



Gulf Consortium Agenda

January 24, 2014 11:00 a.m. - 5:00 p.m. (EST)

Florida Department of Environmental Protection

3900 Commonwealth Boulevard

Carr Building, Room 170

Tallahassee, Florida 32399

Conference Call Accessible

Dial-in Number: (888)670-3525

Participant Passcode: 998 449 5298#

1. Call to Order
2. Pledge
3. Public Comment
4. Consent Agenda
 - a) Minutes Approval
 - b) Executive Committee Minutes Approval
 - c) Updated List of Directors/Alternates
 - d) Financials
 - e) Notice of Meeting as published in the Florida Administrative Register
5. Update by Mr. Justin Ehrenwerth, Executive Director, Gulf Coast Ecosystem Restoration Council
6. Lunch Break/Working Lunch
7. Vision Setting Activity
8. Staff Update
9. Elections
10. Call to Directors to Express Interest in Serving as "At Large" Appointees on the Executive Committee
11. Procurement Policy
12. State Expenditure Plan Consultant Solicitation
13. Roles of the Gulf Consortium
14. Public Comment



15. Next Meeting:

March 26, 2014 10:00 am - 2:00 pm (EST)
Tallahassee City Commission Chambers
Tallahassee, FL

16. Adjourn

Gulf Consortium Meeting
November 13, 2013 9:00 a.m. (EDT)
Hilton Daytona Beach
Volusia County (Daytona Beach, FL)

Directors / Alternates in Attendance: Commissioner Mike Thomas (Bay), Commissioner Christopher Constance (Charlotte), Commissioner Rebecca Bays (Citrus), Commissioner Grover Robinson (Escambia), Commissioner Cheryl Sanders (Franklin), Commissioner Warren Yeager (Gulf), Commissioner Wayne Dukes (Hernando), Commissioner Betsy Barfield (Jefferson), County Coordinator Fred Moody (Levy), Natural Resources Director Charlie Hunsicker (Manatee), Commissioner George Neugent (Monroe), Commissioner Dave Parisot (Okaloosa), Commissioner Jack Mariano (Pasco), Commissioner Susan Latvala (Pinellas), Commissioner Nora Patterson (Sarasota), County Administrator Jack Brown (Taylor), Commissioner Ralph Thomas (Wakulla), Commissioner Sara Comander (Walton)

Agenda Item #1 – Call to Order

Commissioner Grover Robinson called the meeting to order 9:03 am (EDT).

Agenda Item #3 – Public Comment

Janet Bowman – The Nature Conservancy
Jessica Koelsch – National Wildlife Federation

Agenda Item #4 – Consent Agenda Mr. Doug Darling, Interim Director, presented the consent agenda containing minutes from the August October 25, 2013 Gulf Consortium Board of Directors' (Board) Meeting in Tallahassee, an updated list of Directors/Alternates and the Notice of Meeting as published in the Florida Administrative Register. A motion to approve the consent agenda minutes was presented by Commissioner Christopher Constance (Charlotte) and seconded by Commissioner George Neugent (Monroe).

ACTION: PASSED

Agenda Item #5 – Staff Update- Staff briefly provided the Board an update on conversations with Florida Congressional Delegation Members and Staff, problems with the website to submit comments on US Treasury Rules and RESTORE Act planning activities with the National Association of Counties (NACo).

Agenda Item #6 – Call for Elections

Ms. Sarah Bleakley, Interim General Counsel, informed the Board the qualification period for election of offices for 2014 would remain open until January 3, 2014 and that elections would be held at the meeting scheduled for January 24, 2014 in Leon County. Commissioner Wayne Dukes (Hernando) presented a motion to extend the tenure of the current Executive Committee Officers for one year and Jack Brown (Taylor) seconded it. Discussion ensued, and no vote was taken due to the policy stated in the Inter-Local Agreement.

Agenda Item #7 – Scope of Services

Mr. Doug Darling, Interim Director, presented an updated draft scope of services resulting from comments from the September 18th Board meeting. The updated draft was reduced to three services. Discussion ensued. A motion to continue the discussion allowing the Board to determine their vision for the Draft State Expenditure Plan at the meeting scheduled for January 24, 2014 in Leon County was presented by Commissioner Susan Latvala (Pinellas) and seconded by Commissioner Warren Yeager (Gulf).

ACTION: PASSED

Agenda Item #8 – New Business

Commissioner Jack Mariano (Pasco) requested the Governor's Appointees be invited to the meeting scheduled for January, 24, 2014.

Agenda Item #9 – Public Comment

There was no public comment.

Agenda Item #10 – Future Meetings

1. January 24, 2014 at 11:00 am (EST) at the Florida Department of Environmental Protection with conference call capabilities.
2. A motion to set a tentative date for a February meeting was presented by Commissioner Dave Parisot (Okaloosa). There was no second and no vote taken.
3. A motion to hold a Board meeting at 11:00 am (EST) on March 26, 2014 in conjunction with the FAC Legislative Day at the Tallahassee City Commission Chambers in Leon County was presented by Commissioner Dave Parisot (Okaloosa) and seconded by Commissioner Sara Comander (Walton).

ACTION: PASSED

Agenda Item #11 – Adjournment

There being no other new business the Committee adjourned at 10:32 am (EDT).

**Gulf Consortium Executive Committee Meeting
December 11, 2013 12:00 p.m. (EDT)
Florida Association of Counties
Leon County (Tallahassee, FL)**

Officers in Attendance: Commissioner Grover Robinson (Escambia), Commissioner Susan Latvala (Pinellas)

Officers in Attendance Telephonically: Commissioner Warren Yeager (Gulf), Commissioner Sara Comander (Walton)

Agenda Item #1 – Call to Order

Commissioner Grover Robinson called the meeting to order at 12:03 pm (EDT).

Agenda Item #3 – Public Comment

The Board then heard public comment from:

1. Jessica Koelsch, Florida Wildlife Federation
 2. Preston Robertson, Florida Wildlife Federation
-

Agenda Item #4 – Federal Talking Points

Mr. Doug Darling, Interim Director, reviewed the talking points on the RESTORE Act Draft Treasury Rule with the Committee that had been drafted based on the Gulf Consortium's formal letter to the US Treasury.

Next Ms. Deena Reppen, FAC Legislative Director, informed the Committee she had been notified by Florida's delegation there would be US Treasury briefing on rule development and Congressman Southerland's office had asked the Consortium to provide them with talking points prior to that briefing. A motion to approve the talking points was presented by Commissioner Susan Latvala (Pinellas) and seconded by Commissioner Warren Yeager (Gulf).

ACTION: APPROVED

Agenda Item #5 – Review of Agenda for January 24, 2014 Gulf Consortium Meeting

Mr. Doug Darling, Interim Manager, reviewed the draft agenda for the January 24, 2014 meeting with the Committee. Discussion ensued with the decision to send a survey to each county requesting they respond with individual county strategic issues and to acquire the services of a facilitator for the January 24, 2014 Gulf Consortium Meeting in Tallahassee.

Agenda Item #6 – Other Business

There was no other business presented by the Committee.

Agenda Item #7 – Public Comment

The Board then heard public comment from:

1. Dave Parisot, Okaloosa County Commissioner
 2. Janet Bowman, The Nature Conservancy
 3. William Sheehan
 4. T.J. Marshall , Ocean Conservancy
 5. Darryl Boudreau, The Nature Conservancy
 6. Jessica Koelsch, Florida Wildlife Federation
-

Agenda Item #8 – Adjournment

There being no other new business the Committee adjourned at 2:02 pm (EDT).

Gulf Consortium Directors and Alternates

January 24, 2014

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

**Gulf Consortium Board Meeting Agenda Item
January 24, 2014
Consent Agenda Item # 4.d**

Statement of Issue or Executive Summary: At previous Gulf Consortium meetings, a request was made, and approved by Directors, that financial status reports are provided at each Gulf Consortium meeting.

Background: Gulf Consortium member counties have contributed to the operation of the Consortium during this transition phase of establishment.

Analysis: The sheets below provide a recap of revenue and expenses to date compared to budget.

Options:

- 1) Approve a motion to accept the financial reports as presented.
- 2) Provide other direction.

Fiscal Impact: None.

Recommendation: Approve a motion that approves financial reports.

Division and Staff Person's Name: Doug Darling, Florida Association of Counties.

Moved _____; Seconded_____.

Action: Approved____; Approved as amended____; Defeated_____.

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

	<u>FY14 Budget</u>	<u>FY14 Year To Date Actual</u>
Revenues		
Interim County Funding	140,053.00	68,025.00
Interest Income	-	5.35
Total Revenues	140,053.00	68,030.35
Disbursements		
Consulting-Administration	60,000.00	-
Consulting-Legal & Expenses	60,000.00	-
Meeting and Travel Expense	8,000.00	135.66
Miscellaneous	1,000.00	-
Audit Expense	3,000.00	-
Grant Writer Expense	7,500.00	-
Total Disbursements	139,500.00	135.66
Revenues Over (under) Disbursements	553.00	67,894.69

Gulf Consortium
Cash Flows Statement
October 1, 2013 -December 31, 2013

Beginning Cash Balance	9/30/2013	32,080.87
Deposits- FY13 FAC Contribution	2,634.50	
Deposits- FY14 County Funding	68,025.00	
Deposits- Interest	5.35	
Net Cash Provided		70,664.85
Expenses- FY 13 Expenses	(18,494.24)	
Expenses- FY 14 Expenses	(135.66)	
Net Cash Used		(18,629.90)
Ending Cash Balance	12/31/2013	84,115.82

Gulf Consortium
Expense Register Detail
October 1, 2013 to December 31, 2013

Check #	Payee	Date	Total Amount	FY2014 Expenses				FY2013 Expenses				Description		
				Consult-Admin	Consult-Legal	Meeting & Travel	Misc	Consult-Admin	Consult-Legal	Meeting & Travel	Misc			
1026	FL Dept of State	10/09/13	43.70							43.70				
1027	FL Dept of State	10/30/13	50.18							50.18				
1028	FL Dept of State	10/30/13	92.53			92.53								
1029	FAC	10/30/13	15,400.38					15,000.00		3,400.38				
1030	FL Dept of State	12/05/13	43.13			43.13								
TOTAL EXPENSES			15,429.39			135.36		15,000.00		3,854.24				

Notice of Meeting/Workshop Hearing

OTHER AGENCIES AND ORGANIZATIONS

Gulf Consortium

The Gulf Consortium announces a meeting by conference call and public meeting to which all persons are invited.

DATE AND TIME: January 24, 2014, 11:00 a.m. Eastern Standard Time

PLACE: Florida Department of Environmental Protection, Carr Building, Room 170, 3900 Commonwealth Boulevard, Tallahassee, Florida; conference call number, (888) 670-3525; participant code: 998 449 5298#

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Board of Directors will meet to consider procurement matters, elect members of the Executive Committee, and to consider other matters.

A copy of the agenda may be obtained by contacting: Doug Darling at (850)922-4300 or ddarling@fl-counties.com; or, see www.FACRestore.com.

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: Doug Darling at (850)922-4300 or ddarling@fl-counties.com. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, (800)955-8771 (TDD) or (800)955-8770 (Voice).

If any person decides to appeal any decision made by the Board with respect to any matter considered at this meeting or hearing, he/she will 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, you may contact Doug Darling at (850)922-4300 or ddarling@fl-counties.com; or, see www.FACRestore.com.

Gulf Consortium Board Meeting Agenda Item

January 24, 2014

Agenda Item #7 & #13: Visioning Activity & Roles of the Gulf Consortium

Executive Summary: At the Gulf Consortium Meeting held November 13, 2013, the Board directed staff to formulate a plan to establish a vision for the Consortium. Subsequently, The Executive Committee met on December 11, 2013 and directed the survey below be sent to all member counties to assist the vision setting process and Roles of the Consortium. Additionally, the Executive Committee directed staff to acquire the services of a facilitator.

Background:

The attached responses were submitted by counties and will be used during the visioning exercise. The desired result of the activity is for the Consortium to identify long-term outcomes, considering what RESTORE projects could accomplish for Florida's Gulf Coast over the next twenty years.

If time allows, Directors will begin a discussion of how the Consortium can contribute to achieving the long-term outcomes identified during the visioning activity.

Analysis: N/A

Options: N/A

Fiscal Impact: None

Recommendation: N/A

Prepared by: Doug Darling, Interim Manger and Heidi Stiller, National Oceanic and Atmospheric Administration

Vision Survey for January 24, 2014 Gulf Consortium Meeting

The Gulf Consortium Executive Committee directed staff to distribute the below Council Goals and Authorized uses of RESTORE Act funds:

The Gulf Coast Ecosystem Restoration Council (Federal Council) has established the following 5 goals to guide the collective actions at local, state, tribal and federal levels:

- ❖ Restore and Conserve Habitat
- ❖ Restore Water Quality
- ❖ Replenish and Protect Living and Coastal and Marine Resources
- ❖ Enhance Community Resilience
- ❖ Restore and Revitalize the Gulf Economy

Additionally, the RESTORE Act authorizes the following uses of funds:

- ❖ Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region
- ❖ Mitigation of damage to fish, wildlife, and natural resources
- ❖ Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring
- ❖ Workforce development and job creation
- ❖ Improvements to or on state parks located in coastal areas affected by the Deepwater Horizon oil spill
- ❖ Infrastructure projects benefitting the economy or ecological resources, including port infrastructure
- ❖ Coastal flood protection and related infrastructure
- ❖ Planning assistance
- ❖ Administrative costs (limited to not more than 3% of a state's allotment)
- ❖ Promotion of tourism in the Gulf Coast Region, including recreational fishing

- ❖ Promotion of the consumption of seafood harvested from the Gulf Coast Region

In order to get a jump start on our discussion at the next Gulf Consortium meeting, January 24, 2014, please submit the following by **January 10, 2014**:

“Your County’s greatest need(s) that fit into the above goals and authorized uses. This should not be individual project based but a strategic need of your county. For example: Storm Water Treatment or Economic Development.”

Okaloosa

Stormwater Control and Treatment

Monroe

Water Quality

Protection and Restoration of The Florida Keys

Jefferson

Replenish and Protect Living and Coastal and Marine Resources

Enhance Community Resilience

Restore and Revitalize the Gulf Economy

Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region

Mitigation of damage to fish, wildlife, and natural resources

Workforce development and job creation

Infrastructure projects

Manatee

Environmental Restoration

Infrastructure Projects Focusing on Ports

Promotion of Seafood Harvested from Gulf Coast Region

Bay

Regional Economic Development and Diversification, including workforce development and job creation

Conversion from septic tanks to centralized sewer

Improved Stormwater treatment

Stabilizing/paving unpaved roads closely linked to waterways to improve water quality

Natural lands acquisition for public access and use

Walton

Restoration and protection of natural resources, ecosystems, fisheries, marine and wildlife habitat, beaches and coastal wetlands

Workforce development and job creation

Port infrastructure (our port at Freeport)

Administrative cost assistance and planning assistance

Santa Rosa

Stormwater Treatment

Franklin

Replenish and Protect Living and Coastal and Marine Resources

Restore and Revitalize the Gulf Economy

Restore Water Quality

Restore and Conserve Habitat

Enhance Community Resilience

Wakulla

Countywide sewer systems and upgrades, septic tank upgrades and replacements, and storm water treatment plant upgrades and repairs

Rehabilitate, improve or enhance recreational and commercial fishing opportunities, fish/shell fish populations and habitats, and the livelihood of our commercial fishermen and seafood retailers

Rehabilitate, improve or enhance County facilities and access to the Gulf for recreational and commercial fisherman and other water activities

Levy

Restore and Revitalize the Gulf Economy

Workforce development and job creation

Planning assistance

Administrative costs

Hernando

Restore and Revitalize the Gulf Economy

Replenish and Protect Living and Coastal and Marine Resources

Restore and Conserve Habitat

Restore Water Quality

Enhance Community Resilience

Sarasota

Tourism asset enhancement

Bay and marine habitat restoration and enhancement

Septic tank replacement program

Dixie

Restoration of natural resources, fisheries and marine
Coastal flood protection
Workforce development and job creation

Gulf

Restore and Revitalize the Gulf Economy
Restore and Conserve Habitat
Restore Water Quality
Replenish and Protect Living and Coastal and Marine Resources
Enhance Community Resilience

Pasco

Economic development
Environmental Protection, conservation and restoration
Improving Water Quality through storm and waste water infrastructure
development
Recreational and tourism development
Environmental Education

Escambia

Environmental Restoration (water quality)
Economic Restoration (economic diversification)
Human Health
Education/Workforce
Tourism

Pinellas

Economic development
Storm water management/treatment

Collier

Restoration and Conservation of Habitats
Improvement of water quality
Protection of Living and Coastal Marine Resources

Hillsborough

Environmental Improvements

Infrastructure Improvements

Economic Development

**Gulf Consortium January 24, 2014 Board Meeting
Agenda Item Memorandum**

Agenda Item # 9: Election of Officers for 2014

Executive Summary: Pursuant to the Interlocal Agreement and the Board's election policy adopted in 2012, this agenda item is intended to provide for the 2014 election of Directors to serve as the three elected officers of the Executive Committee: the Chairman, Vice-Chairman and Secretary-Treasurer. The three incumbent elected officers are the only Directors who have qualified for election to the Executive Committee. The following are the unopposed candidates:

- Chairman: Escambia County Commissioner Grover Robinson
- Vice-Chairman: Pinellas County Commissioner Susan Latvala
- Secretary-Treasurer: Gulf County Commissioner Warren Yeager

Because the Board's policy for soliciting nominees has been followed, and none of the elected positions is contested, a motion to suspend the policy's requirement for an election ballot and to elect the three unopposed candidates will be in order.

The Interlocal Agreement requires the three elected officers of the Executive Committee to designate two additional Directors to serve as "at large," voting members of the Executive Committee. Another agenda item for this meeting provides a time frame and calls for Directors to submit their names to the Consortium Manager for consideration by the elected Executive Committee members for designation to the two other positions on the Executive Committee.

Background: The Interlocal Agreement requires the annual election of three officers to the Executive Committee. The following is a summary of the election process as adopted by the Board in 2012 as applied to this year's election, a copy of which is attached :

- Self-nomination for one or more of the offices sought,
- Notification to the Interim Manager by January 3, 2014,
- Written approval by the respective Board of County Commissioners of the Director's candidacy,
- Re-election of an incumbent officer allowed,
- Election by written ballot, with a majority vote required of the Directors present and voting, and
- Newly elected officers take office immediately and serve until the election of new officers in 2015.

The Interlocal Agreement establishes the following three elected offices: Chairman, Vice-Chairman and Secretary-Treasurer . These officers must be held by Directors and shall each serve a one year term, unless reelected. The duties of the Chairman include signing documents, calling meetings of the Board and taking such other actions and having such other powers as provided by the Board. Sec. 3.04, 3.05, 3.07. The Vice-Chairman is authorized to act in the absence or otherwise inability of the Chairman to act. Sec. 3.05. The Secretary-Treasurer is responsible for the minutes of the meetings and shall have other powers approved by the Board. Sec 3.05. Certain duties and powers are delegated to the Executive Committee as provided in Section 3.11 of the Interlocal Agreement, including the power to designate two additional Directors to serve on the Executive Committee.

ELECTION BALLOTS. Because none of the elected offices of the Executive Committee is contested, no ballots have been prepared. Instead, a motion to elect the unopposed slate of candidates is in order. A majority vote of the directors present at the meeting is required for election to an office.

Analysis: This agenda item requires the election of the three elected officers to serve on the Executive Committee. Because the Board's process has been followed and none of the offices is contested, it is appropriate to elect the three by approval of a single motion instead of a ballot procedure.

Options:

- (1) Adopt a motion to elect the unopposed slate of candidates to the Executive Committee.

Fiscal Impact: None.

Recommendation: Adopt a motion to elect the unopposed candidates for Chairman, Vice-Chairman and Secretary Treasurer.

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

Date Prepared: January 16, 2014.

Moved _____; Seconded_____.

Action: Approved____; Approved as amended____; Defeated_____.

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

Adopted by the Board of Directors in November 2012.

Commencing with the elections in 2014 and applicable annually thereafter, the following election process is approved:

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

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

Gulf Consortium Board Meeting Agenda Item Memorandum

January 24, 2014

Agenda Item # 10: Call for Directors Self-Nomination to be Designated as an Appointed Officer by the Elected Members of the Executive Committee

Executive Summary: Pursuant to the Interlocal Agreement, the elected Chairman, Vice-chairman and Secretary-Treasurer are required to designate two other Directors to fill out the five-member Executive Committee. In accordance with the policy adopted in January, 2013, this agenda item provides formal notification of the call for Directors to nominate themselves for appointment to the Executive Committee by notifying the interim manager of their intent on or before February 14, 2014. The appointments will be made at the first meeting of the Executive Committee to be held in 2014, but *no earlier* than February 21, 2014. The appointees serve a one year term.

Background: The Interlocal Agreement establishes three elective officers: Chairman, Vice-Chairman and Secretary-Treasurer. A separate agenda item for this meeting provides for the election of these officers. The Interlocal Agreement requires the three elected officers to designate two other Directors to serve on the Executive Committee so that the Committee consists of five Directors. Each of the appointed officers serves a one year term on the Executive Committee. Certain duties and powers are delegated to the Executive Committee as provided in Section 3.11 of the Interlocal Agreement.

The process adopted in 2013 provides for the self nomination by a Director to the Executive Committee for consideration. The complete process adopted by the Board is attached. A Director desiring to be appointed to the Executive Committee shall declare his/her candidacy in writing to the Interim Manager on or before February 14, 2014, the Qualifying Date set by the Manager. A duly noticed public meeting of the three elected officers will be held on or after February 21, 2014 to select two additional Directors to serve on the five member Executive Committee. The three elected members will make the designation of the two appointed members by majority vote.

Analysis: N/A

Options: No action is required by the Board. This agenda memorandum is provided for informational purposes only.

Fiscal Impact: None

Recommendation: N/A

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

Date Prepared: January 16, 2014.

Gulf Consortium Adopted Policy for the Designation of Two Directors to Serve as Officers on the Executive Committee

Adopted by the Board of Directors in January 2013

The following process applies to the designation of the two appointed members of the Executive Committee:

- **Date of Selection.** Selection of appointed officers shall be held annually at the Elected Officers first meeting of the calendar year after the Board has elected its officers for the year (the Executive Committee Selection Meeting).
- **Term of Office.** An appointed officer shall take office immediately upon selection. The term of office shall end upon the selection of the appointed officer in the following year.
- **Self Nomination and Notification; Timelines.--** A Director wishing to be appointed to the Executive Committee shall formally declare his/her candidacy by the Qualifying Date as set by the Manager, which date is not less than 35 days prior to the Executive Committee Selection Meeting. The Manager shall provide notice to each Director of the Qualifying Date at least 28 days before the Executive Committee Selection Meeting. The Director's declaration of candidacy must be in writing and be received by the Manager on or before the Qualifying Date. The Director shall send the declaration of candidacy to the Manager by either (a) express delivery, return receipt requested, or (b) via electronic mail (email). The Manager shall acknowledge receipt of emails declaring candidacy within 24 hours of receipt. However, it shall be the responsibility of the Director declaring his or her candidacy to assure that the email has been received by the Manager on or before the qualifying date.
- **Appointment at a Public Meeting.** The Chairman, Vice-chairman and Secretary-Treasurer shall appoint two Directors to serve on the Executive Committee from among those Directors who have qualified. The appointment shall be made a duly noticed meeting of the Elected Officers called for that purpose.
- **Majority Vote Requirements.--** A majority vote of the Chairman, Vice-chairman and Secretary-Treasurer shall be required for the selection of each of the officers to serve on the Executive Committee. Voting shall continue until a majority vote of the Elected Officers present is achieved for a candidate for the office. In case of a tie, the Interim Manager shall

call for another vote for those tied until the office is filled by a majority vote of the Elected Officers present.



**PURCHASING POLICY FOR
STATE EXPENDITURE PLAN CONSULTANT**

Resolution 2014-01

As adopted on _____, 2014

**GULF CONSORTIUM
PURCHASING POLICY FOR
STATE EXPENDITURE PLAN CONSULTANT**

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SECTION 1. PURPOSE.

This policy is adopted to promote the following purposes:

- A. To establish the process and procedure for procuring the services needed to develop and submit the State Expenditure Plan.
- B. To set forth the procurement responsibilities of the Manager.
- C. To implement the Consortium's Interlocal Agreement with Leon County whereby the County agrees to provide procurement services to the Consortium.
- D. To promote public confidence in the purchasing procedures followed by the Gulf Consortium.
- E. To ensure the fair and equitable treatment of all people who deal with the procurement system of the Gulf Consortium.
- F. To maximize economy in the Gulf Consortium procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the Gulf Consortium.
- G. To provide safeguards for the maintenance of a procurement system of high quality and integrity for the Gulf Consortium.

SECTION 2. APPLICATION OF POLICY.

- A. **Contracts:** This policy shall apply to State Expenditure Plan contracts solicited or entered into after the effective date of this policy and subsequent amendments or revisions to those contracts.
- B. **Exemptions:** The following are exempted from this Policy:
 - 1. All services purchased at a price established in any of the authorized forms of state contracts of the State of Florida Department of Management Services, Division of Purchasing; or under the terms and conditions of a cooperative purchasing agreement or term contract by other governmental units.
 - 2. All services purchased from another unit of government not otherwise limited or prohibited by law.

SECTION 3. DEFINITIONS AND CONSTRUCTION. The Board hereby adopts the Leon County Board of County Commissioner's Purchasing Policy and regulations

promulgated to implement the County's Policy as though set forth here verbatim. In all circumstances, where the RESTORE Act or other Federal Law imposes a requirement on the Consortium that conflicts with this Policy, Federal Law takes precedence.

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

- A. The singular includes the plural and vice versa.
- B. Gender-specific language includes the other gender and neuter.
- C. The following terms defined in this section shall have the meanings set forth below whenever they appear in this policy:
 - 1. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument including an Invitation to Bid or Request for Proposals. An addendum is not a contract "Amendment."
 - 2. "Board" means the Board of Directors of the Consortium.
 - 3. "Business" means any corporation, partnership, limited liability company, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
 - 4. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.
 - 5. "Contract" means all types of the Gulf Consortium agreements, regardless of what they may be called, for the purchase of services for the development of the State Expenditure Plan and which specify the terms and obligations of the business transaction.
 - 6. "Contract Amendment" or "Contract 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.
 - 7. "Contractor" means any person having a contract with the Consortium.
 - 8. "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 which are independent contractors. Such services may include, but are not limited to, evaluations; consultations; auditing; accounting; management systems;

management consulting; public involvement and relations services; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services.

9. "Contractual Services Contract" is a contract for a contractor's time and effort rather than the furnishing of a specific commodity. Satisfactory completion of the service or providing the service for a specified period of time or date or both completes such a contract.
10. "Cooperative Purchasing" is procurement conducted by, or on behalf of, more than one public procurement unit.
11. "Data" means recorded information, regardless of form or characteristic.
12. "Designee" means a duly authorized representative of a person holding a superior position. In the case of the Manager, the term "Designee" includes, but is not limited to, the Purchasing Director of Leon County.
13. "Federal Law" means the RESTORE Act, the Rule promulgated by the United States Department of the Treasury, the Regulation promulgated by the Gulf Coast Ecosystem Restoration Council, applicable federal grant law and any other federal law applicable to the Consortium's responsibility for developing the State Expenditure Plan under the RESTORE Act.
14. "Gratuity" is a payment, loan, subscription, advance, deposit of money, service, or anything of more than nominal value, present or promised, inuring to the benefit of an employee, unless consideration of substantially equal or greater value is given by the recipient.
15. "Intended Decision" means a written notice that states the business to whom the 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 is posted on the Gulf Consortium website and on the Public Notice board in the Leon County Purchasing Division.
16. "Interlocal Agreement" means the Interlocal Agreement Relating to Establishment of the Gulf Consortium dated as of September 19, 2012.
17. "Invitation to Negotiate" means a written solicitation that calls for responses to select one or more businesses with which to commence negotiations for the procurement of contractual services.

18. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
19. "Person" means any business, individual, committee, club, other organization, or group of individuals.
20. "Pre-Bid Conference" and "Pre-Proposal Conference" mean 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, and standards relative to the subject, and to elicit expertise and bidders' interest in submitting a bid or pursuing the task.
21. "Procurement Award" is an award of a contract for services resulting from a solicitation through action by the Board of Directors of the Consortium in a public meeting.
22. "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 services, delivery schedule, criteria for evaluation, payment terms, and other specifications.
23. "Purchasing" means buying, procuring, renting, leasing, or otherwise acquiring any services. It also includes all functions that pertain to the obtaining of any services, including description of specifications and requirements, selection and solicitation of resources, preparation, and award of contract.
24. "Purchasing Director" means the Leon County employee duly authorized to enter into and administer contracts and make written determinations with respect thereto under the terms of the purchasing policies of the Board of County Commissioners of Leon County.
25. "Regulation" means a statement by the Board of County Commissioners of Leon County having general or particular applicability and future effect, designed to implement, interpret, or prescribe law, policy, or practice.
26. "Responsive Bidder" means a person who has submitted a bid, which conforms in all material respects to the Invitation to Negotiate.
27. "RESTORE Act" means the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 adopted by the United States Congress in Public Law 112-141 and signed by the President.

28. "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 are not defined as "supplies."
29. "Specification" means any description of the functional characteristics of the nature of a service. It may include a description of any requirement for inspection, testing, or preparing a service for delivery.
30. "State Expenditure Plan" means the Florida Plan required by the RESTORE Act to be developed by the Gulf Consortium and submitted for approval to the Gulf Coast Ecosystem Restoration Council for funding projects, programs and activities that will improve the ecosystems or economy of the Gulf Coast Region.
31. "Term Contract" means an indefinite quantity contract whereby a contractor agrees to furnish service 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 a contract.

SECTION 4. AUTHORITY OF CONSORTIUM MANAGER AND LEON COUNTY PURCHASING DIRECTOR. The Manager shall purchase or supervise the purchase of all services for the development of the State Expenditure Plan. In executing those duties, the Manager shall rely upon Leon County's Purchasing Director and her technical and strategic procurement support, including, but not limited to, preparing the solicitation document, advertising and disseminating a solicitation document, and advising the Manager, the procurement Evaluation Team and the Consortium Board in the selection of the most qualified firm.

SECTION 5. BIDS.

SECTION 5.01. INVITATION TO NEGOTIATE AND REQUEST FOR BEST AND FINAL OFFER. Utilizing the procurement services of Leon County, the Manager shall issue a written solicitation in the form of an Invitation to Negotiate for assistance to the Board in the development of the State Expenditure Plan. The Invitation to Negotiate shall solicit qualified businesses to offer bids that include, but are not limited to, ideas and advice as to the design of the State Expenditure Plan; a nomination process for projects, programs, and activities; an evaluation process; a public involvement process; and an estimate of the cost for services. After the bids are submitted, an Evaluation Team shall evaluate the bids and determine which are responsive. The Evaluation Team may rank the firms based on the evaluation criteria. The Evaluation Team may recommend an additional procurement solicitation be issued to some or all Responsive Bidders that would request a Best And Final Offer. The Manager shall apprise the Board of the result and recommendation of the Evaluation Team. This section sets forth

the process for the issuance of the solicitations for an Invitation to Negotiate and the request for Best And Final Offer.

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

mistake of fact may be permitted to withdraw its bid if:

- a. the mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- b. the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Manager.

E. Conferences. The Manager may hold a Pre-Proposal Conference or a Pre-Bid Conference, or both.

F. Evaluation Team.

1. The Manager shall appoint an Evaluation Team to evaluate the bids. At least one member of the Evaluation Team shall also serve on the Florida Department of Environmental Protection Coordinated Review Team as established in the Consortium's Memorandum of Understanding with the Governor (2013).
2. Public Meetings. The Evaluation Team meetings shall be conducted in accordance with the public meeting and closed meeting requirements of Section 286.011, Florida Statutes. The Evaluation Team Chairperson shall be responsible to provide the Manager and the Leon County Purchasing Director with all meeting information (date, time, location, and reason for meeting) no less than 96 hours in advance of any scheduled meeting, excluding holidays and weekends. The Purchasing Director will provide reasonable notice of all meetings, no less than 72 hours in advance of such scheduled meeting, excluding holidays and weekends, by posting a Notice of Evaluation Team Meeting on the public notice bulletin board in the Division offices, on the Leon County website, and on the Gulf Consortium website. The Manager shall ensure compliance with public meeting requirements.
3. Contact with the Evaluation Team. Members of the Evaluation Team are prohibited from discussing a solicitation with any person that may submit a proposal during the procurement process, except in formal committee meetings. The conduct of the business and discussions regarding the proposals before the Evaluation Team must be done in the public meetings only.

4. Evaluation of Proposals. Bids shall be evaluated based on the requirements and criteria set forth in the Invitation to Negotiate. No criteria may be used in bid evaluation that is not set forth in the Invitation to Negotiate, in Leon County regulations or policy, or in this Policy.
 - a. The Evaluation Team may conduct an initial ranking of proposals based upon the points given in the Weighted Scoring Sheet utilizing the Evaluation Criteria Matrix.
 - b. Shortlisting. The best-qualified respondents shall be based upon the Evaluation Team's ability to differentiate qualifications applicable to the scope and nature of the services to be performed as indicated by the ratings on the Weighted Scoring Sheet.
 5. Presentations/Interviews. The Evaluation Team may choose to conduct formal presentations/interviews with shortlisted firms prior to final ranking.
 6. Final Ranking. The Evaluation Team may utilize an Ordinal Process Rating System to rank the firms. The respondents shall be listed in order of preference starting at the top of the list. The list of best-qualified persons shall be forwarded to the Consortium Manager or Board, as appropriate.
- G. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the Manager for review and recommendation. The Manager shall prepare the recommendation in the appropriate format to the Consortium Board.
- H. Best And Final Offer.
1. The ranking of Responsive Bidders in the Invitation to Negotiate solicitation process may be followed by a solicitation of a Request for Best And Final Offer ("BAFO"). The BAFO may be limited to those bidders whose offers have been determined to be acceptable or to be the highest ranking under the criteria set forth in the Invitation to Negotiate.
 2. The BAFO, a multi-step process utilizing pre-qualification of bidders or respondents may be used to ensure that the bidders/respondents have the appropriate capacity, qualifications, experience, staffing, equipment, bonding, insurance and similar project based criteria to successfully perform a service. Those bidders/respondents determined to be the highest ranked in the Invitation to Negotiate will then be eligible to participate in the Best And Final Offer solicitation.

3. Revisions and Discussions with Responsible Offerors. Notwithstanding subsection F(3) of this Section, discussions may be conducted by the Evaluation Team or Manager with responsible offerors who submit proposals determined to be qualified of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the Best And Final Offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.
 4. Bid Agenda Item. The Tabulation Sheet and other bid documents, as necessary, shall be presented to the Manager for review and recommendation. The Manager shall prepare the recommendation in the appropriate format to the Consortium Board.
- I. Award. The Consortium reserves the right to waive any informality in bids and to make an award in whole or in part when either or both conditions are in the best interest of the Consortium. The contract shall be awarded by purchase order or other written notice. Every procurement of contractual services shall be evidenced by a written contract.
1. Notice of Intended Decision. The Intended Decision shall be posted on the County website, the Consortium website, and on the public notice board in the Leon County Purchasing Division. This written notice shall state the business to whom the Consortium intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
 2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the Consortium's or County's rules or policies, the solicitation specifications, or law. The standard of proof for such proceedings shall be whether the action is clearly erroneous, contrary to competition, arbitrary or capricious. Such notice of intent of bid protest shall be delivered to the Manager within 72 consecutive hours after posting of the Notice of Intended Decision of Award (excluding Saturdays, Sundays, and County holidays). A Protestor shall file thereafter a formal written bid challenge within 10 calendar days after the date in which the notice of intent of bid protest has been submitted. Failure to timely file a notice of intent of bid protest or failure to timely file a formal written bid protest with the proper bond shall

constitute a waiver of all rights provided under the Leon County Purchasing Policy.

- J. Disqualification of Vendors. For any specific bid, vendors may be disqualified by the Manager for the following reasons:
1. Failure to materially perform according to contract provisions on prior contracts with the County or the Consortium.
 2. Conviction in a court of law of any criminal offense in connection with the conduct of business.
 3. Clear and convincing evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
 4. Clear and convincing evidence that the vendor has attempted to give an employee of the County, the Manager or the General Counsel a Gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
 5. Failure to execute a Public Entity Crimes Statement as required by Section 287.133(3)(a), Florida Statutes.
 6. Other reasons deemed appropriate by the Board.
- K. If less than two responsive bids, proposals, or replies for contractual services purchases are received, or all bids received exceed the anticipated budget identified for the contractual service, the Manager may negotiate on the best terms and conditions. The 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 Manager shall report all such actions to the General Counsel prior to final award of any contract resulting from the negotiations.

SECTION 5.02. COOPERATIVE PURCHASING.

- A. State Contracts. The 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, or other such contracts authorized by statute for use by local governments) of the Florida Department of Management Services or other state

agencies. Such purchases shall be made without competitive bids provided that funding has been appropriated and approved by the Consortium Board.

- B. Federal Supply Service. The 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 in Department/Division accounts.
- C. Other Public Procurement Units. The Manager shall have the authority to join with other units of government in cooperative purchasing ventures when the best interest of the Gulf Consortium would be served thereby, and the same is in accordance with the Gulf Consortium and State law. The Manager shall appropriately document such cooperative purchasing arrangements. All Cooperative Purchasing 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 purchasing.

SECTION 5.03. PROTESTING INTENDED DECISIONS AND PROCUREMENT AWARDS.

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to an Invitation to Negotiate, a request for qualifications, a multistep sealed bid, or multi-step request for proposals under Sections 5.01 or 5.02 of this Policy, and who is aggrieved with an Intended Decision of the Gulf Consortium or a Procurement Award rendered by the Board of Directors of the Gulf Consortium shall have the right to protest. Failure to protest an Intended Decision shall act as a bar to protest a subsequent Procurement Award that adopts the Intended Decision in all material respects.
 - 1. Any Protestor wishing to protest an Intended Decision shall follow the procedures set forth in paragraphs B, C, and D of this Section.
 - 2. Any Protestor wishing to protest a Procurement Award shall follow the procedures in paragraphs B, C, and E of this Section.
- B. Filing a Protest. A Protestor shall file with the Gulf Consortium a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the Gulf Consortium. A formal written protest shall be filed within 10 calendar days after the date the notice of

intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section. A notice of intent to protest and the formal written protest are deemed filed with the Gulf Consortium when it is received by the Purchasing Division.

1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.
2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$5000, whichever is greater. If after completion of the bid protest process and any court proceedings, the Gulf Consortium prevails, the Gulf Consortium shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the Gulf Consortium all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Manager.

C. General Provisions.

1. **Intervenor.** Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the Gulf Consortium, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.
2. **Time Limits.** The time limits in which formal written protests shall be filed as provided herein may be altered by specific provisions in the invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals or upon the mutual written consent of the Protestor and the Gulf Consortium.
3. **Entitlement to Costs.** In no case will the Protestor or Intervenor be entitled to any costs incurred with the Invitation to Negotiate, or multi-step sealed bids, or multi-step requests for proposals, or Best And Final Offers, including, but not limited to bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
4. After a formal written protest has been filed with the Manager, the Protestor may not discontinue such appeal without prejudice, except as authorized by the Procurement Appeals Board or Special Master.
5. **Stay of Procurement During Protests.** In the event of a timely protest under Section 5.03 herein, the Purchasing Director shall not proceed further with the solicitation or award of the contract until all administrative remedies have been exhausted or until the Consortium Manager makes a written determination that the award of a contract without delay is necessary to protect the substantial interests of the Gulf Consortium.

D. Protest of Intended Decisions.

1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an Invitation to Negotiate, or multi-step sealed bids, or multi-step requests for proposals, or Best And Final Offer.
2. Upon timely receipt of a formal written protest of an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the Chairman of the Procurement Appeals Board. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.
3. Procurement Appeals Board. There is hereby established a Procurement Appeals Board to be composed of a chairperson and two members and two alternates. The chairperson, members, and alternates of the Procurement Appeals Board shall be appointed by the Consortium Manager. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the Consortium Manager shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.
 - a. Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Manager.
 - b. Procurement Appeals Board Proceeding Procedures.
 - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or businesses, including the Protestor, and any Intervenor.

- ii. At or prior to the protest proceeding, the Protestor and/or Intervenor, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
- iii. In the protest proceeding, the Protestor, and/or Intervenor, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and crossexamination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
- iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
- v. Within seven working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the Gulf Consortium.
- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Awards; Special Master Proceedings.

- 1. Upon timely receipt of a notice of intent to protest a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multi-step sealed bids, or multi-step requests for proposals.

2. Upon timely receipt of a formal written protest of a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and will notify the Gulf Consortium General Counsel of the protest. The Manager shall within one business day mail a copy of the formal written protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a request for qualifications, or multistep sealed bids, or multi-step requests for proposals.
3. Appointment of a Special Master. The Consortium Manager shall appoint and retain a special master or shall contract with the Florida Division of Administrative Hearings for an administrative law judge to act as a special master to conduct evidentiary proceedings regarding formal written protests of Procurement Awards. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in procurement law, local governmental law, or administrative law. Each special master appointed and retained by the Gulf Consortium shall serve at the pleasure of the Consortium Manager and shall be compensated at a rate or rates to be fixed by the Consortium Manager. The expense of each special master proceeding shall be borne equally by the Protestor and the Gulf Consortium.
4. Ex parte communication.
 - a. No Gulf Consortium employee, elected official, or other person who is or may become a party to a proceeding before a special master may engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and Gulf Consortium staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
 - b. If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due

to the effect of an ex parte communication received by him, the special master may withdraw from the case.

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

evidence and provide argument on all issues involved which are related to the formal written protest, and to conduct cross-examination and submit rebuttal evidence. During cross-examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony and matters involving impeachment. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate.

- g. The special master shall render a final order on the formal written protest to the parties within ten days after the hearing concludes, unless the parties waive the time requirement. The final order shall contain written findings of fact and conclusions of law.

SECTION 5.04. CONTRACT CLAIMS.

A. Authority to Settle Contract Controversies. This Section applies to controversies between the Gulf Consortium and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission, where the contractor and Gulf Consortium agree to utilize the provision of this Section.

1. The Manager is authorized to settle any controversy arising out of the performance of a Gulf Consortium contract, prior to the commencement of an action in a court of competent jurisdiction up to \$10,000 in value.
 - a. If such a controversy is not resolved by mutual agreement, the Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
 - i. State the reason for the action taken; and,
 - ii. Inform the Contractor of its right to administrative review as provided in this Section.
 - b. If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

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

SECTION 5.05. REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.

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

incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or

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

SECTION 5.06. EMPLOYMENT ELIGIBILITY AND VERIFICATION.

- A. Federal statutes and executive orders require employers to abide by the immigration laws of the United States and to employ in the United States only individuals who are eligible to work in the United States. It is the policy of the Gulf Consortium, Florida that unauthorized aliens shall not be employed nor utilized in the performance of contracted services for the Gulf Consortium, in accordance with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (8 U.S.C. § 1324a), and Subpart 22.18 of the Federal Acquisition Register.
- B. Employment Eligibility Verification.
 1. This Section on employment eligibility verification ("E-Verify") requirements shall apply to contractors and subcontractors performing contracted services for the Gulf Consortium, where the contracted services are funded pursuant to federal grants, federal contracts, state grants, or state contracts.
 2. Each Contractor and subcontractor, as defined in this section, shall agree to enroll and participate in the federal E-Verify Program for Employment Verification under the terms provided in the "Memorandum of Understanding" governing the program. Contractor further agrees to provide to the Gulf Consortium, within thirty days of the effective date of this contract/amendment/extension, documentation of such enrollment in the form of a copy of the E-Verify "Edit Company Profile" screen", which contains proof of enrollment in the E-Verify Program (this page can be accessed from the "Edit Company Profile" link on the left navigation menu of the E-Verify employer's homepage).
 3. Contractor further agrees that it will require each subcontractor that performs work under this contract to enroll and participate in the E-Verify Program within sixty days of the effective date of this contract/amendment/extension or within sixty days of the effective date of the contract between the Contractor and the subcontractor, whichever is later. The Contractor shall obtain from the subcontractor(s) a copy of the

"Edit Company Profile" screen, indicating enrollment in the E-Verify Program and make such record(s) available to the Agency upon request.

4. Contractor will utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of: (a) all persons employed during the term of the Contract by Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Contract a) Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Contract by Contractor to perform employment duties within Florida within three business days after the date of hire.
 - a. Contractor must initiate verification of each person (including subcontractors) assigned by Contractor to perform work pursuant to the Contract within 60 calendar days after the date of execution of this contract or within 30 days after assignment to perform work pursuant to the Agreement, whichever is later.
5. Contractor further agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided previously, and to make such records available to the Gulf Consortium or other authorized state entity consistent with the terms of the Memorandum of Understanding.
6. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this contract and the Gulf Consortium may treat a failure to comply as a material breach of the contract.

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

SECTION 6.01. CONTRACT PROVISIONS.

- A. Standard Contract Clauses and Their Modification. The Manager, after consultation with the Gulf Consortium General Counsel, may establish standard contract clauses for use in Gulf Consortium contracts. However, the Manager may, upon consultation with the Gulf Consortium General Counsel, vary any such standard contract clauses for any particular contract.
- B. Contract Clauses. All Gulf Consortium contracts for supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Manager, after consultation with the Gulf

Consortium General Counsel, may propose provisions appropriate for supply, service, or construction contracts, addressing among others the following subjects:

1. the unilateral right of the Gulf Consortium to order, in writing, changes in the work within the scope of the contract;
2. the unilateral right of the Gulf Consortium to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
3. variations occurring between estimated quantities or work in contract and actual quantities;
4. defective pricing;
5. time of performance and liquidated damages;
6. specified excuses for delay or nonperformance;
7. termination of the contract for default; and
8. termination of the contract in whole or in part for the convenience of the Gulf Consortium.

SECTION 6.02. PRICE ADJUSTMENTS.

- A. Methods of Price Adjustment. Adjustments in price during the term of a contract shall be computed in one or more of the following ways upon approval by the Board:
1. by contract on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 2. by unit prices specified in the contract or subsequently agreed upon;
 3. by the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon by the Board;
 4. in such other manner as the contracting parties may mutually agree; or
 5. in the absence of agreement by the parties, by a unilateral determination by the Gulf Consortium of the costs attributable to the events or situations

under such clauses with adjustment of profit or fee as computed by the Gulf Consortium, subject to the provisions of this Section.

- B. Cost or Pricing Data Required. A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of this Section.

SECTION 6.03. ASSIGNMENTS OF CONTRACTS. No contract made pursuant to any section of this policy shall be assigned or sublet as a whole or in part without the written consent of the Gulf Consortium nor shall the contractor assign any monies due or to become due to the contractor hereunder without the previous written consent of the Gulf Consortium.

SECTION 6.04. RIGHT TO INSPECT PLANT. The Gulf Consortium may, at its discretion, inspect the part of the plant or place of business of a contractor or any subcontractor, which is related to the performance of any contract awarded, or to be awarded, by the Gulf Consortium. The right expressed herein shall be included in all contracts or subcontracts that involve the performance of any work or service involving the Gulf Consortium.

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

SECTION 8. GULF CONSORTIUM PROCUREMENT RECORDS.

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

SECTION 9. SPECIFICATIONS.

SECTION 9.01. MAXIMUM PRACTICABLE COMPETITION. All specifications shall be drafted to promote overall economy and encourage competition in satisfying the Gulf Consortium's needs and shall not be unduly restrictive.

SECTION 10. ETHICS IN PUBLIC CONTRACTING.

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

SECTION 10.02. EMPLOYEE CONFLICT OF INTEREST.

- A. Participation. It shall be unethical for the Manager and the General Counsel and the employees of either to participate directly or indirectly in a procurement contract when the Manager and the General Counsel and the employees of either knows that:
1. the Manager and the General Counsel and the employees of either or any member of the immediate family (father, mother, brother, sister, child, grandparent, or grandchild of employee or spouse) has a financial interest pertaining to the procurement contract; or
 2. any other person, business, or organization with whom the Manager and the General Counsel and the employees of either or any member of a Gulf Consortium employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- B. Blind Trust. The Manager and the General Counsel and the employees of either 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.

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

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

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

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

SECTION 10.06. GRATUITIES AND KICKBACKS.

- A. **Gratuities.** It shall be unethical for any person to offer, give, or agree to give any employee of the Manager or the General Counsel, or for any employee of the Manager or the General Counsel to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

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

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

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

- A. **General Provisions.** The value of anything being transferred or received in breach of the ethical standards of this policy by the Manager or General

Counsel's employee or a non-employee may be recovered from both Gulf Consortium employee and non-employee.

- B. Recovery of Kickbacks by the Gulf Consortium. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order there under, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Gulf Consortium and will be recoverable hereunder from the recipient. In addition, that amount may also be recovered from the subcontractor making such kickback. Recovery from one offending party shall not preclude recovery from other offending parties.

SECTION 11.

SECTION 11.01. FEDERAL POLICY NOTICE PATENTS. If a contract involving research and development, experimental, or demonstration work is being funded in whole or in part by assistance from a federal agency, then the contract shall include the following provisions.

- A. Notice to Contractor. The contract shall give notice to the contractor of the applicable grantor agency requirements and regulations concerning reporting of, and rights to, any discovery or invention arising out of the contract.
- B. Notice by Contractor. The contract shall require the contractor to include a similar provision in all subcontracts involving research and development, experimental, or demonstration work.

SECTION 11.02. NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS.

- A. Applicability. If the contract is being funded in whole or in part by assistance from any federal agency, the contract is subject to one or more federal public policy requirements such as:
1. equal employment opportunity;
 2. affirmative action;
 3. fair labor standards;
 4. energy conservation;
 5. environmental protection; or
 6. other similar socio-economic programs.

- B. Notice. The Manager shall include in the contract all appropriate provisions giving the contractor notice of these requirements. Where applicable, the Manager shall include in the contract provisions the requirement that the contractor give a similar notice to all of its subcontractors.

SECTION 12. INSURANCE REQUIREMENTS.

- A. Minimum Requirements. Contractor shall purchase and maintain such insurance as will protect it from claims under Workers' Compensation laws, disability benefit laws or other similar employee benefit plans; from claims or damages because of bodily injury, occupational sickness or disease or death of its employees and claims insured by usual personal injury liability coverage in amounts determined by the provisions of the Risk Management Policy.
- B. Certificates of Insurance. Certificates of Insurance acceptable to the Gulf Consortium shall be filed with the Purchasing Division prior to the commencement of the work and periodically thereafter upon any renewals during the term of the contract.
- C. Change of Insurance Requirements. The Gulf Consortium reserves the right to change the insurance requirements based on the project scope, or when determined in the best interest of the Gulf Consortium.

SECTION 13. BONDS AND DEPOSITS. When any of the following bonds are required, the bond will be requested in the bid document. No work in connection with the fulfillment of a contract shall commence until the appropriate bond is accepted by the Gulf Consortium.

SECTION 13.01. TYPES OF BONDS AND DEPOSITS.

- A. Performance Bond - For a project of an estimated value less than \$200,000, requirement of a performance bond will be at the discretion of the Manager with the approval of the Consortium Manager. For projects estimated to be \$200,000 or more, such bond will be required to insure that a contract is carried out in accordance with the applicable specifications and at the agreed contract price.
- B. Payment and Material Bond - For a project of an estimated value less than \$200,000, requirement of a payment and material bond will be at the discretion of the Consortium Manager. For projects estimated to be \$200,000 or more, such bond will be required to protect the Gulf Consortium from suits for non-payment of debts, which might be incurred by a contractor's performance for the Gulf Consortium.

- C. Warranty Bonds - At the discretion of the Manager, after consultation, a Warranty Bond may be required from a successful bidder to insure warranty provisions are fulfilled.
- D. Guaranty of Good Faith Deposit (Bid Deposit) - For projects estimated to be less than \$200,000, requirement of a bid bond will be at the discretion of the Consortium Manager. For purchases where it is determined by the Manager to be in the best interest of the Gulf Consortium, and projects estimated to be \$200,000 or more, bidders will be required to submit with their bid or proposal a guaranty of good faith deposit. When in the best interest of the Gulf Consortium, the Consortium Manager may waive these requirements.
1. Return of Bond. Such deposit may not be withdrawn until a specified time after the proposals are opened and awards made. The deposit of the bond shall be retained by the Manager until satisfied that the Contractor's obligations have been satisfactorily completed.
 2. Substitutes. In lieu of a surety bid bond, contractor may submit a certified check, cashier's check, or treasurer's check, on any national or state bank. Such deposits shall be in the same percentage amounts as the bond. Such deposits shall be retained by the Manager until all provisions of the contract have been met.
- E. Irrevocable Letter of Credit. Upon approval of the Manager, a contractor may present an Irrevocable Letter of Credit from a national or state chartered bank in lieu of any of the foregoing bonds for the same face value as required for the bond. The letter of credit shall be for a period of time not less than three months beyond the scheduled completion date of the purchase of the contracted services or materials.
- F. Retention of Payments. The Gulf Consortium may require the payment for a project, or a portion thereof, be withheld until the project has been completed as a method of protecting the Gulf Consortium's interest. Retention may also be used in lieu of the above listed bonds. The solicitation documents shall specifically state if retention of any portion or all of the payment for the project is to be done.

SECTION 13.02. AMOUNT OF BOND OR DEPOSIT.

- A. Amount of Bond. Bonds or deposits, which may be required, shall normally be in the following amounts, except as provided in the following subsection B.
1. Performance Bond: 100% of contract price.

2. Payment Bond: 100% of contract price.
 3. Payment and Performance Bond: 100% of contract price.
 4. Guaranty of Good Faith Deposit (Bid Deposit or Bond): The bid deposit will be 5% of the price bid by the vendor.
- B. Exceptions to Amount of Bond. Any of the previously listed bonds may be required at another amount approved by the Consortium Manager when in the best interest of the Gulf Consortium.

SECTION 13.03. PROCESSING OF BONDS AND DEPOSITS.

- A. Responsibility for Securing Bonds. The contractor shall be responsible for securing the bond. Any costs may be included in the contract price.
- B. Licensure of Bonding Company. The company acting as surety for any bond issued shall be licensed to do business in the State of Florida.
- C. Review of Bonds by Gulf Consortium General Counsel. Surety bonds furnished will be reviewed by the Gulf Consortium General Counsel, who shall either accept or reject it for the Board. All surety bonds accepted shall be forwarded to the Manager to be filed in the official records of the Board.
- D. Failure to Provide Required Bond. In the event a contractor fails to provide an acceptable bond when required, within 10 days after notification, the Gulf Consortium General Counsel will be notified. Upon the recommendation of the Gulf Consortium General Counsel, the Board may declare the contract null and void, and retain in the account of the Gulf Consortium any good faith deposits or guaranty which may have been submitted as liquidated damages under the terms of the solicitation.
- E. Filing of Bonds. Bonds, when accepted, shall be forwarded to the Manager and shall be filed with the applicable contract documents.
- F. Deposits. Cash deposits (cashier's check, money orders, bank drafts, etc.) of all bidders shall be forwarded to the Manager for deposit to the account of the Gulf Consortium. Upon award of contract, the Manager shall be responsible for approving the return of deposits to unsuccessful bidders.
- G. Plans and Specification Deposit/Fees. The Manager is authorized to assess reasonable deposits or fees or both, not to exceed the cost of reproduction, for plans and specifications issued as a part of invitations for bids or requests for proposals. Deposits of all bidders for plans and specifications shall be forwarded

to the Manager for deposit to the account of the Gulf Consortium. Upon award of contract, the Manager or designee shall be responsible for approving the return of refundable deposits to unsuccessful bidders. Fees are to be deposited into the account from which applicable reproduction costs are paid.

SECTION 14. PAYMENT TO VENDORS. It is the policy of the Gulf Consortium that payment for all purchases by the Gulf Consortium be made in a timely manner in accordance with the provisions of the "Local Government Prompt Payment Act," Sections 218.70-218.79, Florida Statutes.

SECTION 15. PAYMENT DISPUTE RESOLUTION.

- A. In the event a dispute occurs between a contractor/vendor, herein referred to as "vendor", and the Gulf Consortium concerning payment of a payment request for construction work or an invoice for goods and/or services, the vendor should first attempt to resolve the issue with the Manager. If the dispute cannot be resolved between the vendor and the Manager within two business days of the dispute first being raised, the vendor may file a formal payment dispute. Formal payment dispute resolution shall be finally determined by the Gulf Consortium, under this procedure in accordance with Section 218.76, Florida Statutes.
- B. Filing a Dispute. Any vendor shall file with the Manager in a formal notice of payment dispute in writing within two business days of the dispute first being raised.
1. The notice of payment dispute shall contain at a minimum: the name of the vendor; the vendor's address and phone number; the name of the vendor's representative to whom notices may be sent; the contract number associated with the payment dispute; and, a brief factual summary of the basis of the dispute.
 2. Waiver. Failure to timely file a written payment dispute shall constitute a waiver of proceedings under this Section.
 3. Upon timely receipt of a formal payment dispute, the Contract Manager shall provide the vendor with acknowledgement of receipt, will notify the Payment Dispute Resolution Committee, and will coordinate with all parties to establish the date and time for a Payment Dispute Resolution Proceeding.
- C. General Provisions.
1. Time Limits. Proceedings to resolve the dispute shall be commenced not later than 45 calendar days after the date on which the payment request

or proper invoice (as specified in the contract document) was received by the Gulf Consortium and shall be concluded by final decision of the Gulf Consortium not later than 60 calendar days after the date on which the payment request or proper invoice was received by the Gulf Consortium.

2. Protest. Dispute resolution procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding, which prohibits a court from deciding de novo any action arising out of the dispute.
3. Interest. If the dispute is resolved in favor of the Gulf Consortium, then interest charges shall begin to accrue 15 calendar days after the Gulf Consortium's final decision. If the dispute is resolved in favor of the vendor, then interest shall begin to accrue as of the original date the payment became due.
4. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

D. Payment Dispute Resolution Proceeding Process.

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

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

SECTION 16. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.

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

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

SECTION 16.01. 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.

Vision Survey for January 24, 2014 Gulf Consortium Meeting

The Gulf Consortium Executive Committee directed staff to distribute the below Council Goals and Authorized uses of RESTORE Act funds:

The Gulf Coast Ecosystem Restoration Council (Federal Council) has established the following 5 goals to guide the collective actions at local, state, tribal and federal levels:

- ❖ Restore and Conserve Habitat
- ❖ Restore Water Quality
- ❖ Replenish and Protect Living and Coastal and Marine Resources
- ❖ Enhance Community Resilience
- ❖ Restore and Revitalize the Gulf Economy

Additionally, the RESTORE Act authorizes the following uses of funds:

- ❖ Restoration and protection of the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, and coastal wetlands of the Gulf Coast region
- ❖ Mitigation of damage to fish, wildlife, and natural resources
- ❖ Implementation of a federally approved marine, coastal, or comprehensive conservation management plan, including fisheries monitoring
- ❖ Workforce development and job creation
- ❖ Improvements to or on state parks located in coastal areas affected by the Deepwater Horizon oil spill
- ❖ Infrastructure projects benefitting the economy or ecological resources, including port infrastructure
- ❖ Coastal flood protection and related infrastructure
- ❖ Planning assistance
- ❖ Administrative costs (limited to not more than 3% of a state's allotment)
- ❖ Promotion of tourism in the Gulf Coast Region, including recreational fishing
- ❖ Promotion of the consumption of seafood harvested from the Gulf Coast Region

In order to get a jump start on our discussion at the next Gulf Consortium meeting, January 24, 2014, please submit the following by **January 10, 2014**:

“Your County’s greatest need(s) that fit into the above goals and authorized uses. This should not be individual project based but a strategic need of your county. For example: Storm Water Treatment or Economic Development.”