



www.gulfconsortium.org

Executive Committee Call Agenda
October 24th, 4:00 p.m. EDT
Dial-in Number: +1 (571) 317-3117
Access Code: 285-322-405#

1. Call to Order and Roll Call
2. Public Comment
3. Executive Committee Discussion and Review of three Gulf Consortium Draft Policies for recommendation to the board
 - a. Conduct
 - b. Communications
 - c. Procedures review
4. Executive Committee Discussion and Review of two Gulf Consortium Draft Policies
 - a. Procurement
 - b. Internal controls
5. Upcoming Gulf Consortium Board Meeting
Thursday, November 29, 2018
4:00 PM, EDT
Grand Salons A-C, located on the second level
Tampa Marriott Waterside Hotel & Marina
700 S Florida Ave, Tampa, FL 33602
6. Adjourn

Notice of Meeting/Workshop Hearing

OTHER AGENCIES AND ORGANIZATIONS

Gulf Consortium

The Gulf Consortium announces a public meeting of its Executive Committee via communications media technology to which all persons are invited to participate.

DATE AND TIME: October 24, 2018 at 4:00 pm (ET)

PLACE: This meeting will be conducted via communications media technology (teleconference). Interested persons may participate by telephone via the following:

Dial in Number +1 (571) 317-3117

Participant Passcode: 285-322-405

Interested persons may also participate in the meeting at the following location, at which communications media technology will be provided:

The Balmoral Group, 165 Lincoln Avenue, Winter Park, FL 32789

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Executive Committee of the Gulf Consortium will meet to evaluate draft policies, procedures, and regulations for The Gulf Consortium. A copy of the agenda may be obtained at www.gulfconsortium.org or by contacting: Craig Diamond at 407-629-2185 or Gulf.Consortium@balmoralgroup.us.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 3 days before the workshop/meeting by contacting Craig Diamond at 407-629-2185 or Gulf.Consortium@balmoralgroup.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1-800-955-8771 (TDD) or 1-800-955-8770 (Voice).

If any person decides to appeal any decision made by the Executive Committee with respect to any matter considered at this meeting, he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence from which the appeal is to be issued.

For more information, please contact Craig Diamond at 407-629-2185 or Gulf.Consortium@balmoralgroup.us.

Gulf Consortium Executive Committee Policy Review Meeting
October 24, 2018, 4:00 p.m., Eastern
The Balmoral Group Office - Conference Call



<u>County</u>	<u>Executive Committee Member</u>	<u>Present</u>
Escambia	Commissioner Grover Robinson	
Gulf	Warren Yeager	
Levy	Commissioner John Meeks	
Charlotte	Commissioner Chris Constance	
Pasco	Commissioner Jack Mariano	

AGENDA ITEM 3

AGENDA ITEM 3a

Conduct Policy
for
The Gulf Consortium

DRAFT



October 2018

INTRODUCTION AND OVERVIEW

The Gulf Consortium adheres to sound professional and ethical standards without compromise. The intent of this Code of Conduct (“Code”) is to establish clear ethical guidelines and requirements applicable to all persons and entities working for or on behalf of the Gulf Consortium. Every director, employee, contractor, consultant, or agent appointed or working on behalf of the Gulf Consortium must read, understand, and comply fully with the principles established by this Code of Conduct.

Ethical conduct is a matter of proper intent, characterized by truthfulness and honesty, compliance with all applicable laws and regulations, and carefully exercising good professional judgment. Occasionally, one may be placed in situations in which there is a good-faith disagreement as to what may be the appropriate course of conduct. This Policy is not an exhaustive description of appropriate conduct, because it is impractical to cover in a document of this nature all the significant legal requirements of each jurisdiction in which the Gulf Consortium operates.

The Gulf Consortium requires its directors, employees, contractors, consultants, and agents to:

- Abide by the ethical requirements set forth in the Florida Constitution and Chapter 112, Florida Statutes;
- Uphold the highest standards of ethical conduct in every action they take;
- Know the rules and laws that govern their duties, and follow them;
- Perform all duties to the best of their ability at all times;
- Use their best efforts to promote and protect the interests of the Gulf Consortium; and
- Operate in the best interest of the public and the member counties the Gulf Consortium serves.

The Gulf Consortium regards violations of this Conduct Policy as serious matters. A breach of established policy can put the Gulf Consortium and its member Counties at risk. Anyone who violates this Conduct Policy may be subject to disciplinary action. In addition, violations of law can result in civil or criminal penalties to you, as well as the Gulf Consortium. This can also apply to an employee contractor, consultant, or agent at any level of the Gulf Consortium who directs, approves, or condones violations, or who has knowledge of violations and does not promptly report and correct them.

1. EQUAL EMPLOYMENT OPPORTUNITY

It is the Gulf Consortium’s policy to provide equal consideration in all employment matters regardless of race, color, religion, sex, age, national origin, handicap/disability, veteran's status, or sexual preference. The Gulf Consortium seeks to provide an environment that is free of unlawful discrimination and harassment. The Gulf Consortium complies with all applicable government employment statutes.

It is the intent of the Gulf Consortium to fully comply with the mandates of the Americans with Disabilities Act of 1990, as amended (ADA). In that regard, qualified individuals with disabilities are encouraged to participate with the Gulf Consortium and the Gulf Consortium will reasonably accommodate such individuals.

2. COMPLIANCE WITH LAWS AND REGULATIONS; INDIVIDUAL RESPONSIBILITY

It is of critical importance that all Gulf Consortium directors, employees, contractors, consultants, and agents understand and comply with all applicable federal, state and local laws. If Gulf Consortium directors, employees, contractors, consultants, or agents have questions concerning a specific legal or regulatory requirement or concerning a particular situation, they should, consult with the Gulf Consortium's General Counsel.

As a basic tenant of high professional and ethical standards, each person is responsible for their own conduct. No one may justify illegal or unethical conduct by claiming they were ordered by someone else or that such conduct was only "minor" in nature. No one is authorized to direct someone to commit an illegal or unethical act or omission, regardless of the perceived "minor" nature of the conduct. If a representative of the Gulf Consortium is approached by anyone inside or outside the Gulf Consortium with a request to do something unethical or illegal, that person should refuse to do so and immediately report the incident to the Gulf Consortium General Manager and/or General Counsel.

3. ETHICAL REQUIREMENTS AND CONFLICTS OF INTEREST

The Gulf Consortium shall adhere to the Code of Ethics for Public Officers and Employees codified in Chapter 112, Part III, Florida Statutes. Chapter 112, Part III, Florida Statutes, prohibits, among other things, the following:

- A Gulf Consortium director, employee, or consultant from soliciting or accepting any gift, loan, favor, reward, or service (i.e. anything of value) that would cause a reasonably prudent person to be influenced in the discharge of official duties, or that is based upon any understanding that the action and/or judgment of the official or employee "would be influenced thereby."
- A Gulf Consortium director, employee, or consultant from transacting business on behalf of the Gulf Consortium with any business entity in which either the director, employee, consultant or a their immediate family has a "material interest," defined as direct or indirect ownership of more than 5% of the total assets or capital stock of such business entity.
- A Gulf Consortium director, employee, or consultant from accepting compensation to influence any action in his/her official capacity with the Gulf Consortium.

- A Gulf Consortium director, employee, or consultant from using his/her position to secure a special privilege, benefit, or exemption for him/herself or others.
- A Gulf Consortium director, employee, or consultant from holding any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, the Gulf Consortium.
- A Gulf Consortium director, employee, or consultant from disclosing or using information not available to the general public, gained by reason of their official position, for his/her personal gain or for the gain of any other person or business entity.

All contractors and suppliers engaging in business transactions with the Gulf Consortium shall be advised of these prohibitions. Any questions concerning these or other ethical requirements applicable to the Consortium should be referred to the Consortium's General Counsel.

4. VOTING CONFLICTS

In accordance with section 112.3143, F.S., Gulf Consortium directors are prohibited from voting on any matter that the director knows would inure to his or her special private gain or loss, or to the special private gain or loss of: (1) any principal by whom the director is retained; (2) any "relative" as defined in section 112.3143, F.S.; or any business associate of the director.

In the event of a voting conflict, directors must: (1) disclose the nature of the conflict prior to the vote being taken, and (2) refrain from voting on the item. Directors shall make every reasonable effort to disclose the nature of the conflict in a written memorandum filed with the General Manager prior to the vote. In the event it is not possible for the director to file such memorandum before the vote, it shall be filed with the General Manager no later than 15 days after the vote. Upon disclosing the nature of the conflict, the director may participate in Board discussion of the item.

Directors are strongly encouraged to consult with Gulf Consortium General Counsel prior to Board meetings at which official action will be taken to identify potential voting conflict issues.

5. FINANCIAL INTEGRITY

The financial books, records, and accounts of the Gulf Consortium must accurately and fairly reflect in reasonable detail the Gulf Consortium's assets, liabilities, revenues, and expenses. Any person or entity having occasion to prepare such records must do so in

conformity with 2 CFR 200, generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), and the U.S. Foreign Corrupt Practices Act, as amended. No false or fictitious entries may be made on the books, records, or accounts of the Gulf Consortium, nor shall funds or accounts be established or maintained for purposes that are not fully and accurately described. Payments may be made only to the contracting party or a valid assignee, and only for actual services rendered or products delivered. The use of the Gulf Consortium's funds or assets for unlawful purposes is strictly prohibited. Any consultant working on behalf of the Gulf Consortium which prepares financial information for the Gulf Consortium must also be aware of and abide by these standards.

6. GOVERNMENT PROJECT STANDARDS

Throughout all dealings with any governmental entity, no false, fictitious, or fraudulent statements may be made by a director, employee, contractor, consultant, or agent on behalf of the Gulf Consortium. This is true whether any such statement is made in proposals, invoices, reports, or negotiations, including negotiations of disputes. It is imperative that all invoices and claims submitted to governmental agencies on behalf of the Gulf Consortium accurately reflect the work performed and are in strict conformance with the requirements of the applicable grants. When negotiating disputes with a governmental entity, such as scope, quality of work, or price, it is not permissible to bolster the Gulf Consortium's position with unsupportable claims. Similarly, absent appropriate approval, there will be no use of government-owned equipment for purposes other than its intended contractual use.

In any transaction involving the United States Government, Consortium directors, employees, contractors, consultants, and agents must comply with the provisions of the Truth in Negotiations Act, 10 U.S.C. § 2306. All "cost and pricing data" on Federal projects or must be accurate, current, and complete, and records of such information must be retained. Also, it is a fundamental principle of the United States procurement process that government contractors must not improperly obtain, use, or disclose source selection or proprietary information.

The Gulf Consortium will neither give nor encourage anyone else to give inducements to governmental employees or contractors for the purpose of obtaining favorable treatment in connection with a contract or subcontract. Further, the Gulf Consortium shall not contribute or donate, or commit to contribute or donate, Gulf Consortium funds, services, or other resources for any political cause, party, or candidate. However, Gulf Consortium directors, employees, contractors, consultants, and agents may make voluntary personal contributions to any lawful political causes, parties, or candidates as long as such individuals do not represent that such contributions come from the Gulf Consortium.

7. WHISTLEBLOWER PROTECTION POLICY

The Gulf Consortium is committed to providing an environment in which there is open discussion of operations and practices. Accordingly, any person, including any Gulf Consortium director, employee, contractor, consultant, or agent who has reason to believe the Gulf Consortium or any of its directors, employees, contractors, consultants, and agents are violating or not complying with State or Federal statutes, rules, or regulations is encouraged to report such concerns to the Consortium's General Manager or General Counsel.

The Gulf Consortium shall fully comply with Florida's "Whistle-blower's Act," codified at sections 112.3187 to 112.31895, Florida Statutes. Pursuant to such Act, no adverse personnel action shall be taken against any person who reports suspected misconduct, fraud, gross mismanagement, or abuse, irrespective of whether the information contained in the report is ultimately substantiated. Adverse personnel action includes but is not limited to termination, demotion, suspension, transfer, reduction in salary or benefits, harassment, or any other type of discrimination or adverse action. The whistleblower protections contained herein shall also apply to personnel employed by Gulf Consortium contractors and consultants.

AGENDA ITEM 3b

Communications and Public Records
Policy
for
The Gulf Consortium

DRAFT



October 2018

BACKGROUND

The purpose of this Communications and Public Records Policy is to: (1) provide policies and procedures for the Gulf Consortium to follow when engaging with the public and other governmental agencies to foster clear and effective channels of communication; and (2) ensure compliance with public records inspection, production, and retention requirements imposed by Florida law.

POLICY

1. CHANNELS OF COMMUNICATION

- 1.1 **Restore Council** – The Gulf Consortium Board (“Board”) has delegated to the General Manager and General Counsel all day to day correspondence with the RESTORE Council and its staff. The General Manager shall work to ensure that Gulf Consortium Board Members (“Board Members”) are timely informed of interactions with and material information disseminated by the RESTORE Council at regularly scheduled intervals, including through communication with individual Board members when necessary.
 - 1.1.1 The General Manager shall assign at least one contact person to be available for the RESTORE Council to communicate with directly.
 - 1.1.2 From time to time the Board may delegate other Consultants to engage in communication with RESTORE Council.
- 1.2 **State & Federal Agencies** – The Gulf Consortium may delegate the responsibility for communicating and coordinating with State and Federal agencies to the General Manager, General Counsel, or such other Consultants as determined by the Board. The General Manager shall ensure that the Board is timely informed of any relevant communications with State and Federal agencies, including through communication with individual Board Members when necessary.
 - 1.2.1 All formal inter agency correspondences and agreements will be made publicly available on the Gulf Consortium’s website.
- 1.3 **Grant Sub-Recipients** – The General Manager will be the direct point of contact for the sub-recipients (the Counties) for all matters pertaining to grant applications and management. The General Manager shall compile all activity of the sub-recipients in a meaningful way and routinely disseminate that information to the Board.
 - 1.3.1 The General Manager shall designate at least one individual staff member who will be the primary point of contact for the sub-recipients.
- 1.4 **Other Stakeholders** – Communication with all other stakeholders shall be through the General Manager. The General Manager shall inform the Board of relevant communications with stakeholders where appropriate.

2. COMMUNICATION AND TECHNOLOGY

- 2.1 All Gulf Consortium communication outlets including but not limited to email, telephone, social media sites, and websites operated by or on behalf of the Gulf Consortium are for business use only and personal use is prohibited. The use of any of these mediums to transmit or receive inappropriate messages, to access inappropriate information, or to harass another party is strictly prohibited. Inappropriate messages and information include but are not limited to, those that are for personal benefit and those involving discriminatory, hostile, suggestive, obscene, or otherwise unsuitable language and downloading of software onto the Gulf Consortium's computers, website(s) and/or social media sites.
- 2.1 **Email:** The General Manager oversees incoming and outgoing email for the Consortium and may use email to manage internal affairs and communications on a daily basis.
 - 2.1.1 All email users are responsible for the content of the messages they send. Each message should be courteous, professional, businesslike, and written in language and tone acceptable for general public review.
- 2.1.2 **Privacy:** E-mail users should have no expectation of privacy in the content of their e-mail. All e-mail, whether personal, transitory, or public record, is subject to inspection by the General Manager or its designee. Minor, infrequent personal use is acceptable, but Consortium e-mail systems should not be used for private business.
- 2.2 **Security:** The General Manager is responsible for the security and maintenance of their local area network password.
 - 2.2.1 In order to maintain security, passwords shall be changed on a regular basis. Users shall not disclose their passwords to others or record/post their password where it can be compromised.
 - 2.2.2 Certain sensitive information, such as personally identifiable information, will be only accessible by the senior members of the General Manager's team. If senior members of the General Manager's team depart, those members' security rights shall be terminated immediately.
 - 2.2.3 The General Manager shall oversee and provide due care for the Gulf Consortium's electronic data including back-up solutions which adhere to industry standards. Any data loss or theft shall be immediately reported to the Board.

3. SOCIAL MEDIA POLICY

- 3.1 **General.** The Gulf Consortium may at times utilize Social Media as a means to disseminate information to the public and provide for news and updates concerning the goals and objectives of the Consortium, the State Expenditure Plan, and the status of projects contained in same. "Social Media," as used herein, means and includes blogs, websites, Facebook profiles/pages, Twitter feeds, Instagram, and related websites available for the dissemination of information and viewing by the public. The rules set out herein

are intended to provide for the responsible and appropriate use of social media in furtherance of this purpose.

3.2 Use of Personal Social Media Sites. Gulf Consortium Members, employees, and consultants, including the General Manager, may create, manage, administer, or communicate news and their own views and opinions regarding Consortium business through Social Media, but must ensure that they do not hold out such views as representative of the Consortium as a whole. As further described in Section 4 of this Policy, communications on personal Social Media sites may constitute Public Records and must be retained in accordance with Florida law.

3.3 Creation and Use of Gulf Consortium Social Media Sites.

3.3.1 The Board may authorize the General Manager to create and manage Social Media Sites on behalf of the Gulf Consortium. Each Consortium Social Media Site shall have at least one individual designated by the General Manager who shall be responsible for the administration, updating, and maintenance of thereof (the “Page Administrator”). Each Page Administrator shall be required to undergo training covering state public records laws including but not limited to those contained in Chapter 119, Florida Statutes.

3.3.2 The Page Administrator shall post the following on a Consortium Social Media Site:

The Gulf Consortium’s name and approved logo;

1. An e-mail address or telephone number for contact purposes;
2. Official Gulf Consortium information, resources, calendars, events, and news; and
3. A link to the Gulf Consortium’s website.

Gulf Consortium Social Media Sites may not be used for the following:

1. To communicate political advertisements or electioneering communications concerning an issue, referendum, or other matters that may be subject to the vote of the electors, except for electioneering communications limited to solely factual information in accordance with section 106.113, Florida Statutes;
2. To communicate personal opinions; or
3. To communicate irrelevant, impertinent or slanderous information.

3.3.3 Two-Way Communication. At the discretion of the General Manager, Consortium Social Media Sites may be structured to allow for two-way communication between the Consortium and the Public. Where two-way communication is permitted, members of the general public may be allowed to post comments and other content which relates to the general purpose and subject matter of the site. In the event the Consortium elects to allow for two-way communication, the following terms of use shall be posted on the Consortium Social Media Site:

“The Gulf Consortium has created this page as a limited public forum for the purpose of facilitating the dissemination of information and communication with the public concerning [Insert Description of Type of Info to Be Provided]. Please be aware that when engaging with the Gulf Consortium through social media, you agree to adhere to the following terms of use:

- Florida has broad public records laws. All postings on this page, including personal information, may be public records under Florida public records laws and all information is being preserved by the Gulf Consortium.
- Please keep all comments and discussion on topic and related to the purpose of the page.
- The following are **expressly prohibited**: pornography; graphic or obscene content; content that promotes illegal activity; violations of copyrights and trademarks; content that promotes, fosters or perpetuates discrimination on the basis of race, creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability, gender identity or sexual orientation; content that constitutes an imminent threat; and solicitations, advertisements, or other content that is commercial in nature.”

3.3.4 Retention of Records.

- a. In accordance with Chapter 119, Florida Statutes, all communications made through Social Media regarding Gulf Consortium business by Consortium Board Members, agents, employees, volunteers, or contractors and comments by the public on Consortium Social Media Sites are Public Records and must be stored according to the retention schedule established by the Department of State.
- b. Communications on personal Social Media sites regarding Gulf Consortium business may also be considered a public record under the definitions in Chapter 119, Florida Statutes. It is the sole responsibility of the Consortium Board Members, agents, employees, volunteers, and/or contractors who utilize personal Social Media sites to capture and save any communications received on the social media sites which relate to official Consortium business and provide such communications to the Consortium’s public records custodian so that such communications may be retained according to the retention schedule established by the Department of State.

3.3.5 Sunshine Law Requirements for Board Members Utilizing Gulf Consortium or Personal Social Media. Board Members who use Gulf Consortium Social Media Sites or personal Social Media sites must exercise caution to comply with Chapter 286, Florida Statutes. Pursuant to the requirements of Chapter 286, Florida Statutes, Board Members must not engage in an exchange or discussion of matters with other Board Members via Social Media on matters that will foreseeably come before that Board.

4. PUBLIC RECORDS

4.1. Public Record Defined – The term “Public Record” refers to all documents, papers,

letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by the Gulf Consortium.

4.2 Compliance with Public Records Laws. The Gulf Consortium, any committees, consultants, and all Members shall fully comply with the public records laws embodied in Chapter 119, Florida Statutes. The General Manager shall serve as the custodian of Public Records for the Gulf Consortium. It shall be the duty of the custodian to ensure that Public Records are kept secure, reasonably protected from alteration or destruction, and readily available for inspection.

4.2.1 Request log – The Consortium will maintain a record of each Public Records request which will identify the date of the request; the name of the requestor if identified; and a general description of the records requested. Completed public records requests will be logged either manually or electronically. Such logs will allow the General Manager to review the timeliness of responses.

4.3 Public Records Requests.

4.3.1 Public Records requests may be made in person, in writing, by phone, by email, or fax. The contact information for the custodian to be used for receiving and processing public records requests shall be maintained on the Gulf Consortium’s website and prominently posted in the primary administrative building in which public records are routinely created, sent, received, maintained, and requested. The requestor does not have to provide a name, contact information, or show any special or legitimate interest in the record requested. However, if an individual requests records that are deemed confidential or entitled to exemption and the requestor claims entitlement to view the records, then identification may be requested.

4.3.2 The Gulf Consortium cannot refuse a request because it is “over broad,” but can request clarification from the person requesting records. The custodian is not required to answer questions concerning the requested records, create records that do not already exist, or reformat its records in a particular form other than the form in which they already exist. The custodian must allow inspection and copying within limited reasonable time. The custodian can retrieve the record, review for exemptions and/or confidential information (in coordination with the Gulf Consortium’s legal counsel where appropriate), and redact or delete any portion claimed exempt.

4.3.3 Public Records are to be made available for inspection and copying within a reasonable amount of time but in no case longer than five (5) business days following the original request, except for unusual circumstances, such as voluminous records or requests requiring extensive staff time. When unusual circumstances arise, the custodian should contact persons requesting documents every five (5) days until the request is fulfilled to inform them of progress in obtaining requested material.

4.4. Costs. For all Public Records requests, the following fee schedule shall apply:

- \$.15 per page for single page copies (8.5" x 11" and 8.5"x 14)
- \$. 20 per page for double sided copies
- \$1.00 per CD/DVD
- \$1.00 per page for a certified copy of a public record

Costs for duplication of larger sized documents (i.e. planning maps, topographical maps, bound books, etc.) are charged at the actual cost associated with the duplication.

There shall be no charge for the first 30 minutes of time spent by the custodian or such other person as designated by the Gulf Consortium or General Manager in compiling Public Records pursuant to a Public Records request. If the nature or volume of Public Records requested to be inspected or copied is such as to require extensive use of information technology resources or extensive clerical or supervisory functions, a special service charge may be imposed. Any such special service charge so imposed shall be reasonable and shall be based on the actual cost incurred for the extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the Gulf Consortium or attributable to the clerical and supervisory assistance required, or both. Actual cost means base salary plus benefits for Gulf Consortium employees or the applicable contract rates for contracted Gulf Consortium services for the lowest paid employee or contractor who is able to perform the service.

- 4.4.1 In order to maximize the efficient use of Gulf Consortium resources, upon receipt of a Public Records request, the custodian shall estimate all costs associated with fulfilling that request and provide that estimate to the requestor within two (2) business days of receipt of the request. Any estimates in excess of \$10 must be paid in full before the custodian begins producing the requested records. Upon receipt of a deposit of all estimated costs, the requested materials shall be made available within a reasonable time thereafter, which should not to exceed five (5) business days unless unusual circumstances exist. If the deposit exceeds the cost of the request, the balance will be returned to the requestor. In all cases, the total cost associated with processing a Public Records request must be paid before any materials will be provided to the requestor.

4.5. Retention of Public Records

- 4.5.1 The custodian shall be responsible for ensuring that all Gulf Consortium Public Records are preserved in accordance with the retention schedule for state and local government agencies established by the State of Florida, General Records Schedule for State and Local Government Agencies.

- 4.5.2 **Email.** Emails relating to official Consortium business are Public Records. All Consortium Board Members, employees, agents, and contractors are responsible for ensuring the preservation of all emails constituting Public Records and shall provide such to the custodian for inspection and copying upon request.

AGENDA ITEM 3c

Procedures Review Policy
for
The Gulf Consortium

DRAFT



October 2018

1. BACKGROUND

Outdated policies can expose the Gulf Consortium to risk. Old policies may fail to comply with new laws and regulations. They may not address new systems or technology, which can result in inconsistent practices. This Procedures Review Policy is intended to ensure periodic review of the Gulf Consortium's policies and procedures in order to ensure that such policies and procedures remain up to date with the latest regulations, technology, and industry best practices.

2. OBJECTIVE

Each policy review will address the following questions:

a. Is the policy being implemented as intended?

Each review should consider whether employees, consultants, subrecipients, or other persons or parties to which the policy is addressed are complying with such policy and/or procedure. If there are instances of non-compliance, a review of the reasons why should be conducted. Is the policy outdated? Are the procedures difficult to follow? Have accounting or technology platforms changed during the year that the policy doesn't address? Has sufficient training been completed?

b. Is the policy having the desired effect?

Each policy is intended to meet a clear goal or objective. Over time, review of the policy objectives will help to assess whether a policy is effective. For example, if a policy was put in place to improve employee safety and employees are following the policy but accidents are still occurring at the same rate, the policy should be examined to identify how to revise it to be more effective.

c. Are the policies and procedures current and relevant?

Each review should confirm that policies and procedures align with current systems and structures. If the policies and procedures refer to outdated structures or technology, employees, consultants, subrecipients or other persons or parties to which the policy is addressed are more likely to ignore them or think that they are no longer relevant. For example, if the policies refer to contact individuals that are no longer in place, updates are necessary.

3. PROCESS

Sixty days prior to the established annual review date for all policies, which shall be the anniversary of acceptance by Council of the Consortium's OSA, the following process will commence.

3.1. Determine is the parties involved with each policy

Depending on the policy, the individuals and entities involved with the policy will differ. Generally speaking, General Counsel, at least one Board representative, and representatives from Accounting and Procurement will review existing policies and identify whether updates are required. One or more Policy Review Committees shall be created by the Board. On each such Committee, a point person will be charged with the

review of each policy. In addition, General Counsel will be asked to conduct a high level review of statutory references throughout existing policies which may require updates due to changes regulatory requirements. The following policies at a minimum will be formally reviewed:

- a. Accounting and Financial Management
- b. Communications and Public Records
- c. Conduct and Conflict of Interest
- d. Grant Management
- e. Internal Controls
- f. Procurement
- g. Subrecipient Management

3.2. Convene a review session to propose changes

The Policy Review Committee shall convene at least one group session to review proposed changes put forward by the point person for each policy and to receive the report from General Counsel of any required updates. As needed, additional sessions may be scheduled to allow time for consideration and discussion of all proposed updates or refinements to policy.

3.3. Document all proposed comments and changes to the policy, prepare for Board consideration

The General Manager shall maintain a log of all proposed changes to policies and procedures. A summary of all proposed changes and supporting justification will be prepared for the Board's consideration.

3.4. Finalize and disseminate updated policies

Changes that are approved by the Board to any policy will be updated in all Gulf Consortium documents and made available within 30 days as a part of the permanent record.

AGENDA ITEM 4

AGENDA ITEM 4a

Procurement Policy

of

The Gulf Consortium

DRAFT



October 2018

Table of Contents

1. Purpose	3
2. Application of Policy	3
3. Definitions	3
4. Authority of Procurement Manager	9
5. Specifications	9
6. Solicitation Prohibitions.....	11
7. Methods of Source Selection.....	11
8. Approval Thresholds.....	12
9. Small Purchases	13
10. Procurement Quotes.....	13
11. Competitive Bids (ITB)	13
12. Competitive Solicitation: Requests For Qualifications (RFQ) And Requests For Proposals (RFP) (collectively the “Proposals”).....	16
13. Emergency Purchases	19
14. Sole Source/Non-Competitive Purchases	20
15. Cooperative Procurement.....	26
16. Protesting Intended Decisions and Procurement Awards	26
17. General Provisions	27
18. Contracting With Small And Minority Businesses.	28
19. Rights of the Gulf Consortium Board	29
20. Ethics in Public Contracting	29
21. Consultant Conflict of Interest.....	30
22. Contemporaneous Employment Prohibited	30
23. Gratuities and Kickbacks	30
24. Sanctions.....	31
25. Recovery of Value Transferred Or Received In Breach Of Ethical Standards	31
26. Authorization to Debar or Suspend Vendor(s).....	31
27. Insurance Requirements	32
28. Payment to Vendors	33

PART A: PROCUREMENT PROCEDURE

1. Purpose

This policy is adopted to promote the following purposes:

- a. To clarify, organize, and unify the procurement practices used by the Gulf Consortium.
- b. To align procurement standards with RESTORE Council's standards and requirements, including 2 CFR Part 200.
- c. To assure adherence to all applicable procurement laws, regulations and procedures.
- d. To promote public confidence in the procurement procedures followed by the Gulf Consortium.
- e. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Gulf Consortium.
- f. To maximize economy in Gulf Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of Gulf Consortium funds.
- g. To provide safeguards for the maintenance of a procurement system of quality and integrity for the Gulf Consortium.

2. Application of Policy

- 2.1. **Contracts:** This policy shall apply to contracts/agreements solicited or entered into after the effective date of this policy or subsequent amendments or revisions, unless the parties agree to its application to a contract solicited or entered into prior to the effective date.
- 2.2. **Activities:** This policy shall apply to the purchase/procurement of all materials, supplies, services, and equipment except as herein specifically exempted.
- 2.3. **Waiver:** The Consortium Board shall have the authority to waive the policies and procedures contained herein when deemed to be in the best interest of the Consortium.

3. Definitions

The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:

1. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument (Invitation to Bid, Request for Proposals or Request for Qualifications). An addendum is not to be confused with a "contract amendment."
2. "Agreement/Contract" means all types of agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction and which name the terms and obligations of the business transaction.
3. "Blanket Purchase Order" means a purchase order issued to a vendor for an amount not to exceed the face value of the purchase order. A blanket purchase order is for the procurement of commodities or services no single item of which shall exceed the

threshold for small purchases unless the appropriate method of procurement was used to generate the Blanket Purchase Order.

4. "Board" means the Board of Directors of the Gulf Consortium.
5. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
6. "Change Order" means a written order amending the scope of, or correcting errors, omissions, or discrepancies in a purchase order.
7. "Commodity" means a product that the Gulf Consortium may contract for or purchase for the use and benefit of the Gulf Consortium. A specific item, it is different from the rendering of time and effort by a provider.
8. "Competitive Sealed Bidding" (Invitation to Bid) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation for bids is used when the Gulf Consortium is capable of specifically defining the scope of work for which a contractual service is required or when the Gulf Consortium is capable of establishing precise specifications defining the actual commodity or group of commodities required.
9. "Consortium" shall mean the Gulf Consortium, created under the Florida Interlocal Cooperation Act (Part I of Chapter 163, Florida Statutes) and the Interlocal Agreement entered into by its members on September 12, 2012.
10. "Contract amendment or modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.
11. "Contractor/Consultant" means any person having a contract with the Consortium.
12. "Contractual Services" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and other professional and technical services.

13. "Contractual Services Contract" is a contract for a contractor's time and effort rather than the furnishing of specific commodities. Satisfactory completion of the service and/or a specified period of time or date completes such contract.
14. "Cooperative Procurement" is procurement conducted by, or on behalf of, more than one public procurement unit.
15. "Cost Analysis" is the evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
16. "Data" means recorded information, regardless of form or characteristic.
17. "Definite Quantity Contract" is a contract whereby the contractor(s) agrees to furnish a specific quantity of an item or items at a specified price and time to specified locations. Delivery by the vendor and acceptance of the specific quantity by the Consortium completes such contract.
18. "Designee" means a duly authorized representative of a person holding a superior position.
19. "Emergency Purchase" means a purchase necessitated by a sudden unexpected turn of events (e.g., including but not limited to acts of God, riots, fires, floods, hurricanes, accidents, terrorism, or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interest of the Consortium.
20. "Established Catalog Price" is the price included in a catalog, price list, schedule, or other form that:
 - a. is regularly maintained by a manufacturer or contractor;
 - b. is either published or otherwise available for inspection by customers; and
 - c. states prices at which sales are currently or were last made to a significant number of any category of buyers or those buyers constituting the general buying public for the supplies or services involved.
21. "General Manager" shall refer to the staff so designated by the entity contracted to provide General Manager services for the Consortium.
22. "Intended Decision" means a written notice that states the contractor(s) to whom the Gulf Consortium intends to award a contract resulting from a solicitation and which establishes the period in which a notice of intent to protest may be timely filed. The Intended Decision shall be posted on the Gulf Consortium website.

23. "Invitation to Bid" (Competitive Sealed Bidding or ITB) means a written solicitation for sealed competitive bids used for the procurement of a commodity, group of commodities, or services valued more than the threshold for this category. The invitation to bids is used when the Consortium is capable of specifically defining the scope of work for which a contractual service is required or when the Consortium is capable of establishing precise specifications defining the actual commodity or group of commodities required.
24. "Invitation to Negotiate" means a written solicitation that calls for responses to select one or more persons or business entities with which to commence negotiations for the procurement of commodities or contractual services.
25. "Joint Venture" means:
 - (a) a combination of contractors performing a specific job in which business enterprises participate and share a percentage of the net profit or loss; or
 - (b) a joint business association of a minority individual(s)/firm(s) as defined herein, and a non- minority individual(s)/firm(s) to carry out a single business enterprise for which purpose the individuals/firms combine their property, money, efforts, skills and/or knowledge.
26. "Florida Business" means a business which:
 - (a) Has had a fixed office or distribution point located in Florida for at least six months immediately prior to the issuance of the request for competitive bids or request for proposals; and
 - (b) Holds any business license required by the State of Florida.
 - (c) Is the principal offeror who is a single offeror; a business that is the prime contractor and not a subcontractor; or a partner or joint venturer submitting an offer in conjunction with other businesses.
34. "Manufacturer" means a person or firm engaged in the process of making, fabricating, constructing, forming, or assembling a product(s) from raw, unfinished, semi-finished, finished, or recycled materials through a direct contract/agreement on behalf of the general contractor.
35. "Option to Renew" means a contract clause that allows a party to reinstate the contract for an additional term.
36. "Person" means any business, individual, committee, club, other organization, or group of individuals.
37. "Pre-Bid Conference" (or Pre-Proposal Conference) means a meeting held with prospective bidders prior to solicitation of or the date for receipt of bids or proposals, to recognize state of the art limits, technical aspects, specifications, or standards relative to the subject, and to elicit expertise and bidders' interest in submitting a bid or

pursuing the task.

38. "Procurement Award" is an award of a contract for goods or services resulting from a solicitation through action by the Consortium in a public meeting.
39. "Professional Services" shall include, but not be limited to, those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered land surveying, as defined by the State of Florida, or those performed by any architect, professional engineer, landscape architect, or registered land surveyor in connection with his professional employment or practice.
40. "Purchase Order" means that document used by the Consortium to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, payment terms, and other specifications.
41. "Procurement" means buying, procuring, leasing, or otherwise acquiring any materials, supplies, services, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
42. "Procurement Manager" means an individual designated by the Consortium Manager duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the Procurement policies of the Consortium.
43. "Procurement Quotes" is the procedure used to purchase commodities or contractual services wherein the Procurement Manager obtains written quotations from two or more vendors for purchases within the threshold amounts set for this category.
44. "Request for Information" means a written or electronically posted request to vendors for information concerning commodities or contractual services. Responses to these requests are not offers and may not be accepted to form a binding contract.
45. "Request for Proposals" (RFP) means a written solicitation for sealed proposals with the title, date, and hour of public opening designated. The request for proposals may be used when the Consortium is unable to specifically define the scope of work for which the commodity, group of commodities, or contractual service is required, and when the Consortium is requesting that a qualified offeror propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.

46. "Request for Qualifications" (RFQ) means a written solicitation for sealed qualifications with the title, date, and hour of public opening designated. The request for qualifications is used where the specifications of required services are broad and specialized in nature. Evaluation of a response is based on prior established criteria which involves more than price.
47. "Request for a Quote" means a solicitation that calls for pricing information for purposes of competitively selecting and procuring commodities and contractual services from qualified or registered vendors.
48. "Responsible bidder or offeror" means a person who has the capability, in all respects, to fully perform the contract requirements, and the integrity and reliability, which will assure good faith performance.
49. "Responsive bidder" means a person who has submitted a bid or proposal, which conforms in all material respects to the competitive solicitation.
50. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which is not defined as supplies and which are merely incidental to the required performance.
51. "Small Purchases" means the procurement of commodities or services with a value within the thresholds set for this category without the requirement of quotes, bids, or public notice.
52. "Sole Source Purchases" means the purchase of a commodity, service, equipment, or construction item(s) from one available practical source of supply. It can only be used when one or more of these circumstances apply: item is available from only one source, there is a public exigency or emergency, non-Federal entity has prior approval to use this method, and/or after solicitation of a number of sources, competition is determined inadequate.
53. "Specification" means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled, or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
54. "Supplier" means a person or firm who engages in the selling of materials and supplies to contractors, subcontractors, and/or manufacturers for the purpose of constructing,

repairing, altering, remodeling, adding to or subtracting from or improving any building, structure, or property through a direct contract/agreement on behalf of the general contractor.

55. "Term Contract" means indefinite quantity contract whereby a contractor(s) agrees to furnish an item or items during a prescribed period of time (such as 3, 6, 9, 12 months or a specific date). The specified period of time or date completes such contract.
56. "Tie (Identical) Bid" is when two or more bids are equal with respect to price and it appears that the quality and service offered by the vendors are otherwise comparable.

4. Authority of Procurement Manager

The Procurement Manager shall be designated by the General Manager. Except as otherwise specifically provided in this policy, the Procurement Manager shall:

- a. Purchase or supervise the purchase of all supplies, services, materials, equipment, and construction services defined within the scope of this policy
- b. Upon the prior approval of the General Manager, the Procurement Manager may delegate authority to designee(s).

5. Specifications

Technical specifications are designed to ensure that the quality and service will fulfill the requirements for which the equipment, materials, commodities or services are intended. It is the policy of the Consortium that specifications permit maximum practicable competition consistent with this purpose. Specifications should be drafted with the objective of clearly describing the Consortium's requirements. Specifications take many forms, some of which are more complex than others. The Procurement Manager shall maintain a library of current specifications through the National Institute of Governmental Purchasing (NIGP) for equipment, commodities, materials and services.

6.1. The Procurement Manager may make modifications or alterations to specifications to accommodate competitive bidding.

6.1.1. General

The purpose of a specification is to serve as a basis for obtaining a supply or service adequate and suitable for the Consortium's needs. The drafting of specifications should be done in a cost effective manner, taking into account the total cost of ownership and operation, as well as the initial acquisition cost.

6.1.2. Design/Performance Specification

Specifications should, to the extent practicable, emphasize functional or performance criteria while limiting design or other physical descriptions to those necessary to meet the needs of the Consortium. To facilitate the use of such

criteria, originating departments should endeavor to include as part of the principal functional or performance needs to be met.

6.1.3. Detail of Specifications

Bids and quotations should be based on concise specifications. Specifications should be detailed, providing a basis for open and equitable competitive bidding, based upon a common standard. Specifications should clearly describe the product to be purchased and must be free from restrictions that limit competition.

6.1.4. Selection Criteria

The specifications should relate directly to the selection criteria. A proposed selection criteria form with relative weights will be incorporated in the solicitation package.

6.1.5. Revision of Specifications Due to Budget Constraints

Should it be determined, after bids have been opened, that bids received exceed the budgeted amount and additional funds are not available, bids may be rejected. The scope of the specifications may be revised in an effort to comply with the established budget.

6.1.6. Alternate Specifications

Alternate specifications involving two or more designs, functional or performance criteria may be proposed by a bidder if the specification satisfactorily meet the Consortium's requirements and alternate specifications are expressly permitted in the bid document.

6.1.7. Reference-Bidders Qualification and Experience

Bidders may be required to furnish evidence of qualifications and past experience in the type of work as outlined in the specifications, to include specific experience for a particular services or project.

To expedite validation of bidder credentials for architect or engineering services only, the Purchasing Manager may choose to rely on proof of prequalification from other State agencies, including FDOT and FDEP. In the event the scope is relevant to an existing prequalification category, proof of current prequalification status may be required as an essential requirement for bidding.

6.1.8. Familiarity with Laws

The bidder is expected to be familiar and in compliance with all Federal, State and Local laws, Ordinances, Codes, Rules and Regulations that in any manner affect work, including, but not limited to, the Americans with Disabilities Act (ADA) and local environmental ordinances. Ignorance on the part of the bidder in no way relieves the bidder from the responsibility of compliance with all said laws, ordinances, codes, rules and regulations.

6.2. Bidders must possess any and all licenses necessary to perform. Bidders are responsible

for obtaining permits necessary to complete work, at their own expense, prior to starting any work provided by a Consortium purchase order or contract.

6. Solicitation Prohibitions

To ensure compliance with federal procurement rules, specifications and solicitation requirements may not contain features that unduly restrict competition including, but not limited to:

- a. Imposing unreasonable business requirements/qualifications for bidders or offerors.
- b. Imposing unnecessary experience requirements for bidders and offerors.
- c. Using prequalification procedures (except in the case of qualifications based procurement for services under section 287.055, F.S. known as the Consultants' Competitive Negotiations Act).
- d. Making a noncompetitive award to any person or firm on a retainer contract with the recipient if the award is not for the property or services specified for delivery under the retainer contract.
- e. Excessive Bonding shall not be permitted. Bid bonds and payment performance bonds shall be required for construction projects in excess of the federal small purchase threshold only.
- f. Specifying only a "brand name" product without allowing offers of "an equal" product, or allowing "an equal" product, or allowing "an equal" product without listing the salient characteristics that the "equal" product must meet to be acceptable for award.
- g. Specifying in-State or local geographical preferences or evaluating bids or proposals in light of in-State or local geographical preferences, even if those preferences are imposed by State or local laws or regulations.
- h. Supporting or acquiescing in noncompetitive pricing practices between firms or between affiliated companies including acceptance of submission of identical bid prices for the same products by the same group of firms, or an unnatural pattern of awards that had the cumulative effect of apportioning work among a fixed group of bidders or offerors.

7. Methods of Source Selection

The Consortium policies and procedures address the following methods of source selection:

- a. Small Purchases
- b. Procurement Quotes
- c. Competitive Solicitations (ITB, RFQ and RFP)
- d. Emergency Purchases
- e. Sole Source/Non-Competitive Purchases

8. Approval Thresholds

For multi-year contracts, when the annual amount is not specified, signature authority is based on the average yearly expenditure over the contract term. This applies for all approval thresholds. Table 1 provides the Procurement Process thresholds. Table 2 provides the Signature Authority thresholds.

Table 1 Procurement Process Thresholds	
Procurement Method	Threshold
Micro Purchase Procedures	Up to \$3,000
Procurement Quotes	\$3,000.01 to \$50,000
Competitive Solicitation – ITB, RFP and RFQ	\$50,000.01 and above

Table 2 Contract Award and Signature Authority Thresholds	
Individual	Threshold¹
Procurement Manager	*Procurement Agreements up to \$25,000
General Manager	*Procurement Agreements greater than \$25,000 and no greater than \$50,000
Gulf Consortium	*Procurement Agreements greater than \$50,000
¹ Term contracts will be awarded based upon the value of the initial term of the contract. *All contracts will be in a form approved by the Consortium General Counsel prior to execution.	

- 8.1. Purchases utilizing Federal funds must conform to applicable Federal law, including: 2 CFR Part 1201 incorporating 2 CFR 200 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” and comply with all requirements of FTA Circular C 4220.1F, as amended from time to time. Contracts utilizing Federal funds shall include all required Federal contract clauses.
- 8.2. To ensure compliance with Federal procurement rules, the Procurement Manager shall ensure that adequate competition exists by confirming that two or more responsible bidders are willing and able to compete effectively for the business.
- 8.3. A Cost Analysis shall be completed by the Consortium Manager or designee. The Consortium shall rely on FAR Part 31, Contract Cost Principles and Procedures for allowable costs. In general, costs must be necessary and reasonable, allocable to the project, authorized or not prohibited by Federal law or regulation, and must comply with Federal cost principles applicable to the recipient.
- 8.4. An Independent Cost Estimate is required prior to bidding for all purchases over the small purchase threshold and can be obtained by:

- a. Design/engineering firm or member county technical staff for construction work;
- b. Published price lists or past pricing with inflation factors;
- c. Independent third-party staff member not impacted by the final procurement.

8.5. Advertisement shall be via website and online services not later than the fourteenth day before the day set for receipt of bids, proposals or qualifications.

9. Small Purchases

- 9.1. The purchase of commodities, equipment, and services, which cost less than \$3,000 does not require solicitation of quotes or bids. Small purchases shall be authorized by the Procurement Manager or designees and documented as to their conformance with an approved Budget category.
- 9.2. Micro-purchases may be made without obtaining competitive quotations so long as the Procurement Manager determines that the price is reasonable, and that purchases made under the micro-purchase threshold shall be distributed equitably among qualified suppliers, in accordance with 41 U.S.C. Section 1902.

10. Procurement Quotes

- 10.1. For purchases exceeding \$1,000, the Procurement Manager or designee shall obtain multiple competitive quotations whenever possible. The Procurement Manager may solicit written quotations from the open market and shall use available current vendors and suppliers price lists whenever possible. The Procurement Manager or designee shall prepare a written quotation solicitation form that clearly documents the commodities, equipment or services requested and when needed, contact information, due date for quotation, vendor requirements and other relevant transactional terms. The requested commodities, equipment or services must be adequately described on a consistent basis to assure a like-to-like comparison among vendors. In those instances where the securing of two (2) quotations is not practicable, the Procurement Manager shall provide written justification of such.
- 10.2. Vendors submitting written quotes must have the required expertise and capability to perform the work or supply the commodities or equipment. Quotes must be on company letterhead, which shall be signed and dated by an authorized representative of the vendor. The lowest cost, responsible and responsive vendor who is capable of performing the services or supplying the commodities or equipment shall be awarded the contract.

11. Competitive Bids (ITB)

11.1. Conditions for Use

An ITB shall be utilized when the Procurement Manager is capable of establishing precise specifications for a commodity or defining, with specificity, a scope of services for the commodities or services sought and when the estimated cost of these

commodities, equipment or services exceeds \$50,000. Vendors compete on a cost basis for like items or services. The selection shall be based upon the lowest priced, responsive, and responsible bidder.

11.1.1. The Procurement Manager shall maintain a posting on the Consortium's website, accessible to the public where all advertisements for bids and/or bid tabulations may be posted. The notice shall include a general description of the goods and services to be procured, the location where specifications may be obtained, closing date, and the time and place for receipt of and the opening of the competitive bidding.

11.1.2. Exceptions to competitive award methods include:

- a. Other Governmental Agency Contracts - The Procurement Manager may procure commodities, materials, equipment and services from the State of Florida, Federal Government (GSA) and other governmental entity contracts when deemed to be in the best interest of the Consortium and in compliance with federal procurement requirements.
- b. Emergency Purchases (See Section xx)
- c. Non-competitive Purchase/Sole Source Purchase - (See Section xx)

11.2. Procedures

11.2.1. All bids shall be submitted no later than the date and time designated in the notice. The envelope containing the competitive bids shall be sealed. The Procurement Manager or designee shall date and time stamp each response as it is received and file the bids unopened in a secure file until the time designated for the opening. Bids received after the deadline shall be returned unopened to the sender.

11.2.2. All Competitive Sealed Bids shall be opened in public at the time, date and place stated in the notice and shall be recorded. Bids will not be accepted after the time set for the bid opening. The official clock for recording time is the clock located in the Procurement Manager's office. The purpose of the bid opening is to record the bids received. Bids are not analyzed for quality or substance at the bid opening.

11.3. Substitution

Each Bidder/Offerer represents that the bid is based upon requirements described in the ITB and that such commodities, equipment, materials and services fully meets the requirements of the ITB.

Whenever, any material, item, product, system or process is specified by trade name or name of manufacturer or vendor to establish class or standard required, any other material, item, product, system or process, considered equal by the originating department may be accepted, unless otherwise stated in the ITB.

In each such instance, the material, item, product, system or process specified by trade

name or name of manufacturer or vendor shall be considered as a standard basis for bidding and to ensure a uniform comparison of bids, the bidder shall base the bid on the particular material, item, product, system or process identified.

Should a bidder decide to substitute a material, item, product system or process other than that named in the specifications, the bidder shall attach to the bid at the time of submission or prior to submission, a separate sheet upon which shall be listed the pre-approved materials, items, products, systems or processes which the bidder desires to substitute.

- 11.3.1. No substitution will be considered unless written request has been submitted to the Procurement Manager for approval within the time specified. Each request shall include a complete description of the proposed substitute, the name of the material or equipment, etc. for which it is to be substituted, drawings, samples, performance and test data, references and other data or information necessary for complete evaluation. A written approval must be issued by the Procurement Manager or designee in order for the substitution to be fully accepted
- 11.3.2. The Procurement Manager and Consortium representative will review the bids and recommend to the Consortium Board the vendor(s) to receive the award on the basis of being the lowest responsive and responsible bidder.
- 11.3.3. After a bid has been opened, a bidder is not permitted to unilaterally withdraw or alter their bid, or deposit.

11.4. Correction or Withdrawal of Bids; Cancellation of Awards

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 Consortium. Mistakes discovered before bid opening may be modified or withdrawn upon written notice received in the office designated in the ITB 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 Procurement Manager and concurred with

by the General Manager.

11.5. Effective date. For agreements, the date entered in the text portion of the contract will be the effective date. If no date is indicated, the date the contract is fully executed will be the effective date.

11.6. Notification of Award. After approval of the award, the Procurement Manager or designee will notify the successful bidder. The normal means of notification is by Internet Website; however, the Procurement Manager will notify the successful bidder of the award by the most expedient and practical means available.

12. Competitive Solicitation: Requests For Qualifications (RFQ) And Requests For Proposals (RFP) (collectively the “Proposals”)

12.1. Request for Proposals

RFPs are used when the scope of work, specifications, or contractual terms and conditions cannot be well defined. Evaluation of a response is based on prior established criteria which involves more than price. An RFP includes, but is not limited to, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, and evaluation criteria. Under RFPs, the quality of competing products or services may be compared and judged according to evaluation criteria and trade-offs can be made between the price and quality of the products or service offered.

12.2. Request for Qualifications

A request for qualifications (“RFQ”) is used where the specifications of required professional services are broad and specialized in nature. Evaluation of a response is based on prior established criteria which involves more than price. The purpose of obtaining professional services is to offer to the Consortium special expertise, practical experience, knowledge, resources and an objective outside professional opinion. An RFQ must be utilized in CCNA procurements, but may be used in other instances when deemed appropriate by the Procurement Manager.

12.2.1. The provisions and exemptions contained in Florida Statutes section 287.055 (commonly known as the Consultants’ Competitive Negotiation Act, “CCNA”), shall apply herein for the procurement of all professional architecture, engineering, landscape architecture, or registered surveying and mapping services for projects that exceed certain statutory dollar thresholds.

12.2.2. Where it is in the best interest of the Consortium, the Consortium may choose to use the FDOT Prequalified Consultants Directory to validate that consultants have the prerequisite credentials in place to perform required services.

12.3. Procedures

The Procurement Manager shall schedule key events and dates for the RFP and RFQ review and issuance, public notice, the pre-proposal conference (if required), the proposal opening, evaluation, Board approval, and the preparation of the contract (see Section xx).

12.3.1. The Procurement Manager, in coordination with General Counsel, shall review the requirements and prepare the RFP/RFQ package, draft contract, and notice for

posting.

12.3.2. The Procurement Manager shall advertise and post the RFP/RFQ, and any addendums thereto, on the Consortium website. The notice shall include a general description of the goods and services to be procured, the location where the RFP/RFQ may be obtained, closing date, and the time and place for receipt of and the opening of the competitive solicitation.

12.3.3. A pre-proposal conference with vendors may be beneficial, depending on the complexity of the specifications or scope of work to be performed. When pre-proposal conferences are held, the Procurement Manager shall prepare a summary of the meeting. If material changes are made to the RFP/RFQ, the Procurement Manager must prepare an addendum and post it on the Consortium's website.

- a. The pre-bid/proposal conference is a meeting of potential bidders/offerors, the Procurement Manager and, as appropriate, other representatives of the Consortium or member counties.
- b. The ITB/RFP/RFQ shall stipulate the time, date, and location of the pre-bid/proposal conference, which should be as soon as possible after issuance and will indicate whether attendance is mandatory or non-mandatory.
- c. During the pre-bid/proposal conference, specifications are thoroughly reviewed and discussed with all parties in attendance. Subsequent to the conference, changes to the specifications will be reflected in an addendum prior to bid/proposal submittal. No changes to specifications may be made unless the addendum clearly identifying such changes is posted on the Consortium's website.
- d. Areas of concern regarding specifications, conditions, or alternatives must be addressed as soon as possible after the completion of the conference by the Procurement Manager.
- e. A mandatory pre-bid/proposal conference may be required at the discretion of the Consortium when deemed to be in the Consortium's best interest to do so. Mandatory conferences are held to ensure that potential bidders understand the complexity of the project or scope of work. The requirement for a mandatory conference shall be included in the public announcement/bid document.
- f. All interpretations or corrections shall be issued as addenda. If the location, date, or time of the bid opening changes, written notice of the change shall be given in the form of an addendum, as soon as practicable after the change is made and posted on the Consortium website and FAR system, if applicable.

- g. Occasionally after bids/proposals are solicited, but prior to bid opening or submittal time, changes to the specifications, delivery schedules, quantities, etc. may be needed. Ambiguous provisions may need to be clarified, or errors and oversights corrected. All addenda must be signed by the Procurement Manager or designee, processed on Gulf Consortium Letterhead and reference the Bid/RFP title and number.
- h. The Procurement Manager shall process the proposed addenda promptly upon receipt. Prior to issuing of an addendum, the Procurement Manager and the General Manager must consider the period of time remaining until bid opening. If additional time is likely to be required by a bidder(s), the addendum should extend the opening date for a reasonable period of time to obtain the greatest level of competition and fairness.
- i. Bidders must acknowledge receipt of addenda in their bid submittal at the designated time, date, and location. Bids may be rejected due to failure of vendors to acknowledge receipt of addenda. The Procurement Manager, however, has discretion to consider addenda not material to a bid process and may consider a bid responsive without addenda acknowledgement.
- j. All proposals shall be submitted no later than the date and time designated in the notice and the RFP/RFQ. The Procurement Manager or designee shall date and time stamp each proposal as it is received and file the proposals unopened in a secure file until the time designated for the opening. Proposals received after the deadline shall be returned unopened to the sender.
- k. RFPs/RFQs shall be opened publicly, in the presence of two or more witnesses, at the time, date, and place designated in the RFP/RFQ. The name of each offeror shall be read aloud; pricing is not announced at an opening for a competitive proposal. The official clock for recording time is the clock located in the Procurement Manager's office. The purpose of the proposal opening is to record the proposals received. Proposals are not analyzed for quality or substance at the proposal opening.
- l. The Procurement Manager shall evaluate the competitive proposals for responsiveness and completeness. All responsive proposals shall be provided to the Selection Committee for review, along with the Selection Criteria form.

12.4. Selection

All responsive proposals shall be ranked by a selection committee appointed by the Board. The selection criteria form is to be completed by each Selection Committee member, signed and dated.

12.4.1. The Procurement Manager shall compile the Selection Criteria Forms, assemble

cumulative scores and determine the top-ranked proposer. The recommendation for award shall be reviewed by the General Manager and submitted for approval and award by the Consortium Board.

12.4.2. General Counsel shall negotiate the terms and conditions of the resulting contract with the top-ranked proposer. If negotiations with the top-ranked proposer are unsuccessful, negotiations shall begin with the second-ranked proposer. If negotiations with the second-ranked proposer are unsuccessful, the Consortium shall decide whether to continue negotiations with the other proposers or to resolicit the procurement.

13. Emergency Purchases

- 13.1. Definition of Emergency: A purchase necessitated by a sudden unexpected turn of events (e.g., including but not limited to acts of God, riots, fires, floods, hurricanes, accidents, terrorism, or any circumstances or cause beyond the control of the agency in the normal conduct of its business) where the delay incident to competitive bidding would be detrimental to the interest of the Consortium.
- 13.2. To meet an emergency condition, which requires immediate purchase of equipment, commodities or services, the General Manager shall be empowered to authorize the Procurement Manager to secure by open market procedures, equipment, commodities or services regardless of the amount of the expenditure(s).
- 13.3. The Procurement Manager shall have the authority to either reduce the number of days required for competitive sealed bids/proposals, or the Executive Committee may eliminate the requirement for competition altogether based on the emergency situation.
- 13.4. Following each emergency purchase made under the provisions of this section, a report shall be prepared by the Procurement Manager, with complete documentation, clearly stating the justification for an exception from the normal purchasing procedures and submitted to the appropriate approval authority within a 72-hour period after the occurrence. The purchase amount will determine the final approval authority and/or ratification thereof. The Procurement Manager will prepare the essential paperwork for obtaining appropriate approval authority (e.g., Board, General Manager).
- 13.5. A written explanation of the circumstances of an emergency purchase in an amount in excess of \$5,000 shall be confirmed by the Board, which will then be recorded in the minutes of the Board and be open for public inspection.
- 13.6. Approval for Emergency Purchases under \$50,000 will be approved in accordance to the established authorized thresholds (See Section xx).

14. Sole Source/Non-Competitive Purchases

Sole Source and Non-competitive negotiations may be used as a procurement method for purchases of products or services when available from only one source (Sole Source), or when it is determined by the Procurement Manager that there is only one practicable and reasonable source wherein competitive bidding is not feasible or not advantageous to the Consortium (Non-competitive).

Sole Source purchases (except for proprietary software purchases, in most cases) at or above the bid threshold of \$50,000 must be publicly advertised per procedure.

Definition of Sole Source Purchase – The purchase of a commodity, service, equipment, or construction item(s) from one available practical source of supply. It can only be used when one or more of these circumstances apply: item is available from only one source, there is a public exigency or emergency, non-Federal entity has prior approval to use this method, and/or after solicitation of a number of sources, competition is determined inadequate.

Definition of Non-Competitive Purchase – A Non-Competitive purchase exists when it is advantageous to the Consortium to declare a purchase non-competitive because it will result in verifiable financial savings to the Consortium, or utilizing a competitive process will be detrimental to timely securing the goods or services. More than one potential supplier may exist for a good or service. The Procurement Manager shall document the advantages of declaring the purchase non-competitive. Taking this into consideration, therefore, only one reasonable and practicable source exists to supply a particular good or service. Such advantages may include but not be limited to: uniqueness, vendor qualifications, timeliness of purchase, etc.

14.1. The Procurement Manager may negotiate with a sole source/non-competitive provider under the following circumstances/examples:

- a. The needed product or service is available from only one known source, and such determination has been made by the Procurement Manager. (Sole Source Purchase)
- b. Additional products or services are needed to complete an ongoing task. (Non-competitive Purchase)
- c. A product or service is purchased from, or a sale is made to, another unit of government.
- d. The product is a component or replacement part for which there is no commercially available substitute and when can be purchased only from the manufacturer, sole distributor or provider. (Sole Source Purchase)
- e. The needed product or service may be available from more than one source. However, due to documented advantages such as uniqueness, vendor qualifications, timeliness, etc., a non-competitive purchase may be initiated when such determination has been justified that there is only one practicable and reasonable source, with confirmation by the Procurement Manager.

(Non- competitive Purchase)

- f. Funds have become readily available through a grant process and must be spent in a time frame that does not permit competitive bidding. (Non-competitive Purchase)

14.2. Indemnification Statement

It is Consortium standard practice to require vendors and contractors to indemnify the Consortium. The General Manager or designee will only make deviations from this policy at the sole option of the Consortium, when it is determined to be in the best interest of Consortium.

14.3. Insurance Requirements/Recommendations

Prior to commencing work the contractor shall procure and maintain, at the contractor's own costs, for the duration of the contract and any extensions insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Contractor, contractor's agents, representative, employees or subcontractors and any other insurance coverage required by the ITB, RFP or RFQ.

All insurance shall be obtained from an agency of an insurance company, which agency shall have an established place of business in the State of Florida, and be duly licensed to conduct business therein (see Section xx).

14.4. Selection Criteria and Reference Checks

A Selection Criteria Form and Reference Check form shall be completed prior to the recommendation for award in order to consider whether the bidder meets the standards of qualification. Factors to be considered shall include whether the bidder has the following:

- a. The appropriate financial, material, equipment, facility, and personnel resources and expertise available or the ability to obtain them, necessary to indicate its capability to meet all contractual requirements;
- b. A satisfactory record of performance;
- c. A satisfactory record of integrity;
- d. Ability to get bonding and insurance;
- e. The legal ability to contract with the Consortium;
- f. Supplied all necessary information in connection with the inquiry concerning responsibility including, but not limited to licenses, permits, or organization papers required.
- g. Satisfactory status with the Consortium.
- h. No conflict of interest. An organizational conflict of interest exists, when any of

the following occur:

1. Because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice;
 2. A contractor's objectivity in performing the contract work is or might be otherwise impaired; or
 3. The contractor has an unfair competitive advantage.
- i. See Sample Reference Check form attached.

14.5. Award

The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid. For Request for Proposals, the contract shall be awarded to the top-ranked, most responsive and responsible proposer with whom a mutually-agreeable contract is negotiated. The Consortium reserves the right to waive any informality in bids and proposals and to make an award in whole or in part when either or both conditions are in the best interest of the Consortium. The contract shall be awarded by purchase order or written agreement.

14.6. Notice of Intended Decision

The Intended Decision shall be posted on the Consortium website. This written notice shall state the firm or firms 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.

14.7. Contract Administration Compliant with Federal Contract Provisions

14.7.1. Contract Administration. All contracts shall include provisions adequate to form a sound and complete agreement which shall comply with Federal laws and regulations and include all required Federal contract provisions to ensure compliance with those laws and regulations.

14.7.2. The Contract Administration procedures shall be followed for all federally funded contracts.

14.7.3. The Procurement File shall contain proper contract administration including, but not limited to:

- a. Evidence of Board approval and funding commitment;
- b. Evidence of advertisement and tabulation of bids;
- c. The executed contract and notice of award;
- d. Performance and payment bonds, bond-related documentation, and correspondence with any sureties;

- e. Contract-required insurance documentation;
- f. Post-award (pre-performance) correspondence from or to the contractor or other Government agencies;
- g. Notice to proceed;
- h. Approvals or disapprovals of contract submittals required by the contract and requests for waivers or deviations from contractual requirements;
- i. Modifications/changes to the contracts including the rationale for the change, change orders or amendments issued, and documentation reflecting any time and or increases to or decreases from the contract price as a result of those modifications;
- j. Documentation regarding settlement of claims and disputes including, as appropriate, results of audit and legal reviews of the claims and approval by the proper authority of the settlement amount;
- k. Documentation regarding stop work and suspension of work orders and termination actions (convenience as well as default); and
- l. Documentation relating to contract closeout.

14.7.4. Retention of Procurement Records. All records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Consortium in appropriate files by the General Manager.

All procurement records shall be retained and disposed of by the Consortium in accordance with records retention guidelines and schedules established by the State of Florida and 2 CFR 200.

14.7.5. General Counsel shall determine the Federally Required Contract Clauses to be included with each contract, which will be disclosed at the time of advertisement.

14.7.6. Qualification based procurements shall be acquired in accordance with The Brooks Act, 40 U.S.C. 11, et seq.

14.7.7. Time and Materials contracts shall only be allowed, in the following instances:

- a. After determination that no other contract type is suitable,
- b. The contract specifies a ceiling price that the contractor may not exceed except at its own risk.

14.7.8. Davis-Bacon prevailing wage and hour restrictions shall apply to all construction contracts exceeding \$2,000.

14.7.9. Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be allowed.

- 14.7.10. A change order/amendment review checklist shall be completed for all Contract Change Orders/Amendments. All out-of-scope Contract Change Orders/Amendments shall include the following:
- a. An independent estimate and cost analysis prepared by the Architect/Engineer or General Manager,
 - b. The contractor's proposal,
 - c. Meeting minutes discussing the change order and written evidence of negotiations,
 - d. Evidence of Board approval prior to initiation of work (if applicable),
 - e. Change order form signed by all parties.
- 14.7.11. Cardinal Changes (tag-ons) defined as a change which cannot be redressed within the contract (base and option) as it was not bargained for when originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition shall not be allowed.
- 14.7.12. To the extent that any grant award should include rolling stock, Buy America pre and post-delivery audits are required for purchase of rolling stock greater than \$100,000.

14.8. Cancellation of Solicitations

An ITB, RFP or RFQ may be canceled, or any or all solicitations may be rejected in whole or in part when it is in the best interests of the Consortium, as determined by the Board. Notice of cancellation shall be posted on the Consortium website. The notice shall identify the solicitation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar items.

14.9. Disqualification of Vendors

For any specific competitive solicitation, vendors may be disqualified by the Procurement Manager for the following reasons:

- a. Failure to materially perform according to contract provisions on prior contracts with the Consortium.
- b. Conviction in a court of law of any criminal offense in connection with the conduct of business.
- c. 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.
- d. Clear and convincing evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's Procurement activity.

- e. Failure to execute a Public Entity Crimes Statement as required by Florida Statutes Chapter 287.133(3)(a).
- f. Other reasons deemed appropriate by the Consortium.

14.10. Negotiation of Terms and Conditions – Less Than Two Responsive Submissions.

If less than two responsive bids, proposals, or replies for commodity or contractual services purchases are received, or all bids received exceed the available budget identified for the commodity or contractual service, the Procurement Manager may negotiate on the best terms and conditions. The Procurement Manager shall document the reasons that such action is in the best interest of the Consortium in lieu of resoliciting competitive sealed bids, proposals, or replies. The Procurement Manager shall report all such actions to the Consortium or designee prior to final award of any contract resulting from the negotiations. Award will be made according to the award thresholds in Table 1.

14.11. Prohibited Communications

14.11.1. Any form of communication, except for written correspondence with the Procurement Manager requesting clarification or asking questions, shall be prohibited regarding a particular ITB, RFP or RFQ, or any other competitive solicitation between: Any person or person's representative seeking an award from such competitive solicitation; and

Any Board Member, Consortium consultant or any Manager employee authorized to act on behalf of the Consortium to award a particular contract.

14.11.2. 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.

14.11.3. The prohibited communication shall be in effect from the date of advertisement or release of the competitive solicitation and terminate at the time the Consortium approves the award of a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

14.11.4. The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, 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 any employee and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and any employee, communications with the General Counsel or communications with the Procurement Manager.

14.11.5. Prohibited communications may result in disqualification from the particular request for proposal, request for qualification, bid, or any other competitive

solicitation and shall be grounds for suspension from doing business with the Consortium.

14.11.6. For each competitive solicitation exceeding \$100,000, all vendors must submit a Certification Regarding Lobbying pursuant to 44 CFR Part .

15. Cooperative Procurement

15.1. State Contracts

The Procurement Manager is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the respective state contracts (state term continuing supply contracts, SNAPS agreements [State Negotiated Agreement Price Schedules], agreements resulting from Invitations to Negotiate [ITN], or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services or other state agencies.

15.2. Federal Supply Service

The Procurement Manager is authorized to purchase goods or services for any dollar amount from authorized vendors listed on the eligible Federal Supply Schedules issued by the Federal General Services Administration. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Consortium.

15.3. Other Public Procurement Units

The Procurement Manager shall have the authority to join with other units of government in cooperative Procurement ventures when the best interest of the Consortium would be served thereby, and the same is in accordance with State law. The Procurement Manager shall appropriately document such cooperative Procurement arrangements. All Cooperative Procurement conducted under this section shall be through contracts awarded through full and open competition, including use of source selection methods equivalent to those required by this policy. Each selection method shall clearly state the intention to include participation by other units of government as a requirement for use in cooperative Procurement.

15.4. Cooperative Procurement Organizations

The Procurement Manager is authorized to purchase goods or services for any dollar amount from authorized vendors listed on eligible contracts of cooperative Procurement organizations. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Consortium. All Cooperative Procurement contracts utilized under this section shall have been awarded through full and open competition, including use of source selection methods equivalent to those required by this policy.

16. Protesting Intended Decisions and Procurement Awards

16.1. Right to Protest

Any person, hereinafter referred to as Protestor, who submits a timely response to a competitive solicitation, and who is aggrieved with an Intended Decision of the Consortium or a Procurement Award rendered by the Board shall have the right to protest. Vendors who do not submit a legitimate response to a competitive procurement do not have standing to file a protest. Furthermore, vendors who would not be awarded the subject contract, even if the protest were successful, lack standing to file a protest.

16.2. 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 Consortium. A formal written protest shall be filed within 7 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 the Consortium when it is received by the Procurement Manager.

- 16.2.1. 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 number of the solicitation; and, a brief factual summary of the basis of the protest.
- 16.2.2. 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.
- 16.2.3. A formal written protest shall include the posting of a bond with the Manager at the time of filing the formal written protest, made payable to the Consortium, in an amount equal to one percent (1%) of the Consortium's estimate of the total dollar amount of the contract or \$5000, whichever is greater. 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. 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.
- 16.2.4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Procurement Manager.

17. General Provisions

17.1. Time Limits

The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the invitation to bid, request for proposals, request for qualifications, or upon the mutual written consent of the Protestor and the Consortium.

17.2. Entitlement to Costs

In no case will the Protestor be entitled to any costs incurred with the competitive solicitation, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.

17.3. Stay of Procurement During Protests.

In the event of a timely protest, the Procurement Manager shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the General Manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the Consortium. Additionally, the General Manager, or designee may execute an extension of current contract(s) to ensure the continuation of critical services.

17.4. Protest of Intended Decisions.

Upon timely receipt of a notice of intent to protest an Intended Decision, the Procurement Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Procurement Manager shall within two business days mail a copy of the notice of intent to protest to all persons who responded to the competitive solicitation.

17.4.1. Within 7 days of receiving the formal written protest, the Procurement Manager shall respond to the Protestor affirming or denying the protest. Within 5 days of issuance of the Procurement Manager's decision, such decision may be appealed to the General Manager. The General Manager, in coordination with General Counsel, shall within 5 days of receiving the appeal, respond by affirming or overruling the Procurement Manager's decision. The General Manager's decision shall be deemed final action by the Consortium.

18. Contracting With Small And Minority Businesses.

18.1. In accordance with federal procurement rules, specifically 2 C.F.R. 200.321, the Consortium will take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

18.1.1. Affirmative steps include:

1. Placing qualified small and minority businesses and women's business

enterprises on solicitation lists;

2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
- 18.2.** The Procurement Manager shall ensure that the requirements are included in competitive procurements as it applies to both primary and subcontractors.
- 18.3.** The Consortium will accept certification of 8(a), WOSB or HUBZone status from the Small Business Administration or its contracted certification providers as SBA may designate from time to time or the Florida Department of Transportation (FDOT) DBE program in lieu of creating its own certification program.
- 18.4.** The Consortium will utilize the SAM (U.S. System for Award Management, SAM.gov) and FDOT DBE lists to notify certified W/MBE firms of procurement opportunities, as deemed appropriate. The efforts of such outreach shall be maintained in the original purchasing file.

19. Rights of the Gulf Consortium Board

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 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 into any contract 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.

20. Ethics in Public Contracting

20.1. Criminal Penalties

To the extent that violations of the ethical standards of conduct set forth in this policy 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.

21. Consultant Conflict of Interest

21.1. Participation

It shall be unethical for any Consultant to participate directly or indirectly in a procurement contract when the Consultant knows that:

- a. the Consultant or immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
- b. any other person, business, or organization with whom the Consultant or immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.

21.2. Blind Trust

Consultant or immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.

22. Contemporaneous Employment Prohibited

It shall be unethical for any Consultant who is participating directly or indirectly in the procurement process to become or to be, while such a Consultant, the employee or consultant of any person contracting with the Consortium.

23. Gratuities and Kickbacks

23.1. Gratuities

It shall be unethical for any person to offer, give, or agree to give any Consortium Board Member, Consultant or their employee 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.

23.2. 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.

23.3. Contract Clause.

The prohibition against gratuities and kickbacks prescribed in this section shall be conspicuously set forth in every contract and solicitation therefore.

24. Sanctions

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

- a. written warnings;
- b. termination of contracts; or
- c. debarment or suspension (see Section xx).

25. Recovery of Value Transferred Or Received In Breach Of Ethical Standards

25.1. General Provisions

The value of anything being transferred or received in breach of the ethical standards of this policy by a Consortium Board Member or Consultant may be recoverable by the Consortium.

25.2. Recovery of Kickbacks by the 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 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.

26. Authorization to Debar or Suspend Vendor(s)

26.1. Suspension.

After consultation with the General Counsel, the Procurement 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 (3) months, and the Procurement Manager shall immediately inform the Board and provide notice to the affected person.

26.2. 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 (3) years.

26.3. Causes for Debarment.

The causes for debarment include:

- a. 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;
- b. 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 contractor;
- c. 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;
- d. 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:
 1. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 2. 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;
- e. having been adjudicated guilty of any violation by the State of Florida Construction Industry Licensing Board within the past twelve (12) month period at the time of bid submittal;
- f. any other cause the Procurement Manager or Board determines to be as serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity.

26.4. Notice of Decision

The Procurement 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.

26.5. Appeal of decision to debar or suspend

The Board's decision to debar or suspend a person or business shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

27. Insurance Requirements

27.1. Minimum Requirements.

Contractor shall purchase and maintain such insurance as necessary 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 as set forth in the ITB, RFP or RFQ.

27.2. Certificates of Insurance.

Certificates of Insurance naming the Consortium as an additional insured shall be filed with the General Manager prior to the commencement of the work and periodically thereafter upon any renewals during the term of the contract.

27.3. Change of Insurance Requirements.

The Consortium reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the Consortium.

28. Payment to Vendors

The Procurement Manager, in conjunction with the Consortium, shall establish administrative procedures, processes, and forms necessary for the implementation and administration of payments for all contracts.

SAMPLE REFERENCE CHECK FORM

REFERENCE VERIFICATION

PROCUREMENT/CONTRACT

NO.: _____

PROJECT/SERVICE TITLE:

CONSULTING

FIRM: _____

REFERENCE

CONTACTED: _____

PROJECT

REFERENCED: _____

QUESTIONS:

1. Please verify the accuracy of the information submitted?
[Proposer's description of completed project/service.]

2. What was the time period that they worked on the project?
Start Date: Completion Date:

3. Did they efficiently and effectively carry out their contractual obligations?

4. Did the final product meet all required criteria?

5. Were any change orders. Specification changes or schedule extensions required to complete the project?

6. Did you encounter any problems with the Contractor, their Staff or Subs Consultants throughout the duration of the Contract?

DRAFT

AGENDA ITEM 4b

Internal Controls Policy
for
The Gulf Consortium

DRAFT



October 2018

Table of Contents

1. BACKGROUND 1

2. INTERNAL CONTROL SYSTEM..... 1

3. CONTROL ENVIRONMENT 2

4. RISK ASSESSMENT..... 3

5. COMMUNICATION AND INFORMATION..... 3

6. MONITORING 4

7. FINANCIAL REPORTING 4

8. SEGREGATION OF DUTIES 5

9. INDEPENDENT FINANCIAL AUDITING 5

Figure 1. Gulf Consortium Internal Framework..... 2

DRAFT

1. BACKGROUND

The Gulf Consortium has established internal controls in order to maintain accuracy and transparency of financial disclosures and to achieve fiduciary accountability. The Consortium is responsible for:

- a. Fiscally managing and safeguarding SEP funds;
- b. Disbursing funds to sub-recipients in a timely manner for reimbursement of eligible project expenditures;
- c. Keeping accurate and up-to-date records of all financial transactions related to project activities;
- d. Assisting member county staff with monitoring, and evaluation of their sub-awards; and
- e. Aiding county staff in understanding and complying with financial controls and procedures necessary to ensure effective stewardship of the Florida SEP funds

2. INTERNAL CONTROL SYSTEM

The Consortium's internal control system has been modeled in accordance with the Committee of Sponsoring Organizations (COSO) internal control framework and the five inter-related components including:

- a. Risk assessment
- b. Control environment
- c. Control activities
- d. Information and communication
- e. Monitoring

2.1. The Consortium will evaluate each of the above categories on a regular basis to adjust or change policies and procedures to enhance the internal control policy. **Figure 1** illustrates the process.

Figure 1. Gulf Consortium Internal Framework



3. CONTROL ENVIRONMENT

The internal control environment for the Consortium begins with the Board of member counties and extends to all the consortium vendors and member county staff that work in concert with the SEP projects.

3.1. The Gulf Consortium has hired vendors through a competitive bidding process which are required to carry out their part of the internal controls and to report any areas they view as deficiencies. Vendors of the Gulf Consortium are governed by respective policies depending on their working relationship with the Gulf Consortium and are required to familiarize themselves with pertinent policies, including policies relating to subrecipients, procurement, and conduct. Vendors are required to report any control deficiencies to the (head of the Audit/Exec committee or General Counsel).

3.2. The Consortium's internal control activities include written policies, procedures, techniques, and mechanisms that help ensure management's directives are carried out in compliance with the RESTORE Act criteria. Control activities help identify, prevent, or reduce the risks that can impede accomplishment of state objectives. Control activities occur throughout the financial department, at all levels and in all functions; control activities include things such as

- a. approvals,
- b. authorizations,

- c. verifications,
 - d. reconciliations,
 - e. documentation,
 - f. separation of duties, and
 - g. safeguarding of assets.
- 3.3. For each transaction cycle, the flow of information through the process and the internal control activities taken is documented and analyzed. Depending on the transaction at hand, documentation may include organizational charts, standard operation procedures, manuals, flowcharts, decision tables, questionnaires, and/or review checklists.

4. RISK ASSESSMENT

In order to have proper internal controls into place for the Consortium, the types of risks both perceived and real must be identified, analyzed, and categorized in relevant way to manage the goals of the SEP and requirements of the Consortium's regulatory bodies. The identification process examines both internal and external events or circumstances that could adversely affect the Consortium's ability to carry out its fiduciary responsibilities. Several risks have been identified, along with accordant mitigating factors. The risks to the Gulf Consortium include:

- a. The lack of traditional infrastructure of staff and administrative support is an inherent risk for the Consortium. This risk is being mitigated with the careful selection of vendor support with cooperation from members of the board and potential use of member county's staff and other resources.
 - b. Also due to the lack of traditional infrastructure, The Gulf Consortium has undertaken to stand up formal processes to logistically manage numerous grants concurrently. In response, the Gulf Consortium has requisitioned grant management software and financial accounting software in order to reduce risk of misreporting and enhance transparency in financial disclosures. The Gulf Consortium will own and operate these systems with the support of a Manager and other vendors.
 - c. The size of the control environment incorporates multiple counties and is considered an inherent risk for the Consortium. To mitigate this risk, the grant management processes established herein require uniformity among member counties and requires a high level of transparency and adherence to the policies. Training and ongoing compliance monitoring will occur with respect to sub-recipient grant milestone completion and disbursement requests.
- 4.1. The Consortium will continue to monitor, develop, and combat risks as they are identified in the control environment.

5. COMMUNICATION AND INFORMATION

- 5.1. The Consortium is committed to sustaining transparency with the public, RESTORE Council, and other constituents for financial reporting on SEP related projects, programs, and activities. The Gulf Consortium's website provides summary and detail information regarding the status of Gulf Consortium funding and activities.
- 5.2. The Gulf Consortium's financial system provides adequate processes and procedures to ensure that each member county or sub-recipient has relevant, valid, reliable, and timely communications related to internal and external events to effectively run and control the Gulf Consortium's operations.
- 5.3. The Gulf Consortium's grant management system allows member counties to obtain reliable information to make informed decisions, analyze any risks, and communicate actions and other important information to the Gulf Consortium.

6. MONITORING

Monitoring of the internal control system will be performed to assess whether controls are effective and operating as intended. The Gulf Consortium's monitoring structure is built into normal, recurring intervals and provides feedback on a timely basis, and will be carried out by the Manager, the Audit Committee, and the Procedures Review Board at least annually. Ongoing monitoring occurs through routine managerial activities such as supervision, reconciliations, checklists, comparisons, performance evaluations, and status reports.

- 6.1. Any deficiencies found during monitoring will be reported to the (Audit Committee). The monitoring process also includes analysis of whether exceptions are reported and resolved quickly.

7. FINANCIAL REPORTING

Financial reporting within the Gulf Consortium is a critical component in evaluating the progress financially and programmatically within the sub-recipient grants. It is imperative that the Gulf Consortium Board and the public receive timely, accurate and complete financial reporting. Financial reports will provide the Manager and the Board with critical data to measure the goals and objectives of the grants overseen by the Gulf Consortium.

- 7.1. The basic principles of sound financial management include, but are not limited to, tight internal controls, financial transparency, segregation of duties, and independent external auditing. By integrating these processes into the administrative functions and fiduciary functions of the organization the Consortium can ensure timely, accurate, and complete reporting throughout the FSEPs lifecycle.
- 7.2. The Consortium's financial control system consists of both preemptive controls (created to prevent errors or fraud) and detective controls (designed to identify an error or fraud after it has occurred). The processes created by the Gulf Consortium are designed to provide reasonable assurance in the reliability of project financial reporting.

7.2.1. The financial control system includes multiple protections of public funds including:

- a. Procedures that provide for appropriate segregation of duties to reduce the risk of asset loss or fraud.
- b. Defined roles for the proper employees to authorize and record financial transactions.
- c. Subrecipient training for member county staff performing their duties and functions as they relate to sub-award grant funds. The Gulf Consortium will require sub-recipients to operate and use Gulf Consortium resources with minimal potential for waste, fraud, and mismanagement.

7.3. The principles of sound financial management are designed so the Consortium will be able to:

- a. Ensure that funds are spent in accordance with the respective grant awards, state law and federal law, as applicable.
- b. Prevent fraud and reduce or eliminate fiduciary risk and financial loss.
- c. maintain compliance with the RESTORE Act financial documentation requirements.
- d. create a uniform financial standard for member counties.
- e. ensure that financial reports and disclosures are complete reliable.

8. SEGREGATION OF DUTIES

8.1. To maintain effective internal controls, the Consortium has created internal checks and balances among the entities performing contract administration and financial duties for SEP related projects, programs, and activities.

8.2. Duties required for financial reporting and analysis are segregated to ensure dual controls. Two individuals are required for oversight of all administrative activities that involve confidential or valuable assets, such as opening of bids or handling deposits. For cash management, a designated fiscal agent manages any grant funds from Council, allowing for an additional layer of protection for the Consortium's assets. The Consortium has instituted firewalls between approval of disbursements and access to funding.

9. INDEPENDENT FINANCIAL AUDITING

The Consortium is subject to annual audits conducted by independent auditors which evaluate not only the presentation of financial statements but also the effectiveness of internal controls based upon widely held government standards including, but not limited to, 2 CFR part 200 and the Single Audit Act of 1996.

9.1. Effective financial controls depend on clear policies and procedures for different areas of activity, such as cash management procedures (e.g., requests for funds, project budgets,

and disbursement of funds); procurement policies which follow appropriate laws, regulations, and policies; and administrative policies, such as procedures review policies.

9.2. Federal Single Audit Act

Federal audit and annual reporting requirements are contained in 2 CFR 200 Subpart F (200.5) (Compliance and Audit Requirements). Non-federal entities expending \$750,000 or more in a year in federal awards are required to have a single or program-specific audit conducted for that year, performed by an outside auditor. It is important that all grant activity and any changes to the grant are well documented to facilitate any audit. Audit findings made during the audit are provided to the grantor, which could prompt an audit by the grantor.

The following activities are the fourteen types of compliance requirements considered in every audit conducted under 2 CFR 200 Subpart F (200.5), and are found highlighted throughout this manual:

- a. Activities: Allowed or Unallowable
- b. Allowable Costs/Cost Principles
- c. Cash Management
- d. Compliance with Terms & Conditions (e.g.: Davis-Bacon Act)
- e. Eligibility
- f. Equipment and Real Property Management
- g. Matching, Level of Effort, Earmarking
- h. Period of Availability of Federal Funds
- i. Procurement, Suspension and Debarment
- j. Program Income
- k. Real Property Acquisition and Relocation Assistance
- l. Reporting
- m. Subrecipient Monitoring
- n. Special Tests and Provisions

9.3. Florida Single Audit Act

The Florida Single Audit Act establishes uniform audit requirements for state financial assistance, and follows the same cost principles and requirements established in the Federal Single Audit Act. Florida limits are \$500,000.

9.4. Granting Agency or Pass-Through Agency Audits

Each grantor and/or pass-through agency may have different terms they use when conducting reviews of programs they fund. However, no matter the term used, the agency is reviewing documentation that substantiates whether the Consortium is in compliance with the terms and agreements associated with the specific grant or subaward. These reviews check both programmatic and fiscal components in detail.

9.5. Audit Deficiencies

If any internal or external audit should find the Consortium deficient, the Consortium shall develop responses to the observations identified in the audit and develop corrective actions to remediate the identified deficiencies. The **Audit Committee** will receive and approve or suggest revisions to the corrective actions.

The **Audit Committee** will periodically check on the status of corrective actions and inform the Board when the Consortium has satisfactorily remediated all deficiencies.

The **Audit Committee or Procedures Review Committee** will periodically review the Consortium's grant processes and procedures and recommends improvements to reduce risk to the organization. The reviews provide opportunities to include or amend policy to encompass new federal, state and local regulations as well as improve efficiency in operations. Areas reviewed include but are not limited to: internal controls, risk, grant compliance, distribution of grant related information and grant related training.