

# PROCUREMENT POLICY

of

The Gulf Consortium

June 2021



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## DEFINITIONS

The following terms defined in this section shall have the meanings set forth below whenever they appear in the Gulf Consortium Policies, unless the context clearly requires otherwise:

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 contain the terms and obligations of the business transaction.
3. “Award” means an award of RESTORE Act (Pot 3) grant funds from the RESTORE Council to the Gulf Consortium.
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” or “Gulf 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 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.
13. “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.
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. “Designee” means a duly authorized representative of a person holding a superior position.
18. “Director” means a duly appointed member of the Gulf Consortium Board of Directors.
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. “Finance Manager” shall refer to the staff so designated by the entity contracted to

provide accounting and financial management services for the Consortium.

21. “Fiscal Agent” shall refer to the part designated and contractually retained to perform cash receipt and disbursement activities related to Treasury funds.
22. “General Counsel” shall refer to the person or persons retained to provide legal counsel to the Consortium.
23. “General Manager” shall refer to the staff so designated by the entity contracted to provide General Manager services for the Consortium.
24. “Gulf Consortium” or “Consortium” shall mean the governmental created by interlocal agreement of the 23 Member Counties pursuant to Section 163.01, Florida Statutes, to manager and administer the RESTORE Act Funds allocated to the State of Florida by the Gulf Ecosystem Restoration Council, consistent with the RESTORE Act.
25. “Gulf Ecosystem Restoration Council” or “Council” shall mean the Federal agency created pursuant to the RESTORE Act having oversight responsibility for 60% of the Gulf Coast Restoration Trust Fund, including the 30% comprising the RESTORE ACT (Pot 3) Funds.
26. “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.
27. “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.
28. “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.

29. "Member County" shall mean a county which is a member of 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.
30. "Person" means any business, individual, committee, club, other organization, or group of individuals.
31. "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.
32. "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.
33. "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.
34. "Procurement Manager" means an individual designated by the General 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.
35. "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.
36. "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.
37. "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.



38. “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.
39. “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.
40. “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.
41. “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.
42. “Responsive bidder” means a person who has submitted a bid or proposal, which conforms in all material respects to the competitive solicitation.
43. “RESTORE Act” means Public Law 112-141 (July 6, 2012), codified at 33 U.S.C. 1321(t), as may be subsequently amended, and all implementing regulations.
44. “RESTORE ACT (Pot 3) Funds” refers to the 30% of the Gulf Coast Restoration Trust Fund, established by the RESTORE Act, to fund economic and environmental recovery of the Gulf Coast region impacted by the Deepwater Horizon Oil Spoil. Pot 3 funds are managed separately by each of the Gulf Coast states. The Gulf Consortium is Florida’s designated agency to administer Pot 3 funds.
45. “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.
46. “Simplified Acquisition Threshold” means the dollar amount, as established by

Federal regulation, below which a non-federal entity may purchase property or services using small purchase methods that do not involve the use of sealed competitive solicitations.

47. “Sole Source Purchase” means the purchase of a commodity, service, equipment, or construction item 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.
48. “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.
49. “Subaward” means the subaward of RESTORE Act Funds received by the Consortium pursuant to an Award to a Member County, or the subaward of RESTORE Act Funds by a Member County to another entity where permitted.
50. “Subrecipient” means a Member County that receives a Subaward of RESTORE Act Funds from the Consortium for the performance of a project, or any portion thereof, described in the Florida State Expenditure Plan.
51. “Subrecipient Agreement” means an agreement entered into between the Consortium and a Member County governing the Subaward of RESTORE Act Funds received by the Consortium pursuant to such Member County.
52. “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.
53. “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.

## **PART A: PROCUREMENT PROCEDURE**

### **P-1. PURPOSE**

This policy is adopted to promote the following purposes:

- a. To clarify, organize, and unify the procurement practices used by the 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 Consortium.
- e. To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Consortium.
- f. To maximize economy in Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of Consortium funds.
- g. To provide safeguards for the maintenance of a procurement system of quality and integrity for the Consortium.

### **P-2. APPLICATION OF POLICY**

#### **P-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.

#### **P-2.2 Activities**

This policy shall apply to the purchase/procurement of all materials, supplies, services, and equipment except as herein specifically exempted.

#### **P- 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, provided it does not result in a violation of State or Federal laws or regulations.

### **P-3. 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).

### **P-4. 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 may maintain a library of current specifications through the National Institute of Governmental Purchasing (NIGP) for equipment, commodities, materials and services.

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

#### **P-4.1 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.

#### **P-4.2 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.

#### **P-4.3 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.

#### **P-4.4 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.

#### **P-4.5 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 conform to the established budget.

#### **P-4.6 Alternate Specifications**

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

#### **P-4.7 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 Procurement 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.

#### **P-4.8 Familiarity with Laws**

The bidder is expected to be familiar and in compliance with all applicable Federal, State, and Local laws, ordinances, codes, rules and regulations that in any manner affect the work or services to be performed or the goods to be provided. Ignorance on the part of the bidder in no way relieves the bidder from the responsibility of compliance with all applicable laws, ordinances, codes, rules and regulations.

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.

#### **P-5. 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.
- 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.

**P-6. METHODS OF SOURCE SELECTION**

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

- a. Small Purchases (including micro purchases and procurement quotes)
- b. Competitive Solicitations (ITB, RFQ and RFP)
- c. Emergency Purchases
- d. Sole Source/Non-Competitive Purchases

**P-7. 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 P-1 provides the Procurement Process thresholds. Table 2 provides the Signature Authority thresholds.

<b>Table P- 1 Procurement Process Thresholds</b>	
<b>Procurement Method</b>	<b>Threshold</b>
Micro Purchase Procedures	Up to \$10,000
Procurement Quotes	\$10,000.01 to \$50,000
Competitive Solicitation – ITB, RFP and RFQ	\$50,000.01 and above

<b>Table P-2 Contract Award and Signature Authority Thresholds</b>	
<b>Individual</b>	<b>Threshold<sup>1</sup></b>
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

<sup>1</sup> 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.

P-7.1 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.

P-7.2 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.

P-7.3 A Cost Analysis shall be completed by the General Manager or designee. The Consortium shall rely on 2 CFR 200 Subpart E – Cost Principles for allowable costs. General criteria for costs to be considered allowable are:

- a) Necessary and reasonable for performance and allocable.
- b) Conforms to limitations or exclusions to types or amount of cost items.
- c) Consistent with policies and procedures.
- d) Treated consistently as an indirect or direct cost.
- e) Not included as a cost or used to meet cost sharing or matching requirements of any other federally financed program (see 2 CFR 200.306).
- f) Adequately documented (see 2 CFR 200.300 and 2 CFR 200.309).

P-7.4 An Independent Cost Estimate is required prior to receiving bids or proposals for all purchases over the Simplified Acquisition 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.

P-7.5 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. Unless an earlier timeframe is approved by the Consortium due to an emergency or extenuating circumstance.

## **P-8. MICRO PURCHASE**

The purchase of commodities, equipment, and services, which cost less than \$10,000 does not require solicitation of quotes or bids. Micro purchases shall be authorized by the Procurement Manager or designees and documented as to their conformance with an approved Budget category.

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.

### **P-9. PROCUREMENT QUOTES**

For purchases exceeding \$10,000, 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.

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.

### **P-10. COMPETITIVE BIDS (ITB)**

#### **P-10.1 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.

P-10.1.1 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.

P-10.1.2 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 (See Section 14).



- b. Emergency Purchases (See Section 12)
- c. Non-competitive Purchase/Sole Source Purchase - (See Section 13)

### **P-10.2 Procedures**

P-10.2.1 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.

P-10.2.3 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.

### **P-10.3 Substitution**

Each Bidder/Offeror 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 procurement officer 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.

P-10.3.1 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

P-10.3.2 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.

P-10.3.3 After a bid has been opened, a bidder is not permitted to unilaterally withdraw or alter their bid, or deposit.

**P-10.4 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.

**P-10.5 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.

**P-11. COMPETITIVE SOLICITATION: REQUESTS FOR QUALIFICATIONS (RFQ) AND REQUESTS FOR PROPOSALS (RFP) (COLLECTIVELY THE “PROPOSALS”)**

**P-11.1 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.

### **P-11.2 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.

P-11.2.1 The provisions and exemptions contained in section 287.055, Florida Statutes (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.

P-11.2.2 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.

### **P-11.3 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.

P-11.3.1 The Procurement Manager, in coordination with General Counsel, shall review the requirements and prepare the RFP/RFQ package, draft contract, and notice for posting.

P-11.3.2 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.

P-11.3.3 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.

#### **P-11.4 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.

P-11.4.1 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.

P-11.4.2 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.

### **P-12. EMERGENCY PURCHASES**

#### **P-12.1 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.

P-12.1.1 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).

P-12.1.2 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.

P-12.1.3 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).

P-12.1.4 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.

P-12.1.5 Approval for Emergency Purchases more than \$5,000 but under \$50,000 will be approved in accordance to the established authorized thresholds (See Section 7).

### **P-13. SOLE SOURCE/NON-COMPETITIVE PURCHASES**

Sole Source and Non-Competitive purchases may only be used as a procurement method for purchases of services, products, equipment, or construction items as specifically authorized herein. Further, when purchasing products or services with Federal funds, the Consortium may only use such non-competitive methods of procurement as are specifically authorized by 2 C.F.R. Part 200, which are described in Subsection P-13.1 below.

Sole Source purchases (except for proprietary software purchases, in most cases) above \$50,000 must be publicly advertised in accordance with Section P-7 hereof.

Sole Source/Non-Competitive purchases may be made within the authorized procurement limits identified in section P-7 hereof. When a purchase exceeds the threshold amount for Procurement Manager or General Manager approval, the item will be placed on the agenda for Board approval and certification that the vendor has been determined to be a Sole Source or that circumstances justifying a Non-Competitive purchase exist.

#### **P-13.1 Sole Source Purchases**

The purchase of a commodity, service, equipment, or construction item from only one source, which may be used only when one or more of the following circumstances apply:

- a. The item is available only from a single source;
- b. A public exigency or emergency for the requirement will not permit a delay

- resulting from competitive solicitation;
- c. The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
  - d. After solicitation of a number of sources, competition is determined inadequate.

### **P-13.2 Non-Competitive Purchases**

A Non-Competitive purchase may be used 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.

In accordance with 2 CFR 200.360(f)(3), procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when the Federal awarding agency or pass through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity.

### **P-13.3 Negotiation with Sole Source/Non-Competitive Providers**

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).

**P-13.3 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 upon approval by the Board and upon determination that it is in the best interest of Consortium.

**P-13.4 Insurance Requirements/Recommendations**

Prior to commencing work the contractor shall procure and maintain, at the contractor's own expense, 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.

**P-13.5 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.

**P-13.6 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.

**P-13.7 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.

**P-13.8 Contract Administration Compliance with Federal Contract Provisions**

P-13.8.1 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.

P-13.8.2 The Contract Administration procedures shall be followed for all federally funded contracts.

P-13.8.3 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.

P-13.8.4 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.

P-13.8.5 General Counsel shall determine the Federally Required Contract Clauses to be included with each contract, which will be disclosed at the time of advertisement.

P-13.8.6 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.

P-13.8.7 Davis-Bacon prevailing wage and hour restrictions shall apply to all construction contracts that involve water treatment exceeding \$2,000 and when otherwise required by Federal program legislation.

P-13.8.8 Cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be allowed.

P-13.8.9 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.

P-13.8.10 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.

**P-13.9 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.

**P-13.10 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 Section 287.133, Florida Statutes.
- f. Other reasons deemed appropriate by the Consortium.

**P-13.11 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.

#### **P-13.12 Prohibited Communications**

P-13.12.1 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.

P-13.12.2 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.

13.12.3 The prohibition on communications described in this Section 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.

P-13.12.4 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, agent, or representative of the Consortium 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.

P-13.12.5 Prohibited communications shall result in disqualification from the particular request for proposal, request for qualification, bid, or any other competitive solicitation and may be grounds for suspension from doing business with the Consortium.

P-13.12.6 For each competitive solicitation exceeding \$100,000, all vendors must submit a SF – LLL, Certification Regarding Lobbying pursuant to 44 CFR Part 18.

### **P-14. COOPERATIVE PROCUREMENT**

#### **P-14.1 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.

**P-14.2 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 (GSA). Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Consortium.

**P-14.3 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.

**P-14.4 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.

**P-14.5 Documentation Requirements**

The following documentation is the minimum required to use another government entity's awarded contract:

P-14.5.1 Florida contracts. For all cooperative procurements off state contracts, the current state contract number is required. If the contract has fixed unit prices, a copy of the contract is required. If the contract is a percent discount from list, then a copy of the original manufacturer's list price must be attached. This will usually be in a form of a published price list. If only some of the items on the contract are being sought, then only the pages with those prices are required.

P-14.5.2 Federal GSA contracts. For all cooperative procurements off federal GSA contracts, a copy of the GSA contract showing the contract name, number and contract term is required. The ordering information pages and the pages with the pricing are also required. If the contract is a percent discount from list, then a copy of the original manufacturer's list price must be attached. This will usually be in the form of a published price list. If only some of the items on the contract are being sought, then only the pages with those prices are required.

P-14.5.3 Contracts from other government entities. For all cooperative procurements from other government entities, the required documentation includes:

1. A complete copy of the original bid/RFP;
2. A copy of award letter/memo/agenda item with minutes by the government entity to the vendor to document award;
3. A complete copy of vendor's proposal; and
4. A complete copy of the current contract with the vendor and any amendments thereto.

#### **P-14.6 Cooperative Procurements Using Federal Funds.**

If the Consortium seeks to cooperatively procure goods or services to be paid for with federal grant funds and for which the provisions of 2 CFR 200 apply, the Consortium shall comply with all applicable rules, regulations, or policies governing cooperative procurement imposed by the granting agency as well as 2 CFR 200.318(e). The Procurement Manager shall consult with the granting agency and General Counsel prior to utilizing a cooperative procurement for goods or services to be funded under a federal grant.

### **P-15. PROTESTING INTENDED DECISIONS AND PROCUREMENT AWARDS**

#### **P-15.1 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.

#### **P-15.2 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.

- P-15.2.1 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.
- P-15.2.2 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.
- P-15.2.3 A formal written protest shall include the posting of a bond with the General 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.
- P-15.2.3 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.

## **P-16. GENERAL PROVISIONS**

### **P-16.1 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.

### **P-16.2 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.

### **P-16.3 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.

**P-16.4 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.

P-16.4.1 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.

**P-17. CONTRACTING WITH SMALL AND MINORITY BUSINESSES**

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.

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.



The Procurement Manager shall ensure that the requirements are included in competitive procurements as it applies to both primary and subcontractors.

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.

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.

## **P-18. 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.

## **P-19. ETHICS IN PUBLIC CONTRACTING**

### **19.1 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.

## **P-20. CONSULTANT CONFLICT OF INTEREST**

### **P-20.1 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 an immediate family member (father, mother, brother, sister, child, grandparent, or grandchild of Consultant 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.

### **P-20.2 Blind Trust**

A Consultant or immediate family of a Consultant 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.

## **P-21. CONTEMPORANEOUS EMPLOYMENT PROHIBITED**

It shall be unethical for any Consultant who is participating directly or indirectly in the procurement process to be an employee or contractor of any entity that submits a response to such procurement.

## **P-22. GRATUITIES AND KICKBACKS**

### **P-22.1 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.

### **P-22.2 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.

### **P-22.3 Contract Clause**

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

## **P-23. SANCTIONS**

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 25).

## **P-24. RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS**

### **P-24.1 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.

**P-24.2 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.

**P-25. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR(S)**

**P-25.1 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.

**P-25.2 Debarment**

After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either debar such person or terminate the suspension. The debarment should be for a period of not more than three (3) years.

**P-25.3 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.

**P-25.4 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.

**P-25.5 Appeal of Decision to Debar or Suspend**

The debarred or suspended person may appeal the Procurement Manager's decision to the Board within 10 days from the date of the decision. The Board's decision shall be deemed final action by the Consortium.

**P-25.6 System for Award Management**

All Contractors must be registered in the System for Award Management (SAM). The Consortium shall check SAM to verify that the Contractor has a correct registration and is not debarred.

**P-26. INSURANCE REQUIREMENTS**

**P-26.1 Minimum Requirements.**

Contractor shall purchase and maintain such insurance as necessary to 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.

**P-26.2 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.

**P-26.3 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.

**P-27. PAYMENT TO VENDORS**

The Procurement Manager shall establish administrative procedures, processes, and forms necessary for the implementation and administration of payments for all contracts entered into by the Consortium.

**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?

Did you encounter any problems with the Contractor, their Staff or Subs Consultants throughout