conduct the annual financial audit required in section 218.39, Florida Statutes, for the 2013-14 fiscal year and for renewals thereafter.
- B. To establish the procurement responsibilities of the Manager.
- C. To promote public confidence in the purchasing procedures followed by the Gulf Consortium.
- D. To ensure the fair and equitable treatment of all people who deal with the procurement system of the Gulf Consortium.
- E. To maximize economy in the Gulf Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Gulf Consortium.

- G. To provide safeguards for the maintenance of a procurement system of high quality and integrity for the Gulf Consortium.

SECTION 2. APPLICATION OF POLICY.

- A. **Contracts:** This policy shall apply to Independent Financial Auditor contracts to prepare the annual financial audit required by section 218.39, Florida Statutes, that are solicited or entered into after the effective date of this policy and subsequent amendments or revisions to those contracts.
- B. **Exemptions:** The following are exempted from this Policy:
1. All Independent Financial Auditor services for auditing federal funds where such services are purchased pursuant to another policy adopted by the Gulf Consortium for that purpose.
 2. All services purchased from another unit of government not otherwise limited or prohibited by law.

SECTION 3. DEFINITIONS AND CONSTRUCTION. In all circumstances, where the RESTORE Act or other Federal Law imposes a requirement on the Consortium that conflicts with this Policy, Federal Law takes precedence.

In construing this policy, and each and every word, phrase, or part thereof, where the context will permit:

- A. The singular includes the plural and vice versa.
- B. Gender-specific language includes the other gender and neuter.
- C. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
1. "Audit Committee" means the committee required by section 218.391, Florida Statutes.
 2. "Board" means the Board of Directors of the Consortium.
 3. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.
 4. "General Counsel" means the general counsel or interim general counsel, or her designee of the Gulf Consortium.
 5. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the recipient.

6. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
7. "Person" means any Firm, individual, committee, club, other organization, or group of individuals.
8. "Procurement Award" is an award of a contract for services resulting from a solicitation through action by the Board of Directors of the Consortium in a public meeting.
9. "Procurement Solicitation Document" means the document soliciting qualifications or bids for independent auditor services as required by Florida law.
10. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any services. It also includes all functions that pertain to the obtaining of any services, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
11. "RESTORE Act" means the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 adopted by the United States Congress in Public Law 112-141 and signed by the President.

SECTION 4. AUTHORITY OF CONSORTIUM MANAGER. The Manager shall purchase or supervise the purchase of all Independent Financial Auditors to prepare the state required audit for the 2013-14 fiscal year. In executing those duties, the Manager may rely upon Leon County's Purchasing Director, if available, and her technical and strategic procurement support, including, but not limited to, preparing the solicitation document, advertising and disseminating a solicitation document, and advising the Manager, the Audit Committee and the Board in the selection of the most qualified firm.

SECTION 5. BIDS.

SECTION 5.01. Utilizing the procurement services of Leon County, if available, and at the direction of the Audit Committee, the Manager shall issue a written solicitation in the form required by section 281.391, Florida Statutes. The written solicitation shall solicit qualified Firms to offer bids that meet the requirements of Florida law for securing an independent financial auditor to prepare the 2013-14 fiscal year audit of the Consortium. After the bids are submitted, an Audit Committee shall evaluate the responses and determine which are responsive. The Audit Committee may rank the firms based on the evaluation criteria. The Audit Committee may recommend an additional procurement solicitation if it deems it necessary to procure more competitive bids. The Manager shall apprise the Board of the result and recommendation of the Audit Committee.

- A. Public Notice. The Procurement Solicitation Document shall include the place, date, and time for submitting and opening the bids. If the location, date, or time of the bid opening changes, written notice of the changes shall be given in the form of an addendum, as soon as practicable after the change. Notices shall be posted on the Consortium website and may be posted on the Leon County Purchasing Website.
- B. Cancellation of Procurement solicitation. A Procurement Solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the Consortium. Notice of cancellation shall be provided to all planholders and posted on the Consortium websites and may be posted on the Leon County website, if available. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.
- C. Bid Opening. Bids shall be opened publicly. The Manager shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Negotiate. The name of each bidder, and all witnesses shall be recorded.
- D. Correction or Withdrawal of Bids; Cancellation of Awards. After the publicized submission time and date, any proposal received shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Manager at any point in the process prior to contract negotiations.
 1. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the Manager.
 2. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Consortium or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b. the bidder submits evidence that clearly and convincingly

demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Manager.

- E. Conferences. The Manager may hold a Pre-Proposal Conference or a Pre-Bid Conference, or both.
- F. Audit Committee—Duties and Appointment.
 - 1. The Audit Committee is hereby established consisting of the Consortium Secretary/Treasurer, and at least two other members as appointed by the Consortium Chairman. The Consortium Secretary/Treasurer shall serve as the Chairman of the Audit Committee.
 - 2. The Audit Committee shall develop the Procurement Solicitation Document, evaluate the bids, and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the services.
 - 3. Public Meetings. The Audit Committee meetings shall be conducted in accordance with the public meeting and closed meeting requirements of Section 286.011, Florida Statutes. The Manager shall provide reasonable notice of all meetings and ensure compliance with public meeting requirements.
 - 4. Contact with the Audit Committee. Members of the Audit Committee are prohibited from discussing a solicitation with any person that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the Audit Committee must be done in a public meeting only.
 - 5. Evaluation of Proposals. Bids shall be evaluated by the Audit Committee based on the requirements and criteria set forth in the Procurement Solicitation Document. No criteria may be used in bid evaluation that is not set forth in the Procurement Solicitation Document or in this Policy.
 - 6. Presentations/Interviews. The Audit Committee may choose to conduct formal presentations/interviews with firms prior to final ranking.
 - 7. Final Ranking. The Audit Committee may utilize an Ordinal Process Rating System to rank the firms. The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the Board, as determined in the Procurement Solicitation Document.

- G. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the Manager who shall prepare the recommendation in the appropriate format to the Board.
- H. Award. The Consortium reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of the Consortium. Every procurement of contractual services shall be evidenced by a written contract.
1. Notice of Intended Decision. The Intended Decision shall be posted on the Consortium website and may be posted on the website and public notice board in the Leon County Purchasing Division, if available. This written notice shall state the Firm to whom the Consortium intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
 2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the Consortium's policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Manager within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). A Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall constitute a waiver of all rights provided under this purchasing Policy.
- I. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Manager for the following reasons:
1. Failure to materially perform according to contract provisions on prior contracts with the County or the Consortium.
 2. Conviction in a court of law of any criminal offense in connection with the conduct of business.
 3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 4. Clear and convincing evidence that the vendor has attempted to give an employee of the County, the Manager or the General Counsel a Gratuity

- of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
5. Failure to execute a Public Entity Crimes Statement as required by Section 287.133(3)(a), Florida Statutes.
 6. Other reasons deemed appropriate by the Board.
- J. If less than three responsive bids are received, or all bids received exceed the anticipated budget identified for the contractual service, the Manager may negotiate on the best terms and conditions upon recommendation by the Audit Committee and approval by the Board.

SECTION 5.02. PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to a Procurement Solicitation Document and who is aggrieved with an Intended Decision of the Gulf Consortium or a Procurement Award rendered by the Board of Directors of the Gulf Consortium shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.
1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.
 2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.
- B. Filing a Protest. A Protestor shall file with the Consortium a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the Gulf Consortium. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section. A notice of intent to protest and the formal written protest are deemed filed with Leon County when it is received by the Purchasing Division.
1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.

2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
 3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$1,000, whichever is greater. If after completion of the bid protest process and any court proceedings, the Gulf Consortium prevails, the Gulf Consortium shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the Gulf Consortium all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Manager.
- C. General Provisions.
1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the Gulf Consortium, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.

2. Time Limits. The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the Procurement Solicitation Document or upon the mutual written consent of the Protestor and the Gulf Consortium.
 3. Entitlement to Costs. In no case will the Protestor or Intervenor be entitled to any costs incurred with the Procurement Solicitation Document, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. After a formal written protest has been filed with the Manager, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.
 5. Stay of Procurement During Protests. In the event of a timely protest, the Manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Consortium Manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the Gulf Consortium.
- D. Protest of Intended Decisions; Procurement Appeal Board Proceeding.
1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
 2. Upon timely receipt of a formal written protest of an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
 3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the Manager. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the Manager shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed

for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.

- a. Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Manager.
- b. Procurement Appeals Board Proceeding Procedures.
 - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or Firms, including the Protestor, and any Intervenor.
 - ii. At or prior to the protest proceeding, the Protestor and Intervenor or both, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
 - iii. In the protest proceeding, the Protestor, and Intervenor, or both, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
 - iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
 - v. Within seven working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the Gulf Consortium.

- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Award; Special Master Proceeding.

1. Upon timely receipt of a notice of intent to protest a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
2. Upon timely receipt of a formal written protest of a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the General Counsel of the protest. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to a Procurement Solicitation Document.
3. Appointment of a Special Master. The Consortium Manager shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the Gulf Consortium shall serve at the pleasure of the Consortium Manager and shall be compensated at a rate or rates to be fixed by the Consortium Manager. The expense of each special master proceeding shall be borne equally by the Protestor and the Gulf Consortium.
4. Ex parte communication.
 - a. No Gulf Consortium employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and Gulf Consortium staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
 - b. If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the

substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

5. Powers of special masters. The special masters who conduct hearings pursuant to this Section shall have the powers of hearing officers enumerated in Section 120.569(2)(f), Florida Statutes, as amended.
6. Prehearing requirements. At least fourteen days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the evidentiary hearing.
7. Hearings.
 - a. All hearings shall be commenced within 45 days of the date of the filing of the formal written protest. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.
 - b. All hearings shall be open to the public.
 - c. The participants before the special master shall be the Protestor, the Protestor's witnesses, if any, Gulf Consortium staff and witnesses, and any Intervenor. The participation of Intervenors shall be governed by the terms of the order issued by the special master in response to a petition to intervene. Intervention may only be permitted to any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Procurement Award.
 - d. Testimony and evidence shall be limited to matters directly relating to the formal written protest. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.
 - e. All testimony shall be under oath. The order of presentation of testimony and evidence shall be as set forth by the special master.

- f. To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.
- g. The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

SECTION 5.03. CONTRACT CLAIMS.

- A. Authority to Settle Contract Controversies. This Section applies to controversies between the Gulf Consortium and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and Gulf Consortium agree to utilize the provision of this Section.
 - 1. The Manager is authorized to settle any controversy arising out of the performance of a Gulf Consortium contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value. Approval of the Board of Directors is required to settle any controversy in excess of \$10,000 in value.
 - a. If such a controversy is not resolved by mutual agreement, the Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - i. State the reason for the action taken; and,
 - ii. Inform the Contractor of its right to administrative review as provided in this Section.
 - b. If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

- c. The decision of the Manager may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Manager within five calendar days of receipt of the Manager's decision.
2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Manager or to hear any contract controversy in excess of \$10,000.
3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the proceeding procedures contained in Section 5.03(D)(3). Any prior determination by administrative officials shall not be final or conclusive.

SECTION 5.04. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Consortium Manager, after consultation with the General Counsel, determines that a solicitation is in violation of federal, state, or local law or ordinance or the Interlocal Agreement, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Manager, after consultation with the General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Manager, after consultation with the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Gulf Consortium; or
 - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or

2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Gulf Consortium.

SECTION 6. CONTRACT ADMINISTRATION. The Manager shall serve as the chief contract administrator for the Gulf Consortium.

SECTION 6.01. CONTRACT PROVISIONS.

- A. All Contracts for an Independent Financial Auditor shall be subject to approval by the Board. Renewals of such contracts may be approved by the Executive Committee.
- B. Contract Clauses. All Gulf Consortium contracts for independent auditor services shall include provisions necessary to define the responsibilities and rights of the parties to the contract and shall be in accordance with Section 218.319, Florida Statutes, and other applicable provisions of Florida law. The Manager, after consultation with the General Counsel, may propose provisions appropriate for service contracts, addressing among others the following subjects:
 1. the unilateral right of the Gulf Consortium to order, in writing, changes in the work within the scope of the contract;
 2. the unilateral right of the Gulf Consortium to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 3. variations occurring between estimated quantities or work in contract and actual quantities;
 4. defective pricing;
 5. time of performance and liquidated damages;
 6. specified excuses for delay or nonperformance;
 7. termination of the contract for default which shall require Board approval; and
 8. termination of the contract in whole or in part for the convenience of the Gulf Consortium.

SECTION 6.02. ASSIGNMENTS OF CONTRACTS. No contract made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the Gulf Consortium nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Gulf Consortium.

SECTION 6.03. RIGHT TO INSPECT PLANT. The Gulf Consortium may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by the Gulf Consortium. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Gulf Consortium.

SECTION 7. RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM. Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board in accordance with Florida law and in the best interests of the Gulf Consortium, to reject all bids/proposals received in response to a solicitation, to determine in its sole discretion the responsiveness and responsibility of any bidder/proposer, to approve and authorize or to enter or not to enter into any contract as it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

SECTION 8. GULF CONSORTIUM PROCUREMENT RECORDS.

- A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Gulf Consortium in appropriate files by the Manager.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the Gulf Consortium in accordance with records retention guidelines and schedules established by the State of Florida.

SECTION 9. SPECIFICATIONS.

SECTION 9.01. MAXIMUM PRACTICABLE COMPETITION. All specifications shall be drafted to promote overall economy and encourage competition in satisfying the Gulf Consortium's needs and shall not be unduly restrictive. All specifications shall meet the applicable requirements of Florida law, including Section 218.319, Florida Statutes.

SECTION 10. ETHICS IN PUBLIC CONTRACTING.

SECTION 10.01. CRIMINAL PENALTIES. To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

SECTION 10.02. EMPLOYEE CONFLICT OF INTEREST.

- A. Participation. It shall be unethical for the Manager and the General Counsel and the employees of either to participate directly or indirectly in a procurement contract when the Manager and the General Counsel and the employees of either knows that:

1. the Manager and the General Counsel and the employees of either or any member of the immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
2. any other person, Firm, or organization with whom the Manager and the General Counsel and the employees of either or any member of a Gulf Consortium employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

SECTION 10.03. CONTEMPORANEOUS EMPLOYMENT PROHIBITED. It shall be unethical for the Manager and the General Counsel and the employees of either who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the Gulf Consortium.

SECTION 10.04. USE OF CONFIDENTIAL INFORMATION. It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SECTION 10.05. WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST. The Consortium Manager may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- A. the contemporaneous employment or financial interest of the Manager's or General Counsel's employee has been publicly disclosed;
- B. the Manager's or General Counsel's employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the Gulf Consortium.

SECTION 10.06. GRATUITIES AND KICKBACKS.

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, or for any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

SECTION 10.07. SANCTIONS. The Board may impose any one or more of the following sanctions for violation of the ethical standards:

1. written warnings;
2. termination of contracts; or
3. debarment or suspension as provided in Section 16.

SECTION 10.08. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by the Manager or General Counsel's employee or a non-employee may be recovered from both Gulf Consortium employee and non-employee.
- B. Recovery of Kickbacks by the Gulf Consortium. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Gulf Consortium and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION 11. INSURANCE REQUIREMENTS.

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.
- B. Certificates of Insurance. Certificates of Insurance acceptable to the Gulf Consortium shall be filed with the Purchasing Division prior to the

commencement of the work and periodically thereafter upon any renewals during the term of the contract.

- C. Change of Insurance Requirements. The Gulf Consortium reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the Gulf Consortium.

SECTION 12. BONDS AND DEPOSITS. When any of the bonds are required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond is accepted by the Gulf Consortium.

SECTION 13. PAYMENT TO VENDORS. It is the policy of the Gulf Consortium that payment for all purchases by the Gulf Consortium be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," Sections 218.70-218.79, Florida Statutes.

SECTION 14. PAYMENT DISPUTE RESOLUTION.

- A. In the event a dispute occurs between a contractor/vendor, herein referred to as "vendor", and the Gulf Consortium concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Manager. If the dispute cannot be resolved between the vendor and the Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the Gulf Consortium, under this procedure in accordance with Section 218.76, Florida Statutes.
- B. Filing a Dispute. Any vendor shall file with the Manager in a formal notice of payment dispute in writing within two business days of the dispute first being raised.
1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.
 2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this Section.
 3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.

C. General Provisions.

1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request or proper invoice (as specified in the contract document) was received by the Gulf Consortium and shall be concluded by final decision of the Gulf Consortium not later than 60 calendar days after the date on which the payment request or proper invoice was received by the Gulf Consortium.
2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.
3. Interest. If the dispute is resolved in favor of the Gulf Consortium, then interest charges shall begin to accrue 15 calendar days after the Gulf Consortium's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.
4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

D. Payment Dispute Resolution Proceeding Process.

1. All formal payment disputes shall be presented to the Payment Dispute Resolution Committee. The committee shall be comprised of the members designated by the Manager.
2. Within three (3) business days of timely receipt of a formal notice of payment dispute, the Contract Manager shall schedule a proceeding before the Payment Dispute Resolution Committee to include all substantially affected persons or Firms, including the vendor and Gulf Consortium project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.
3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.
4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment

Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.

- a. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
- b. Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the Gulf Consortium project manager. The decision of the Payment Dispute Resolution Committee shall be final and conclusive for all disputes valued less than \$100,000.
- c. For those disputes valued above \$100,000, the Payment Dispute Resolution Committee shall file a Recommended Order for approval by the Manager.

SECTION 15. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.

- A. Suspension. After consultation with the General Counsel, the Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three months, and the Manager shall immediately inform the Board and provide notice to the affected person.
- B. Debarment. After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three years.
- C. Causes for Debarment. The causes for debarment include:
 1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty

- which currently, seriously, and directly affects responsibility as a Gulf Consortium contractor;
3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
 - a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and
 5. any other cause the Manager or Board determines to be as serious and compelling as to affect responsibility as a Gulf Consortium contractor, including debarment by another governmental entity.
- D. Notice of Decision. The Manager shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

SECTION 15.01. APPEAL OF DECISION TO DEBAR OR SUSPEND. The Board's decision to debar or suspend a person or Firm shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

SECTION 16. SEVERABILITY. The provisions of this Resolution are severable and it is the intention to confer the whole or any part of the Powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Resolution. It is hereby declared to be the legislative intent that this Resolution would have been adopted had such unconstitutional provision not been included therein.

SECTION 17. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by _____ who moved its adoption. The motion was seconded by _____. The motion was adopted by a majority vote of the Board of Directors.

Duly passed and adopted this 17th day of September, 2014.

Chairman

Attest: Secretary-Treasurer

Approved as to form:

Sarah M. Bleakley, Esq.
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel



**PROCESS FOR
SECURING INDEPENDENT AUDITOR**

Resolution 2014-02

As adopted on September 17, 2014

**GULF CONSORTIUM
PROCESS FOR
SECURING INDEPENDENT AUDITOR**

TABLE OF CONTENTS

SECTION 1.	PURPOSE.	3
SECTION 2.	APPLICATION OF POLICY.	4
SECTION 3.	DEFINITIONS AND CONSTRUCTION.	4
SECTION 4.	AUTHORITY OF CONSORTIUM MANAGER.	5
SECTION 5.	BIDS.	5
SECTION 5.01.	5
SECTION 5.02.	PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.	9
SECTION 5.03.	CONTRACT CLAIMS.	15
SECTION 5.04.	REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.	16
SECTION 6.	CONTRACT ADMINISTRATION.	17
SECTION 6.01.	CONTRACT PROVISIONS.	17
SECTION 6.02.	ASSIGNMENTS OF CONTRACTS.	17
SECTION 6.03.	RIGHT TO INSPECT PLANT.	18
SECTION 7.	RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM.	18
SECTION 8.	GULF CONSORTIUM PROCUREMENT RECORDS.	18
SECTION 9.	SPECIFICATIONS.	18
SECTION 9.01.	MAXIMUM PRACTICABLE COMPETITION.	18
SECTION 10.	ETHICS IN PUBLIC CONTRACTING.	18
SECTION 10.01.	CRIMINAL PENALTIES.	18
SECTION 10.02.	EMPLOYEE CONFLICT OF INTEREST.	18
SECTION 10.03.	CONTEMPORANEOUS EMPLOYMENT PROHIBITED.	19
SECTION 10.04.	USE OF CONFIDENTIAL INFORMATION.	19
SECTION 10.05.	WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST.	19
SECTION 10.06.	GRATUITIES AND KICKBACKS.	19
SECTION 10.07.	SANCTIONS.	20
SECTION 10.08.	RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.	20
SECTION 11.	INSURANCE REQUIREMENTS.	20
SECTION 12.	BONDS AND DEPOSITS.	21
SECTION 13.	PAYMENT TO VENDORS.	21
SECTION 14.	PAYMENT DISPUTE RESOLUTION.	21
SECTION 15.	AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.	23
SECTION 15.01.	APPEAL OF DECISION TO DEBAR OR SUSPEND.	24
SECTION 16.	SEVERABILITY.	24
SECTION 17.	EFFECTIVE DATE.	24

GULF CONSORTIUM RESOLUTION NO. 2014-____

A RESOLUTION OF THE GULF CONSORTIUM ADOPTING THE PROCESS FOR SECURING INDEPENDENT AUDITOR, PROVIDING FOR DEFINITIONS AND CONSTRUCTION; PROVIDING FOR AUTHORITY OF THE CONSORTIUM MANAGER AND THE LEON COUNTY PURCHASING DIRECTOR; PROVIDING FOR THE CONTENT, ISSUANCE, RESPONSE AND EVALUATION OF SOLICITATION DOCUMENTS; PROVIDING FOR COOPERATIVE PURCHASING; PROVIDING FOR PROTESTS OF INTENDED DECISIONS AND PROCUREMENT AWARDS; PROVIDING FOR CONTRACT CLAIMS; PROVIDING FOR REMEDIES; PROVIDING FOR CONTRACT ADMINISTRATION AND RIGHTS OF THE BOARD OF DIRECTORS; PROVIDING FOR PUBLIC RECORDS; PROHIBITING UNETHICAL CONDUCT; PROVIDING OTHER REQUIREMENTS, INCLUDING PAYMENT DISPUTES RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM:

SECTION 1. PURPOSE.

This policy is adopted to promote the following purposes:

- A. To establish the process and procedure for procuring the services for conducting an independent financial audit of the Gulf Consortium as required by section 218.391, Florida Statutes, to conduct the annual financial audit required in section 218.39, Florida Statutes, for the 2013-14 fiscal year and for renewals thereafter.
- B. To establish the procurement responsibilities of the Manager.
- C. To promote public confidence in the purchasing procedures followed by the Gulf Consortium.
- D. To ensure the fair and equitable treatment of all people who deal with the procurement system of the Gulf Consortium.
- E. To maximize economy in the Gulf Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Gulf Consortium.

- G. To provide safeguards for the maintenance of a procurement system of high quality and integrity for the Gulf Consortium.

SECTION 2. APPLICATION OF POLICY.

- A. **Contracts:** This policy shall apply to Independent Financial Auditor contracts to prepare the annual financial audit required by section 218.39, Florida Statutes, that are solicited or entered into after the effective date of this policy and subsequent amendments or revisions to those contracts.
- B. **Exemptions:** The following are exempted from this Policy:
1. All Independent Financial Auditor services for auditing federal funds where such services are purchased pursuant to another policy adopted by the Gulf Consortium for that purpose.
 2. All services purchased from another unit of government not otherwise limited or prohibited by law.

SECTION 3. DEFINITIONS AND CONSTRUCTION. In all circumstances, where the RESTORE Act or other Federal Law imposes a requirement on the Consortium that conflicts with this Policy, Federal Law takes precedence.

In construing this policy, and each and every word, phrase, or part thereof, where the context will permit:

- A. The singular includes the plural and vice versa.
- B. Gender-specific language includes the other gender and neuter.
- C. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
1. "Audit Committee" means the committee required by section 218.391, Florida Statutes.
 2. "Board" means the Board of Directors of the Consortium.
 3. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.
 4. "General Counsel" means the general counsel or interim general counsel, or her designee of the Gulf Consortium.
 5. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the recipient.

6. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
7. "Person" means any Firm, individual, committee, club, other organization, or group of individuals.
8. "Procurement Award" is an award of a contract for services resulting from a solicitation through action by the Board of Directors of the Consortium in a public meeting.
9. "Procurement Solicitation Document" means the document soliciting qualifications or bids for independent auditor services as required by Florida law.
10. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any services. It also includes all functions that pertain to the obtaining of any services, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
11. "RESTORE Act" means the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 adopted by the United States Congress in Public Law 112-141 and signed by the President.

SECTION 4. AUTHORITY OF CONSORTIUM MANAGER. The Manager shall purchase or supervise the purchase of all Independent Financial Auditors to prepare the state required audit for the 2013-14 fiscal year. In executing those duties, the Manager may rely upon Leon County's Purchasing Director, if available, and her technical and strategic procurement support, including, but not limited to, preparing the solicitation document, advertising and disseminating a solicitation document, and advising the Manager, the Audit Committee and the Board in the selection of the most qualified firm.

SECTION 5. BIDS.

SECTION 5.01. Utilizing the procurement services of Leon County, if available, and at the direction of the Audit Committee, the Manager shall issue a written solicitation in the form required by section 281.391, Florida Statutes. The written solicitation shall solicit qualified Firms to offer bids that meet the requirements of Florida law for securing an independent financial auditor to prepare the 2013-14 fiscal year audit of the Consortium. After the bids are submitted, an Audit Committee shall evaluate the responses and determine which are responsive. The Audit Committee may rank the firms based on the evaluation criteria. The Audit Committee may recommend an additional procurement solicitation if it deems it necessary to procure more competitive bids. The Manager shall apprise the Board of the result and recommendation of the Audit Committee.

- A. Public Notice. The Procurement Solicitation Document shall include the place, date, and time for submitting and opening the bids. If the location, date, or time of the bid opening changes, written notice of the changes shall be given in the form of an addendum, as soon as practicable after the change. Notices shall be posted on the Consortium website and may be posted on the Leon County Purchasing Website.
- B. Cancellation of Procurement solicitation. A Procurement Solicitation may be canceled, or any or all bids may be rejected in whole or in part when it is in the best interests of the Consortium. Notice of cancellation shall be provided to all planholders and posted on the Consortium websites and may be posted on the Leon County website, if available. The notice shall identify the solicitation, explain the reason for cancellation, and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.
- C. Bid Opening. Bids shall be opened publicly. The Manager shall open the bids in the presence of one or more witnesses at the time and place designated in the Invitation to Negotiate. The name of each bidder, and all witnesses shall be recorded.
- D. Correction or Withdrawal of Bids; Cancellation of Awards. After the publicized submission time and date, any proposal received shall not be modified or allowed to be modified in any manner except for correction of clerical errors or other similar minor irregularities as may be allowed by the Manager at any point in the process prior to contract negotiations.
 1. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted where appropriate under the sole discretion of the Manager.
 2. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the Invitation for Bids prior to the time set for bid opening. After bid opening, corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a non-judgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Consortium or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:
 - a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
 - b. the bidder submits evidence that clearly and convincingly

demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Manager.

- E. Conferences. The Manager may hold a Pre-Proposal Conference or a Pre-Bid Conference, or both.
- F. Audit Committee—Duties and Appointment.
1. The Audit Committee is hereby established consisting of the Consortium Secretary/Treasurer, and at least two other members as appointed by the Consortium Chairman. The Consortium Secretary/Treasurer shall serve as the Chairman of the Audit Committee.
 2. The Audit Committee shall develop the Procurement Solicitation Document, evaluate the bids, and recommend in order of preference no fewer than three firms deemed to be the most highly qualified to perform the services.
 3. Public Meetings. The Audit Committee meetings shall be conducted in accordance with the public meeting and closed meeting requirements of Section 286.011, Florida Statutes. The Manager shall provide reasonable notice of all meetings and ensure compliance with public meeting requirements.
 4. Contact with the Audit Committee. Members of the Audit Committee are prohibited from discussing a solicitation with any person that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the Audit Committee must be done in a public meeting only.
 5. Evaluation of Proposals. Bids shall be evaluated by the Audit Committee based on the requirements and criteria set forth in the Procurement Solicitation Document. No criteria may be used in bid evaluation that is not set forth in the Procurement Solicitation Document or in this Policy.
 6. Presentations/Interviews. The Audit Committee may choose to conduct formal presentations/interviews with firms prior to final ranking.
 7. Final Ranking. The Audit Committee may utilize an Ordinal Process Rating System to rank the firms. The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the Board, as determined in the Procurement Solicitation Document.

- G. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the Manager who shall prepare the recommendation in the appropriate format to the Board.
- H. Award. The Consortium reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of the Consortium. Every procurement of contractual services shall be evidenced by a written contract.
1. Notice of Intended Decision. The Intended Decision shall be posted on the Consortium website and may be posted on the website and public notice board in the Leon County Purchasing Division, if available. This written notice shall state the Firm to whom the Consortium intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
 2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the Consortium's policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Manager within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). A Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall constitute a waiver of all rights provided under this purchasing Policy.
- I. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Manager for the following reasons:
1. Failure to materially perform according to contract provisions on prior contracts with the County or the Consortium.
 2. Conviction in a court of law of any criminal offense in connection with the conduct of business.
 3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 4. Clear and convincing evidence that the vendor has attempted to give an employee of the County, the Manager or the General Counsel a Gratuity

- of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
5. Failure to execute a Public Entity Crimes Statement as required by Section 287.133(3)(a), Florida Statutes.
 6. Other reasons deemed appropriate by the Board.
- J. If less than three responsive bids are received, or all bids received exceed the anticipated budget identified for the contractual service, the Manager may negotiate on the best terms and conditions upon recommendation by the Audit Committee and approval by the Board.

SECTION 5.02. PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to a Procurement Solicitation Document and who is aggrieved with an Intended Decision of the Gulf Consortium or a Procurement Award rendered by the Board of Directors of the Gulf Consortium shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.
1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.
 2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.
- B. Filing a Protest. A Protestor shall file with the Consortium a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the Gulf Consortium. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section. A notice of intent to protest and the formal written protest are deemed filed with Leon County when it is received by the Purchasing Division.
1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.

2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
 3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$1,000, whichever is greater. If after completion of the bid protest process and any court proceedings, the Gulf Consortium prevails, the Gulf Consortium shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the Gulf Consortium all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Manager.
- C. General Provisions.
1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the Gulf Consortium, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.

2. Time Limits. The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the Procurement Solicitation Document or upon the mutual written consent of the Protestor and the Gulf Consortium.
 3. Entitlement to Costs. In no case will the Protestor or Intervenor be entitled to any costs incurred with the Procurement Solicitation Document, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
 4. After a formal written protest has been filed with the Manager, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.
 5. Stay of Procurement During Protests. In the event of a timely protest, the Manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Consortium Manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the Gulf Consortium.
- D. Protest of Intended Decisions; Procurement Appeal Board Proceeding.
1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
 2. Upon timely receipt of a formal written protest of an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
 3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the Manager. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the Manager shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed

for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.

- a. Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Manager.
- b. Procurement Appeals Board Proceeding Procedures.
 - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or Firms, including the Protestor, and any Intervenor.
 - ii. At or prior to the protest proceeding, the Protestor and Intervenor or both, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
 - iii. In the protest proceeding, the Protestor, and Intervenor, or both, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
 - iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
 - v. Within seven working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the Gulf Consortium.

- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Award; Special Master Proceeding.

1. Upon timely receipt of a notice of intent to protest a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to a Procurement Solicitation Document.
2. Upon timely receipt of a formal written protest of a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the General Counsel of the protest. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to a Procurement Solicitation Document.
3. Appointment of a Special Master. The Consortium Manager shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the Gulf Consortium shall serve at the pleasure of the Consortium Manager and shall be compensated at a rate or rates to be fixed by the Consortium Manager. The expense of each special master proceeding shall be borne equally by the Protestor and the Gulf Consortium.
4. Ex parte communication.
 - a. No Gulf Consortium employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and Gulf Consortium staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
 - b. If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the

substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.

5. Powers of special masters. The special masters who conduct hearings pursuant to this Section shall have the powers of hearing officers enumerated in Section 120.569(2)(f), Florida Statutes, as amended.
6. Prehearing requirements. At least fourteen days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the evidentiary hearing.
7. Hearings.
 - a. All hearings shall be commenced within 45 days of the date of the filing of the formal written protest. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.
 - b. All hearings shall be open to the public.
 - c. The participants before the special master shall be the Protestor, the Protestor's witnesses, if any, Gulf Consortium staff and witnesses, and any Intervenor. The participation of Intervenors shall be governed by the terms of the order issued by the special master in response to a petition to intervene. Intervention may only be permitted to any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Procurement Award.
 - d. Testimony and evidence shall be limited to matters directly relating to the formal written protest. Irrelevant, immaterial, or unduly repetitious testimony or evidence may be excluded.
 - e. All testimony shall be under oath. The order of presentation of testimony and evidence shall be as set forth by the special master.

- f. To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.
- g. The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

SECTION 5.03. CONTRACT CLAIMS.

- A. Authority to Settle Contract Controversies. This Section applies to controversies between the Gulf Consortium and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and Gulf Consortium agree to utilize the provision of this Section.
 - 1. The Manager is authorized to settle any controversy arising out of the performance of a Gulf Consortium contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value. Approval of the Board of Directors is required to settle any controversy in excess of \$10,000 in value.
 - a. If such a controversy is not resolved by mutual agreement, the Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - i. State the reason for the action taken; and,
 - ii. Inform the Contractor of its right to administrative review as provided in this Section.
 - b. If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

- c. The decision of the Manager may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Manager within five calendar days of receipt of the Manager's decision.
2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Manager or to hear any contract controversy in excess of \$10,000.
3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the proceeding procedures contained in Section 5.03(D)(3). Any prior determination by administrative officials shall not be final or conclusive.

SECTION 5.04. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.

- A. Prior to Bid Opening or Closing Date for Receipt of Proposals. If prior to the bid opening or the closing date for receipt of proposals, the Consortium Manager, after consultation with the General Counsel, determines that a solicitation is in violation of federal, state, or local law or ordinance or the Interlocal Agreement, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Manager, after consultation with the General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.
- C. After Award. If, after award, the Manager, after consultation with the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
 1. If the person awarded the contract has not acted fraudulently or in bad faith:
 - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Gulf Consortium; or
 - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or

2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Gulf Consortium.

SECTION 6. CONTRACT ADMINISTRATION. The Manager shall serve as the chief contract administrator for the Gulf Consortium.

SECTION 6.01. CONTRACT PROVISIONS.

- A. All Contracts for an Independent Financial Auditor shall be subject to approval by the Board. Renewals of such contracts may be approved by the Executive Committee.
- B. Contract Clauses. All Gulf Consortium contracts for independent auditor services shall include provisions necessary to define the responsibilities and rights of the parties to the contract and shall be in accordance with Section 218.319, Florida Statutes, and other applicable provisions of Florida law. The Manager, after consultation with the General Counsel, may propose provisions appropriate for service contracts, addressing among others the following subjects:
 1. the unilateral right of the Gulf Consortium to order, in writing, changes in the work within the scope of the contract;
 2. the unilateral right of the Gulf Consortium to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
 3. variations occurring between estimated quantities or work in contract and actual quantities;
 4. defective pricing;
 5. time of performance and liquidated damages;
 6. specified excuses for delay or nonperformance;
 7. termination of the contract for default which shall require Board approval; and
 8. termination of the contract in whole or in part for the convenience of the Gulf Consortium.

SECTION 6.02. ASSIGNMENTS OF CONTRACTS. No contract made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the Gulf Consortium nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Gulf Consortium.

SECTION 6.03. RIGHT TO INSPECT PLANT. The Gulf Consortium may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by the Gulf Consortium. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Gulf Consortium.

SECTION 7. RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM. Nothing in this Policy shall be deemed to abrogate, annul, or limit the right of the Board in accordance with Florida law and in the best interests of the Gulf Consortium, to reject all bids/proposals received in response to a solicitation, to determine in its sole discretion the responsiveness and responsibility of any bidder/proposer, to approve and authorize or to enter or not to enter into any contract as it deems necessary and desirable for the public welfare, or to vary the requirements of the Policy in any instance when necessary and desirable for the public welfare.

SECTION 8. GULF CONSORTIUM PROCUREMENT RECORDS.

- A. Procurement Files. All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Gulf Consortium in appropriate files by the Manager.
- B. Retention of Procurement Records. All procurement records shall be retained and disposed of by the Gulf Consortium in accordance with records retention guidelines and schedules established by the State of Florida.

SECTION 9. SPECIFICATIONS.

SECTION 9.01. MAXIMUM PRACTICABLE COMPETITION. All specifications shall be drafted to promote overall economy and encourage competition in satisfying the Gulf Consortium's needs and shall not be unduly restrictive. All specifications shall meet the applicable requirements of Florida law, including Section 218.319, Florida Statutes.

SECTION 10. ETHICS IN PUBLIC CONTRACTING.

SECTION 10.01. CRIMINAL PENALTIES. To the extent that violations of the ethical standards of conduct set forth in this Section constitute violations of the State Criminal Code they shall be punishable as provided therein. Such penalties shall be in addition to civil sanctions set forth in this part.

SECTION 10.02. EMPLOYEE CONFLICT OF INTEREST.

- A. Participation. It shall be unethical for the Manager and the General Counsel and the employees of either to participate directly or indirectly in a procurement contract when the Manager and the General Counsel and the employees of either knows that:

1. the Manager and the General Counsel and the employees of either or any member of the immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
2. any other person, Firm, or organization with whom the Manager and the General Counsel and the employees of either or any member of a Gulf Consortium employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

SECTION 10.03. CONTEMPORANEOUS EMPLOYMENT PROHIBITED. It shall be unethical for the Manager and the General Counsel and the employees of either who is participating directly or indirectly in the procurement process to become or to be, while such an employee, the employee of any person contracting with the Gulf Consortium.

SECTION 10.04. USE OF CONFIDENTIAL INFORMATION. It shall be unethical for any employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated personal gain of any other person.

SECTION 10.05. WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST. The Consortium Manager may grant a waiver from the employee conflict of interest provision or the contemporaneous employment provision upon making a written determination that:

- A. the contemporaneous employment or financial interest of the Manager's or General Counsel's employee has been publicly disclosed;
- B. the Manager's or General Counsel's employee will be able to perform his procurement functions without actual or apparent bias or favoritism; and
- C. the award will be in the best interest of the Gulf Consortium.

SECTION 10.06. GRATUITIES AND KICKBACKS.

- A. Gratuities. It shall be unethical for any person to offer, give, or agree to give any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, or for any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.

- B. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. Contract Clause. The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

SECTION 10.07. SANCTIONS. The Board may impose any one or more of the following sanctions for violation of the ethical standards:

1. written warnings;
2. termination of contracts; or
3. debarment or suspension as provided in Section 16.

SECTION 10.08. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.

- A. General Provisions. The value of anything being transferred or received in breach of the ethical standards of this policy by the Manager or General Counsel's employee or a non-employee may be recovered from both Gulf Consortium employee and non-employee.
- B. Recovery of Kickbacks by the Gulf Consortium. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Gulf Consortium and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION 11. INSURANCE REQUIREMENTS.

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.
- B. Certificates of Insurance. Certificates of Insurance acceptable to the Gulf Consortium shall be filed with the Purchasing Division prior to the

commencement of the work and periodically thereafter upon any renewals during the term of the contract.

- C. Change of Insurance Requirements. The Gulf Consortium reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the Gulf Consortium.

SECTION 12. BONDS AND DEPOSITS. When any of the bonds are required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond is accepted by the Gulf Consortium.

SECTION 13. PAYMENT TO VENDORS. It is the policy of the Gulf Consortium that payment for all purchases by the Gulf Consortium be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," Sections 218.70-218.79, Florida Statutes.

SECTION 14. PAYMENT DISPUTE RESOLUTION.

- A. In the event a dispute occurs between a contractor/vendor, herein referred to as "vendor", and the Gulf Consortium concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Manager. If the dispute cannot be resolved between the vendor and the Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the Gulf Consortium, under this procedure in accordance with Section 218.76, Florida Statutes.
- B. Filing a Dispute. Any vendor shall file with the Manager in a formal notice of payment dispute in writing within two business days of the dispute first being raised.
1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.
 2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this Section.
 3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.

C. General Provisions.

1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request or proper invoice (as specified in the contract document) was received by the Gulf Consortium and shall be concluded by final decision of the Gulf Consortium not later than 60 calendar days after the date on which the payment request or proper invoice was received by the Gulf Consortium.
2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.
3. Interest. If the dispute is resolved in favor of the Gulf Consortium, then interest charges shall begin to accrue 15 calendar days after the Gulf Consortium's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.
4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

D. Payment Dispute Resolution Proceeding Process.

1. All formal payment disputes shall be presented to the Payment Dispute Resolution Committee. The committee shall be comprised of the members designated by the Manager.
2. Within three (3) business days of timely receipt of a formal notice of payment dispute, the Contract Manager shall schedule a proceeding before the Payment Dispute Resolution Committee to include all substantially affected persons or Firms, including the vendor and Gulf Consortium project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.
3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.
4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment

Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.

- a. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
- b. Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the Gulf Consortium project manager. The decision of the Payment Dispute Resolution Committee shall be final and conclusive for all disputes valued less than \$100,000.
- c. For those disputes valued above \$100,000, the Payment Dispute Resolution Committee shall file a Recommended Order for approval by the Manager.

SECTION 15. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.

- A. **Suspension.** After consultation with the General Counsel, the Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three months, and the Manager shall immediately inform the Board and provide notice to the affected person.
- B. **Debarment.** After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three years.
- C. **Causes for Debarment.** The causes for debarment include:
 1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty

- which currently, seriously, and directly affects responsibility as a Gulf Consortium contractor;
3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
 - a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and
 5. any other cause the Manager or Board determines to be as serious and compelling as to affect responsibility as a Gulf Consortium contractor, including debarment by another governmental entity.
- D. Notice of Decision. The Manager shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

SECTION 15.01. APPEAL OF DECISION TO DEBAR OR SUSPEND. The Board's decision to debar or suspend a person or Firm shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

SECTION 16. SEVERABILITY. The provisions of this Resolution are severable and it is the intention to confer the whole or any part of the Powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Resolution. It is hereby declared to be the legislative intent that this Resolution would have been adopted had such unconstitutional provision not been included therein.

SECTION 17. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by _____ who moved its adoption. The motion was seconded by _____. The motion was adopted by a majority vote of the Board of Directors.

Duly passed and adopted this 17th day of September, 2014.

Chairman

Attest: Secretary-Treasurer

Approved as to form:

Sarah M. Bleakley, Esq.
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 11
Proposed Resolution Regarding Federal Fisheries Management**

Statement of Issue:

Proposed resolution for adoption by the Gulf Consortium Board of Directors, supporting the inclusion of several issues in the reauthorization of the Magnuson-Stevens Act.

Background:

The Magnuson-Stevens Fishery Conservation and Management Act (“the Act”) was originally enacted in 1976 and remains the primary law governing marine fisheries in federal waters in the United States. The Act expired in September 2013 and Congress is currently working on its reauthorization. The Act needs more flexibility and better fisheries stock assessments and recreational data collection. The Act also needs considerations related to economic and social impacts on communities from commercial and recreational fisheries to be taken into account.

The Gulf Coast’s diverse fishing opportunities are some of the nation’s most valuable assets and Florida is the number one state in angler expenditures. Saltwater recreational fishing along Florida’s Gulf Coast, in Florida has a \$13.1 billion economic impact and supports 109,300 jobs, according to the National Marine Fisheries Service, Fisheries Economics of the United States 2012.

The Spill Impact Component (Pot 3) of the RESTORE Act is intended to fund projects, programs and activities for ecosystem restoration and economic development. The Gulf Consortium is the entity in Florida, charged by the RESTORE Act to develop the State Expenditure Plan that will identify those investments.

Gulf Consortium staff has worked to tie the mission of the Consortium to Congress’ work in reauthorizing the Act in developing the attached proposed resolution.

Recommendation:

Adoption of the attached resolution, supporting the reauthorization of the Act, that includes increased flexibility, usage of recent data, evaluation of economic and social needs of a community, and stakeholder referenda.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 10.4
Proposed Amendment to Leon County/Consortium
Interlocal Agreement Regarding Procurement**

Statement of Issue:

This agenda item asks the Board to authorize the Chair to execute an interlocal agreement between the Consortium and Leon County to expand the scope of the procurement services provided by Leon County.

Background:

The Consortium entered into an interlocal agreement with Leon County on March 26, 2014, which allows Leon County to provide services to the Consortium for the procurement of the State Expenditure Plan consultant. The agreement also provides the Consortium to reimburse the County for all of its direct expenses and to reimburse the County for other expenses should federal funds be provided to the Consortium for that purpose.

Leon County Purchasing Department has provided ample assistance to the Consortium and will continue to assist the Consortium in the entire procurement process for the SEP consultant. *See, agenda item 8 regarding the status of the SEP consultant procurement.* The County has not yet asked for reimbursement for any direct costs.

Analysis:

To meet its obligations under the RESTORE Act and to comply with the procurement requirements regarding federal grants, the Consortium will need to competitively procure firms or individuals to provide necessary services so that federal funds, instead of county funds, could be used to pay for the services. From the vantage point of being in the middle of the U.S. Treasury and Restoration regulatory process, it appears that the Consortium will need to procure management services, general counsel services, and the services of a grant writer. The need for procuring additional services may be revealed as the regulatory process unfolds.

Consortium staff has begun discussions with Leon County about expanding the scope of procurement services Leon County may provide to the Consortium. Such an expansion will require an amendment to the existing Interlocal

Agreement as it is currently limited to procurement relating to the State Expenditure Plan consultant.

Staff is recommending the Board authorize the Chairman to execute an Interlocal Agreement with Leon County which expands the type of procurement services it provides to the Consortium.

Options:

- 1) Approve a motion authorizing the Chairman of the Consortium to execute an Interlocal Agreement with Leon County, expanding the type of procurement services it provides to the Consortium but leaving all other terms substantially similar to the current interlocal.
- 2) Provide other direction.

Fiscal Impact:

Under the existing Interlocal Agreement with Leon County, the Consortium is responsible for Leon County's direct costs associated with procuring the State Expenditure Plan consultant and for other costs if federal funds are made available for that purpose. Leon County has not yet asked for any costs associated with the SEP consultant services it has provided.

Consortium staff anticipates a similar cost provision would be included in any future interlocal agreement with Leon County expanding its procurement services.

Recommendation:

Approve a motion authorizing the Chairman of the Consortium to execute an Interlocal Agreement with Leon County, expanding the type of procurement services it provides to the Consortium but leaving all other terms substantially similar to the current interlocal.

Prepared by:

Sarah M. Bleakley
Nabors, Giblin & Nickerson, P.A.
Interim General Counsel
On: September 11, 2014

Action Taken:

Motion to: _____, Made by: _____;
Seconded by: _____.

Approved____; Approved as amended____; Defeated_____.

**Gulf Consortium
Resolution No. 2014-03**

**A RESOLUTION OF THE GULF CONSORTIUM
SUPPORTING A REAUTHORIZATION OF THE
MAGNUSON-STEVENSON ACT THAT INCLUDES
INCREASED FLEXIBILITY, USAGE OF RECENT
AND RELEVANT DATA; EVALUATION OF
ECONOMIC AND SOCIAL NEEDS OF A
COMMUNITY AND STAKEHOLDER REFERENDA;
PROVIDING AUTHORIZATION TO STAFF AND
THE GULF CONSORTIUM; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, the Gulf Consortium (“the Consortium”) is a Florida public entity created on October 19, 2012 under section 163.01, Florida Statutes, by Interlocal Agreement among the 23 Florida Gulf Coast counties, as defined in the RESTORE Act;

WHEREAS, the Consortium was created to develop Florida’s State Expenditure Plan for the Spill Impact Component of the RESTORE Act;

WHEREAS, the Spill Impact Component will be invested in projects, programs, and activities for ecosystem restoration and economic development identified in Florida’s approved State Expenditure Plan;

WHEREAS, the Consortium also acts as an advocate for the Consortium Members with executive agencies, the Florida Legislature, and the United States government on issues related to its purpose;

WHEREAS, the Magnuson-Stevens Fishery Conservation and Management Act (“the Magnuson-Stevens Act”) was originally enacted in 1976 and remains the primary law governing marine fisheries in federal waters in the United States;

WHEREAS, the Magnuson-Stevens Act lacks some critical components, like flexibility for states in managing recreational and commercial fisheries but contains other important features like stakeholder referenda requirements;

WHEREAS, the Magnuson-Stevens Act expired in September 2013 and Congress is currently working on its reauthorization;

WHEREAS, the Gulf Coast’s diverse fishing opportunities is one of the nation’s most valuable assets;

WHEREAS, Florida is the number one state in angler expenditures (\$4.95 billion), according to 2011 USFWS Survey Information, making clear the importance of Florida's stakeholders' input;

WHEREAS, saltwater recreational fishing, including the red snapper fishery along Florida's Gulf Coast, in Florida has a \$13.1 billion economic impact and supports 109,300 jobs, according to the National Marine Fisheries Service, Fisheries Economics of the United States 2012;

WHEREAS, the Florida Fish and Wildlife Conservation Commission provided a successful example of the flexibility needed at the state level when it held a 52-day summer recreational red snapper season in Florida's Gulf of Mexico state waters during 2014. This season provided recreational harvest opportunities for Florida's residents and visitors, economic opportunities for Florida businesses, while also allowing the continued recovery of the fishery; and

WHEREAS, the federal recreational red snapper season length has declined from 365 days per year to only nine days in 2014, during a time that red snapper has become more abundant as the stock continually improves, indicating the reliance on stale data;

NOW, THEREFORE, BE IT RESOLVED by the Gulf Consortium Board of Directors the following:

SECTION 1. SUPPORT CONGRESSIONAL REAUTHORIZATION. The Gulf Consortium hereby supports reauthorization of the Magnuson-Stevens Act with increased flexibility, usage of recent data, evaluation of economic and social needs of a community, and stakeholder referenda.

SECTION 2. PUBLICATION OF THIS RESOLUTION. Gulf Consortium staff, Members and Directors are hereby authorized to publicize the Board's adoption of this Resolution No. 2014-03.

SECTION 3. EFFECTIVE DATE. This Resolution No. 2014-03 shall be effective on September 17, 2014.

GULF CONSORTIUM

By: _____
Grover C. Robinson IV, Chair

ATTEST:

By: _____
Warren Yeager, Secretary/Treasurer

The Importance of Diversifying Florida's Economy through Economic Development

September 17, 2014

Griff Salmon
Chief Operating Officer
Enterprise Florida



Enterprise Florida is the lead economic development organization for the state of Florida.



Economic Development



Leverage Points for Job Creation

Competitive Projects

These are the types of projects EFI works daily

- New Business
- Expansions
- Retention

Facilitated Growth

- Tourism
- International Trade
- Small Business Development Programs
- University Entrepreneurial Programs
- Commercialization Programs

Market Driven Growth

- New Business Start-Ups
- Companies Choosing Markets

620,000 Jobs since January 2011



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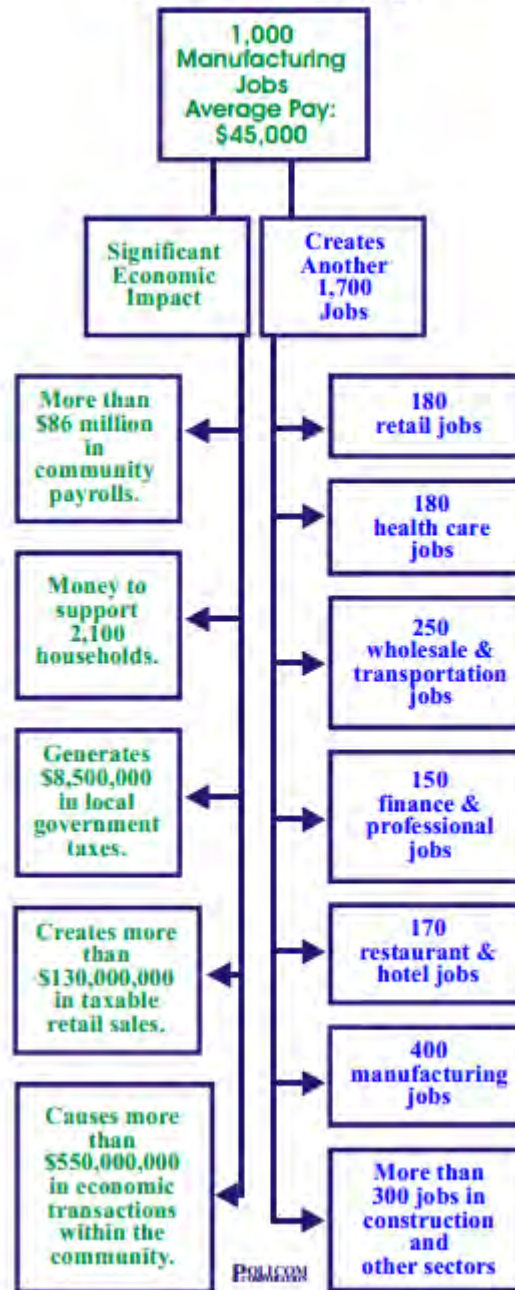


Case Study:

Annual economic impact of a manufacturer which employs 1,000 workers and pays an average annual wage of \$45,000:



Flow of Money



Manufacturing

Source: William Fruth, "The Flow of Money 2014," POLICOM.com



Average Florida Industry Salaries

Average Annual Salaries by Industry
Top 5 and state average



Retail

\$27,522



Construction

\$41,538



All

\$42,447



Transportation
& Warehousing

\$45,453



Health Care &
Social Assistance

\$46,069



Manufacturing

\$53,286



Source: "Diversifying Florida's Economy Through Local Economic Development," Florida TaxWatch, Jan 2014



Case Study: Aircraft Manufacturing

Aircraft Manufacturing pay higher than average wages, leading to more disposable income.

Average Annual Wages

\$72,010

Aircraft Manufacturing

\$81,091

Aircraft Engines/
Engine Parts

\$57,120

Other Aircraft
Parts/Equipment

2nd

Largest Florida exports category:
Aircraft manufacturing and parts

Florida Aircraft Manufacturing Industry

249

FL Establishments

12,519

FL Employees

Industry expansion leads to the retention of **STEM professionals** and an increase in **workforce development and training through partnerships between industry and educational institutions.**



Source: "Ready for TakeOff," Florida TaxWatch, July 2014



Case Study: Military Impact

Defense-related spending accounted for a total of **758,112 direct and indirect jobs**. State and local tax revenue generated by defense driven activities was estimated to be **\$5.41 Billion** in fiscal year 2011.

Table 6 : Top 10 Florida Counties Ranked on GRP Impacts and Employment Impacts

Gross Regional (County) Product Rankings			Employment Rankings	
County	Gross Domestic Product Impact	Defense Impact as % Total GRP	County	Employment Impacts
Okaloosa	\$7,483	65.1%	Duval	108,901
Escambia	\$6,743	45.0%	Okaloosa	71,150
Santa Rosa	\$1,130	33.4%	Hillsborough	68,066
Bay	\$2,578	31.1%	Escambia	66,731
Taylor	\$164	26.6%	Orange	57,092
Duval	\$11,923	19.2%	Miami-Dade	53,151
Monroe	\$791	19.0%	Brevard	44,305
Brevard	\$4,122	18.7%	Pinellas	39,702
Clay	\$500	11.7%	Broward	30,915
Hillsborough	\$7,735	9.9%	Bay	27,338



Source: Florida Defense Industry Economic Impact Analysis





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Griff Salmon
Chief Operating Officer
Enterprise Florida
407.956.5652
gsalmon@enterprise-florida.com



Enterprise Florida is the lead economic development organization for the state of Florida.



**Gulf Consortium Board of Directors
September 17, 2014**

**Agenda Item 12
The Importance of Diversifying Florida's Economy through Economic
Development**

Statement of Issue:

This agenda item is a presentation from Enterprise Florida on the importance of diversifying Florida's economy through economic development.

The presenters are:

Griff Salmon
Chief Operating Officer
Enterprise Florida

Kim Wilmes
Vice President, Marketing
Enterprise Florida

Recommendation:

No action required.

Prepared by:

Ginger Delegal
Florida Association of Counties
Interim Manager
On: September 11, 2014

**Gulf Consortium Directors, Alternates and Governor's Appointees
September 17, 2014**

County	Director and Alternate
Bay	Comm Mike Thomas, Director; Comm George Gainer, Alternate
Charlotte	Comm Christopher Constance, Director; Comm Tricia Duffy, Alternate
Citrus	Comm Rebecca Bays, Director; Ken Cheek, Water Resources Director
Collier	Comm Tom Henning, Director; Comm Donna Fiala, Alternate; Director Bill Lorenz, 2nd Alternate
Dixie	Tim Alexander, Director of Emergency Management; Administrator Mike Cassidy, Alternate
Escambia	Comm Grover Robinson, Director; Comm Gene Valentino, Alternate
Franklin	Comm Cheryl Sanders, Director; County Administrator Alan Pierce, Alternate
Gulf	Comm Warren Yeager, Director; Tan Smiley, Alternate; County Administrator Donald Butler 2nd Alternate
Hernando	Comm Wayne Dukes, Director; Comm David Russell, Alternate; Administrator Len Sossamon, 2nd Alternate
Hillsborough	Comm Les Miller, Director; Comm Ken Hagan, Alternate
Jefferson	Comm Betsy Barfield, Director; County Coordinator Parrish Barwick, Alternate
Lee	Comm John Manning, Director; Comm Larry Kiker, Alternate; Dave Harner, 2nd Alternate
Levy	Comm Ryan Bell, Director; County Coordinator Fred Moody, Alternate
Manatee	Comm Carol Whitmore, Director; Charlie Hunsicker, Natural Resources Dept., Alternate
Monroe	Commissioner George Neugent, Director; Comm David Rice, Alternate
Okaloosa	Comm Dave Parisot, Director; Comm Kelly Windes, Alternate
Pasco	Comm Jack Mariano, Director; Comm Henry Wilson, Alternate
Pinellas	Comm Susan Latvala, Director; Coastal Manager Andy Squires
Santa Rosa	Comm Lane Lynchard, Director; Comm Jim Melvin, Alternate
Sarasota	Comm Nora Patterson, Director; Laird Wreford, Natural Resources Manager, Alternate; Comm Charles Hines, 2nd Alternate
Taylor	Comm Jim Moody, Director; Dustin Hinkel, County Administrator, Alternate
Wakulla	David Edwards, County Administrator, Director; Comm Ralph Thomas, Alternate
Walton	Comm Sara Comander, Director; Comm Cindy Meadows, Alternate
Governor's Appointees	Pam Anderson, Panama City; Peter Bos, Destin; Lino Maldonado, Niceville; Collier Merrill, Pensacola; Mike Sole, Tallahassee; Neal Wade, Panama City

Deepwater Horizon Oil Spill

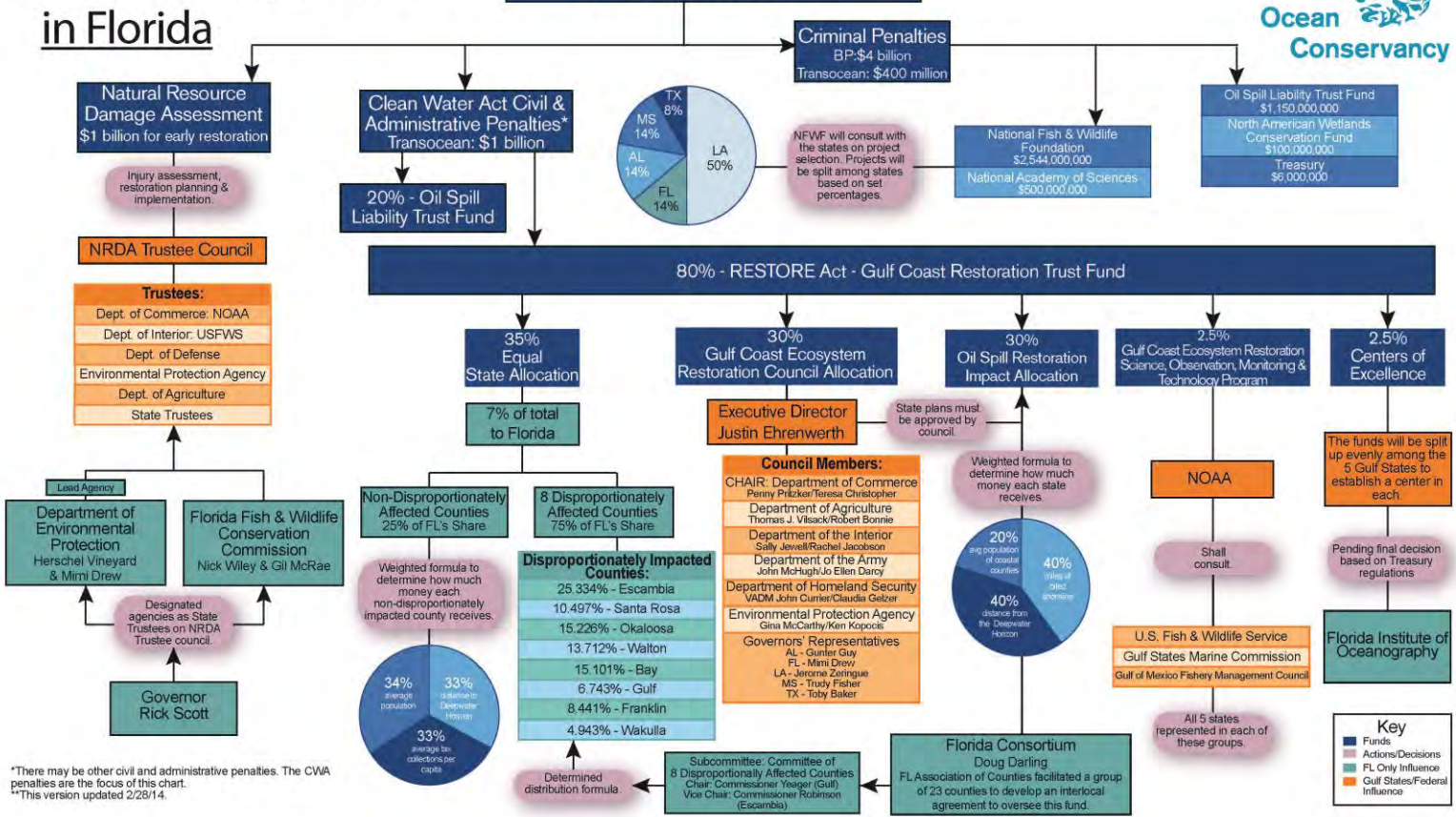
RESTORE Act Funding and Projects Update 9/17/2014



It's Complicated!

Flow of Oil Spill Funds in Florida

Resolution of Criminal, Civil, Administrative & Natural Resource Claims



*There may be other civil and administrative penalties. The CWA penalties are the focus of this chart.
**This version updated 2/28/14.

RESTORE Act

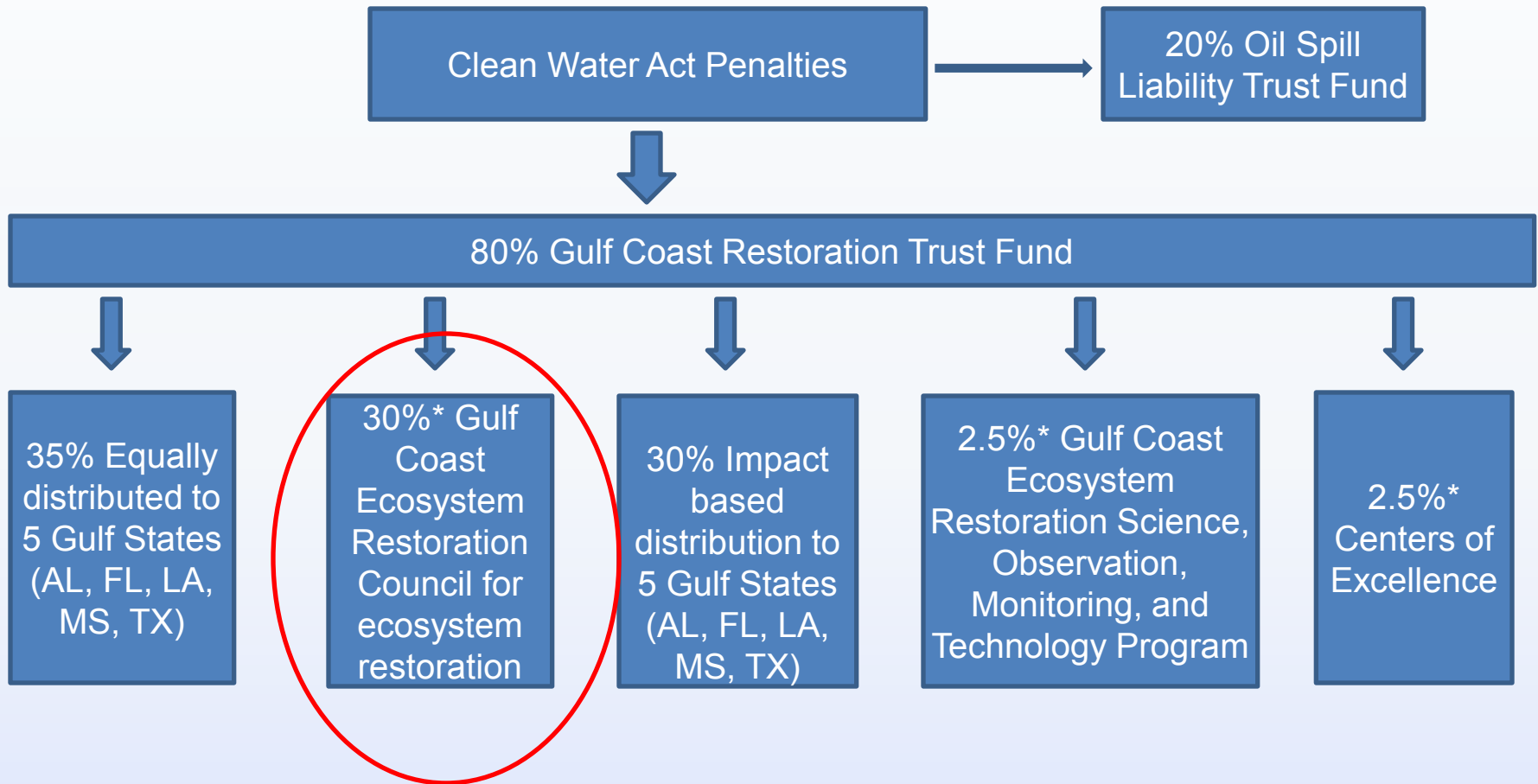
The RESTORE Act was signed into law on July 6, 2012 by the President. It accomplishes:

- the creation of the Gulf Coast Restoration Trust Fund
- an outline for the proper use of the Trust Fund
- the establishment of the Gulf Coast Ecosystem Restoration Council

The Council released the Initial Comprehensive Plan in August 2013 which guides ecosystem and economic restoration for the Gulf.

ALLOCATION OF RESTORE ACT FUNDS

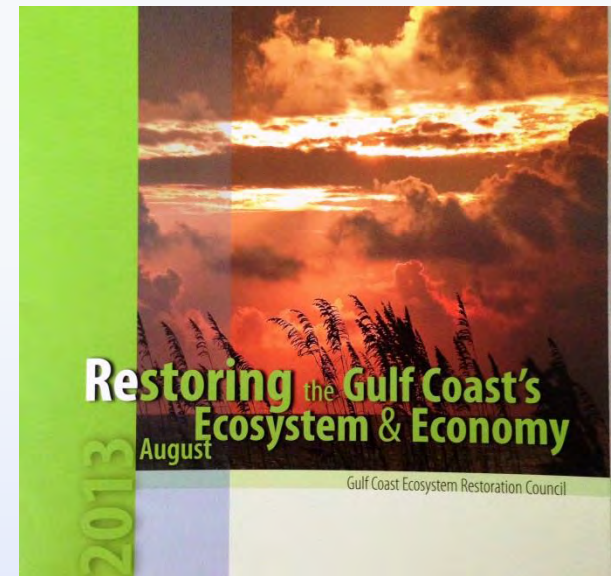
Council-Selected Restoration Component



***Supplemented by interest generated by the Trust Fund (50% to Gulf Coast Ecosystem Restoration Council, 25% to Science Program, 25% to Centers of Excellence)**

Goals and Objectives of the Comprehensive Plan

1. Restore and Conserve Habitat
2. Restore Water Quality
3. Replenish and Protect Living Coastal and Marine Resources
4. Enhance Community Resilience
5. Restore and Revitalize the Gulf Economy



Process for Council-Selected Restoration Component

Projects Submitted. Projects may focus on Habitat and Water Quality goals, with an emphasis on projects that are foundational, sustainable, have a high probability of success and that have community benefits.

Project Vetting Activities

Eligibility Verification and Budget Reasonableness, Coordination Reviews

**Science
Evaluation**

**Priority and
Commitment to
Plan Evaluation**

**Environmental
Compliance
Readiness**

Results from proposal submission and evaluation will be compiled into a context report and attached to each proposal to aid in the development of a draft Funded Priorities List.

Florida's Restoration Approach

- DEPs online project submittal form
- Florida's priorities
 - Stormwater / Wastewater infrastructure projects,
 - Community resilience / Living shorelines,
 - Water quality projects including those which achieve water quality benefits provided by the preservation of buffer lands around military bases,
 - Implementation of agriculture best management practices, or
 - Fish and wildlife habitat and management.
- Collaboration with other states and federal agencies
- Public input on the projects

Florida's Proposed Theme for Council-Selected Restoration Component Projects

- Estuary and associated watershed restoration
 - Watersheds are areas of land in which all of the water that enters it, drains into a common waterbody, such as a bay. Humans, plants, and animals depend on clean water to survive and the health of our watersheds is key to the health of our Gulf.
 - Estuaries are bodies of water where freshwater mixes with saltwater. These habitats are essential nurseries for young fish, shrimp and crabs as well as home to many other marine species.

Successful Project Proposals

- Water quality and habitat focus
- Gulf-wide significance
- Wide-spread support
- NEPA compliant

Next Steps in Process

- The Council member submission window will close no earlier than Nov. 17
- Each of the 11 state and federal Council members are responsible for proposing projects and programs
- Council members may submit up to 5 projects for consideration
- The amount of funding available for the first FPL is approximately \$150-\$180 million
- The projects will be reviewed and included on a draft Funded Priorities List
- Florida public outreach schedule: Webinar on Sept. 23 and Public meeting in Panama City on Oct. 22

Questions?

- For more information or to submit a project visit:
www.deepwaterhorizonflorida.com

- Contact:

Phil Coram, P.E.

Phone: (850) 245-2167

Email: Phil.coram@dep.state.fl.us

Ashley M. Williams, Gulf Coast Public Affairs Manager

Phone: (850) 245-2197

Email: Ashley.M.Williams@dep.state.fl.us