



## **Gulf Consortium Agenda**

**March 26, 2014 10:00 a.m. - 2:00 p.m. (EST)**

Tallahassee City Commission Chambers

300 S. Adams Street

Tallahassee, FL 32301

1. Call to Order
2. Pledge
3. Public Comment
4. Consent Agenda
  - a) Minutes Approval
  - b) List of Directors/Alternates/Governor's Appointees
  - c) Notice of Meeting as published in the Florida Administrative Register
5. Introduction of Governor's Appointees
6. Presentation on National Fish & Wildlife Foundation (NFWF), Ms. Jennifer Fitzwater, FWCC,  
Mr. Mike Sharpe, NFWF and Mr. Thomas Kelsch, NFWF
7. Staff Update
8. Annual Audit Presentation
9. Procurement Policy
10. Invitation to Negotiate (ITN)
11. Visioning and Roles Follow-up
12. Public Comment
13. Meeting Schedule for 2014
  - a) April - Open
  - b) May - Open
  - c) June - Friday, June 20th 10:00am-12:00noon EST- Orange County - in conjunction  
with FAC Annual Conference
  - d) July - Open



- e) August - Thursday, August 7<sup>th</sup> 9:30am-12:00noon CST– Pensacola – in conjunction with FAC Board Retreat
- f) September - Wednesday, September 17<sup>th</sup> 9:30am-12:00noon CST – Walton County – in conjunction with FAC Policy Conference
- g) October - Open
- h) November - Open
- i) December - Wednesday, December 3<sup>rd</sup> 9:30am-12:00noon EST - St. John’s County – in conjunction with FAC Legislative Conference

14. Adjourn

**Gulf Consortium Meeting  
January 24, 2014 a.m. (EDT)  
Florida Department of Environmental Protection, Carr Building  
Leon County (Tallahassee, FL)**

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**Directors / Alternates in Attendance:** Commissioner Mike Thomas (Bay), Commissioner Christopher Constance (Charlotte) by telephone, Commissioner Rebecca Bays (Citrus), Commissioner Tom Henning (Collier), County Manager Mike Cassidy (Dixie), Commissioner Grover Robinson (Escambia), County Manager Alan Pierce (Franklin), Commissioner Warren Yeager (Gulf), Commissioner Wayne Dukes (Hernando), Commissioner Les Miller (Hillsborough) by telephone, Commissioner Betsy Barfield (Jefferson), Commissioner Ryan Bell (Levy) by telephone, Natural Resources Director Charlie Hunsicker (Manatee), Commissioner George Neugent (Monroe), Commissioner Dave Parisot (Okaloosa), Commissioner Jack Mariano (Pasco), Commissioner Susan Latvala (Pinellas), Commissioner Lane Lynchard (Santa Rosa) by telephone, Commissioner Nora Patterson (Sarasota), Commissioner Jim Moody (Taylor), County Administrator David Edwards (Wakulla), Commissioner Sara Comander (Walton)

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**Agenda Item #1 – Call to Order**

Commissioner Grover Robinson called the meeting to order at 11:30 am ET / 10:30 am CT.

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**Agenda Item #3 – Public Comment**

There was no public comment.

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**Agenda Item #4 – Consent Agenda**

Mr. Doug Darling, Interim Director, presented the consent agenda containing minutes from the November 13, 2013 Gulf Consortium Board of Directors' (Board) Meeting in Volusia County, minutes from the December 11, 2013 Gulf Consortium Executive Committee Meeting in Leon County, an updated list of Directors/Alternates, the Gulf Consortium Financials and the Notice of Meeting as published in the Florida Administrative Register. A motion to approve the consent agenda was presented by Commissioner George Neugent (Monroe) and seconded by Commissioner Sara Comander (Walton).

**ACTION: PASSED**

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**Agenda Item #5 – Update by Mr. Justin Ehrenwerth, Executive Director, Gulf Coast Ecosystem Restoration Council**

Mr. Justin Ehrenwerth, Executive Director of the Gulf Coast Ecosystem Restoration Council (Council), briefed the Board on the recent activities of the Council and highlighted the challenges they are facing. He then gave an overview of the Council's priorities.

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**Agenda Item #7 – Vision Setting Activity**

Ms. Heidi Stiller, Humans Dimensions Specialist, Coastal Management Services Division, National Oceanic and Atmospheric Administration, led the Board in an exercise where she asked them to come up with a newspaper headline reflecting the success of the RESTORE Act.

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**Agenda Item #13 – Roles of the Gulf Consortium**

Following the visioning exercise, Ms. Heidi Stiller, Humans Dimensions Specialist, Coastal Management Services Division, National Oceanic and Atmospheric Administration, asked each of the Board members to identify what the role of the Consortium would be to achieve long term goals.

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**Agenda Item #8 – Staff Update**

Ms. Deena Reppen, FAC Legislative Director provided an update on the Governor's Appointees to the Gulf Consortium. She reported the Board will know who the Appointees are by the March Board meeting. She also informed the Board that FAC was including an update on the Gulf Consortium's activities at the Editorial Board meetings throughout the state. Finally she informed the Board that Senators Rubio and Nelson had been briefed on the Consortium's position with regard to the Treasury Regulations as part of the Associations ongoing Federal activities.

Then Mr. Doug Darling, Interim Manager, informed the Board there were two upcoming public meetings regarding Natural Resources Damages Assessment projects in Pensacola and Panama City. He also updated the Board on the quarterly meeting with the Florida Department of Environmental Protection and the Florida Fish and Wildlife Conservation Commission.

Finally Commissioner Dave Parisot gave an update from the conference call held with US Treasury Inspector General Staff and outlined the audit process.

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**Agenda Item #9 – Elections**

Ms. Sarah Bleakley, Interim General Counsel, informed the Board the self-nominating period for Executive Committee Offices had closed. She announced the nominees: Chairman, Commissioner Grover Robinson (Escambia); Vice-Chairman, Commissioner Susan Latvala (Pinellas); Secretary-Treasurer, Commissioner Warren Yeager (Gulf). She informed the Board because there were no challengers for any of the offices, there were no ballots. A Motion to elect the unopposed candidates for Chairman, Vice-Chairman and Secretary-Treasurer was presented by Commissioner Wayne Dukes (Hernando) and seconded by Commissioner Christopher Constance (Charlotte)

**ACTION: PASSED**

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**Agenda Item #10 – Call to Directors to Express Interest in Serving as “At Large” Appointees on the Executive Committee**

Ms. Sarah Bleakley, Interim General Counsel, informed the Board the call for Directors self-nomination to be designated as an appointed officer by the elected members of the Executive Committee had been sent with the meeting notice to each Board member. The deadline to self-nominate has been set for February 14, 2014 and according to the policy adopted by the Board, Directors shall declare his/her candidacy in writing to the Interim Manager on or before that date.

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**Agenda Item #11 – Procurement Policy**

Ms. Sarah Bleakley, Interim General Counsel, provided an overview of the draft purchasing policy for state expenditure plan consultant. She requested the Directors provided and comments on the draft policy no later than February 7, 2014 and informed the Board this would be the primary agenda item at the meeting in March, 2014.

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**Agenda Item #12 – State Expenditure Plan Consultant Solicitation**

*Due to unforeseen circumstances, the Solicitation Document for the State Expenditure Plan Consultant (Agenda item # 12) was not available for consideration at the Board meeting on Friday, January 24<sup>th</sup>. In recognition that this document is of vital importance to the Consortium, the Solicitation Document will be completed and provided to Directors at least two full weeks before the next Board meeting on March 26, 2014.*

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**Agenda Item #14 – Public Comment**

Ann Birch- The Nature Conservancy  
Steven Webster-MW Consulting  
Keith Wilkins-Escambia County Environmental Department  
Len Sossamon-Hernando County Administrator

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**Agenda Item #15 – Next Meeting**

The next Gulf Consortium meeting has been scheduled for March 26<sup>th</sup>, 2014 at 10:00 am ET / 9:00 am CT at the Tallahassee City Commission Chambers in Leon County.

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**Agenda Item #16 – Adjournment**

There being no other new business the Committee adjourned at 2:58 pm ET / 1:15 CT.

## Gulf Consortium Directors, Alternates and Governor's Appointees

**March 26, 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	Commissioner George Neugent, Director; Comm David Rice, Alternate
Okaloosa	Comm Dave Parisot, Director; Comm Kelly Windes, Alternate
Pasco	Comm Jack Mariano, Director; Comm Henry Wilson, Alternate
Pinellas	Comm Susan Latvala, Director; Coastal Manager Andy Squires
Santa Rosa	Comm Lane Lynchard, Director; Comm Jim Melvin, Alternate
Sarasota	Comm Nora Patterson, Director; Laird Wreford, Natural Resources Manager, Alternate; Comm 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
Governor's Appointees	Pam Anderson, Panama City; Peter Bos, Destin; Lino Maldonado, Niceville; Collier Merrill, Pensacola; Mike Sole, Tallahassee; Neal Wade, Panama City

## Notice of Meeting/Workshop Hearing

### **OTHER AGENCIES AND ORGANIZATIONS**

#### **Gulf Consortium**

The Gulf Consortium announces a public meeting to which all persons are invited.

DATE AND TIME: March 26, 2014, 10:00 a.m., Eastern Standard Time

PLACE: City of Tallahassee Commission Chambers, Second Floor, 300 South Adams Street, Tallahassee, Florida

GENERAL SUBJECT MATTER TO BE CONSIDERED: The Board of Directors will meet to consider procurement and other matters.

A copy of the agenda may be obtained by contacting Doug Darling, (850)922-4300, [ddarling@fl-counties.com](mailto:ddarling@fl-counties.com) or see [www.FACRestore.com](http://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](mailto:ddarling@fl-counties.com). If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

If any person decides to appeal any decision made by the 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.

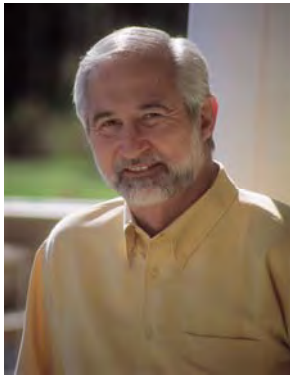
For more information, you may contact Doug Darling, (850)922-4300, [ddarling@fl-counties.com](mailto:ddarling@fl-counties.com) or see [www.FACRestore.com](http://www.FACRestore.com).

March 12, 2014

Pam Anderson is the Operations Manager for Capt. Anderson's Marina in Panama City Beach. She has been working with her family in the Fishing and Cruising business for over 40 years. She is the First Vice President of the Panama City Boatman Assoc., Secretary of the newly formed Bay County Artificial Reef Association, and has represented the fishing industry on the Bay County Chamber of Commerce's Government Affairs Committee since 2007. She participates in the Florida Fish & Wildlife Commission meetings and the Gulf of Mexico Fishery Management Council meetings, representing the recreational fishing industry. She has represented the Bay County area's fishing community on issues with the Federal, State and local governments. She was presented the 2011 Bay County Chamber of Commerce Member of the Year award for her efforts on fishery issues, as well as the 2013 First Quarter Small Business Award from the Panama City Beach Chamber of Commerce.



## Peter H. Bos



Peter Bos, President of the Legendary family of companies, is a graduate of Cornell University, Ithaca, NY (B.S./Hotel and Restaurant Administration). Following graduation, he moved to Florida where he worked for one year as the Manager of Busch Gardens' food & beverage operations, before joining Fletcher Properties in Jacksonville where he developed, constructed, marketed and operated several residential communities including Bay Meadows and Inlet Beach in Jacksonville; Inverness in Birmingham, Alabama; and Stone Bridge in Memphis, Tennessee. He also developed and built over 3,000 apartments, condominiums and homes in various developments throughout Florida.

In 1976, he formed his own company, the Bos Group which later evolved into Legendary, Inc. Some of the projects he developed are:

- Sandestin Beach Resort (a 2400-acre residential/resort) including all the related construction and operational facilities;
- Hyatt Key West, a small boutique hotel and restaurant facilities and the Bottling Court, Key West, a festival shopping complex created with the renovation of Coca-Cola's oldest bottling facility;
- Plantation, Ponte Verde Beach, a 750-acre, high-end residential community;
- St. Albans, an 8300-acre planned mixed-use development in St. Louis, Missouri;
- Sea Palms, St. Simons Island, Georgia, a multi-use residential development;
- East Park, a 540-acre industrial office park in Jacksonville;
- Villages of San Jose, Jacksonville;
- L'Atrium in Ponte Verde Beach, a 300-unit residential community;
- Lake Mandarin, a 240-acre, mixed-use development including commercial, apartments and 400 residential homes in Jacksonville.

Based in Destin in the Florida panhandle, current Legendary developments include:

- Regatta Bay, a multi-use development of residential homes and condos, a golf club and office park;
- Destin Commons, a 670,000-square-foot festival shopping center;
- HarborWalk Village, a mixed-use development featuring the Emerald Grande and HarborWalk Marina, and
- Legendary Marine

Peter has served as a Board member on several committees for the City of Destin including Coastal Vision 3000, the Destin Harbor Association, and the Destin Harbor Community Redevelopment Agency Advisory Board. He is a past recipient of the Business Person of the Year award by the Destin Area Chamber of Commerce and Hotelier of the Year by the Florida Lodging and Restaurant Association. He has also served as an Honorary Commander of Eglin AFB's 53<sup>rd</sup> Wing and Hurlburt Field AFB's 1<sup>st</sup> Special Operations Wing.

Peter and his wife Terri live in Destin. He has two sons, two daughters, and four grandchildren.

## *Michael W. Sole*

Mike Sole is Vice President for State Governmental Affairs with Florida Power & Light Company (FPL), a subsidiary of NextEra Energy, Inc. (NEE) and one of the largest investor-owned electric utilities in the nation. He was appointed to this position in 2010 and is responsible for ensuring constructive government relations with state and federal officials on behalf of FPL.

Prior to his joining FPL, Mike served as Secretary of the Florida Department of Environmental Protection, overseeing Florida's environmental regulatory and law enforcement programs, the acquisition, conservation and management of public lands, including Florida's award-winning state parks, and the development and regulation of Florida's water resources through the State's five water management districts.

Mike was a Captain in the United States Marine Corps, serving our nation during the Gulf War. He received his Bachelors of Science degree in Marine Biology from the Florida Institute of Technology.

Florida Power & Light Company is the largest rate-regulated electric utility in Florida and serves the third-largest number of customers of any electric utility in the United States. FPL serves approximately 4.6 million customer accounts and is a leading Florida employer with approximately 10,000 employees as of year-end 2012. During the five-year period ended December 31, 2012, the company delivered the best service reliability among Florida investor-owned utilities. As of year-end 2012, its typical residential customer bills are the lowest in Florida, and based on data available in July 2012, are about 26 percent below the national average. A clean energy leader, FPL has one of the lowest emissions profiles and one of the leading energy efficiency programs among utilities nationwide. FPL is a subsidiary of Juno Beach, Fla.-based NextEra Energy, Inc. (NYSE: NEE). For more information, visit [www.FPL.com](http://www.FPL.com).

**Neal Wade**  
**Executive Director**  
**Bay Economic Development Alliance**



Neal Wade joined the Bay EDA (Bay County, Florida) in January 2012 as its executive director. He has almost 25 years of public and private sector economic development experience in both Alabama and Florida. In 2003, he was appointed by Alabama Governor Bob Riley as Secretary of Commerce and served in the position for almost eight years. He also served two stints at The St. Joe

Company, most recently as senior vice president of economic development for the private Florida development company.

As the Alabama Secretary of Commerce, The Alabama Development Office was twice named top state economic development agency in the United States.

Now with Bay EDA, Wade leads the organization's effort to create 2,000 new, quality jobs in 2014 in Bay County.

Wade and his wife, Mary Ann, have three children and six grandchildren.

**Gulf Consortium March 26, 2014 Board Meeting  
Agenda Item Memorandum**

**Agenda Item # 7: Staff Update: 2014 Legislative Session**

Legislation concerning the RESTORE Act counties and the Gulf Consortium has been introduced for consideration in the 2014 Florida Legislative Session.

Relating to Federal Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) of the Gulf Coast States Act – 2014

**SB 1610 by Senator Evers**

Committees of Reference: Community Affairs; Commerce and Tourism; Governmental Oversight and Accountability; Rules

**HB 1375 by Rep. Moskowitz, Co-Sponsored by Rep. Hill**

Committees of Reference: Government Operations Subcommittee; Local & Federal Affairs Committee; State Affairs Committee

Section 1. Subsection (6) is added to section 377.43, Florida Statutes, to read:

377.43 Disbursement of funds received for damages caused by the Deepwater Horizon oil spill.

(6)(a) For the purpose of this section, the process a county, or an entity formed by the state or a county, takes for appropriating funds received through the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) of the Gulf Coast States Act of 2012, Pub. L. 112-141, div. A, title I, subtitle F, ss. 1601 et seq., is subject to the open government requirements of s. 24, Art. I of the State Constitution and ss. 119.07(1) and 286.011.

(b) A county receiving RESTORE Act funds shall post each proposed appropriation of funds received under the act as a line item on its website at least 30 days before the meeting during which the proposed appropriation is to be voted on to ensure that the public has ample time to review and comment on the proposed appropriation.

**Prepared by:** Deena Reppen, Legislative Director, Florida Association of Counties.

**Date Prepared:** March 14, 2014

# **Gulf Consortium Board Meeting Agenda Item #8**

**March 26, 2014**

## **Presentation and Approval of Annual Audit**

**Executive Summary:** The Gulf Consortium is a public entity formed by Interlocal Agreement pursuant to Chapter 163, Florida Statutes, by 23 counties along Florida's Gulf Coast. The Consortium operates as a special-purpose single-function government. As a result of the nature of the funding the Gulf Consortium will receive, this function is considered a business-type activity and is accounted for in an enterprise fund in accordance with generally accepted accounting principles for governments as established by the Governmental Accounting Standards Board (GASB).

**Background:** As a public entity, The Consortium is required to have an annual audit performed by a licensed Certified Public Accountant (CPA). The Interim Manager, Chris Holley, contracted with Law, Redd, Crona & Munroe, P.A to conduct the audit in conjunction with the annual audit performed at the Florida Association of Counties. The cost savings associated with conducting the audits simultaneously was the major factor in deciding to use Law, Redd, Crona, & Munroe, P.A.

**Analysis:** The attached audit documents reflect the auditor's opinions on the financial status of the Consortium as of September 30, 2013. The auditor will be present at the meeting to answer questions.

**Options:**

1. Accept the audit as presented and direct staff to file the audit with appropriate State Officers; or
2. Other direction as provided.

**Fiscal Impact:** None

**Recommendation:** Accept audit as presented and direct staff to file audit with appropriate State Officers.

**Prepared by:** Doug Darling, Interim Manager



## **Gulf Consortium Agenda**

**March 26, 2014 10:00 a.m. - 2:00 p.m. (EST)**

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300 S. Adams Street  
Tallahassee, FL 32301

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14. Adjourn



**Gulf Consortium March 26, 2014 Board Meeting  
Agenda Item Memorandum**

**Agenda Item # 9: Procurement Policy Resolution**

**Executive Summary:** The attached resolution proposes a procurement policy for the Board's selection of a consultant for the State Expenditure Plan.

**Background:**

Procedurally, the Board of Directors heard a presentation about the Procurement Policy at its January meeting. A motion was made to provided the members an opportunity to review and offer comments and suggestions on the policy for consideration. Suggested revisions received from Directors have been incorporating in the policy included in the agenda packet. The revisions include the following additions to the draft policy distributed in January:

- (1) A requirement that the Board approve termination of a contract.
- (2) A requirement that the Board approve payment of contract claims in excess of \$10,000.
- (3) A requirement that the Board approve of all solicitations.

Additionally, it was suggested that the Board may wish to discuss whether the Board should have a role in the following:

- a) Selection of members or categories of members of the Evaluation Team
- b) Selection of members or categories of members of the Procurement appeals board, and
- c) Appointment of a Special Master.

Generally, on the issue of procurement, the RESTORE Act conditions the receipt of funds on a certification that the "project or program and the awarding of a contract for the expenditure of amounts received . . . are consistent with the standard procurement rules and regulations governing a comparable project or program in that State, including all applicable competitive bidding and audit requirements . . . ."

The Consortium's primary duty under the RESTORE Act is to produce Florida's State Expenditure Plan for submission to the Governor and then to the Gulf Coast Ecosystem Restoration Council. The RESTORE Act requires the State Expenditure Plan to be consistent with the goals and objectives of the Comprehensive Plan adopted by the Gulf Coast Ecosystem Restoration Council.

The United States Department of the Treasury has promulgated, but not finalized, a Rule to implement the RESTORE Act. After the Treasury Rule has been finalized, the Council will promulgate a regulation governing many aspects of the State Expenditure Plan. It is anticipated that the Council regulation will address procurement, including guidelines for procuring firms for development of State Expenditure Plans whose charges for services can be reimbursed with

RESTORE Act funds. Until the Council regulation is finalized, the Consortium cannot be certain that any procurement policy it adopts will conform to the requirements of the Council.

It is anticipated that the Council regulation will also address the implementation of the formula for determining what portion of the Spill Impact Allocation will be available to Florida and the other four Gulf Coast States. Until the Council regulation is promulgated and finalized, the Consortium cannot apply for grants from the Gulf Coast Restoration Trust Fund to fund the development of the State Expenditure Plan. Until the Council regulation is finalized, the Consortium cannot be certain of the amount of money that can be made available to it to fund the development of the State Expenditure Plan. Nor can the Consortium know how much it can spend on projects and programs that it may desire to include in its plan.

Another impediment to the Consortium's access to funds for paying a consultant is the limited amount of money currently in the Trust Fund. At this point, the Trust Fund consist of an estimated \$640 million from the settlement of the Clean Water Act claims against only a few of the responsible parties, primarily Transocean Deepwater, Inc. The federal government's litigation against other responsible parties, including B.P., is ongoing with no definitive time period for its resolution at the trial court or on appeal, if one is taken.

The Board directed the Manager at its meeting in November, 2013, to move forward with procuring a consultant to provide assistance in developing the State Expenditure Plan. Earlier, the Board had directed the Manager to rely upon the procurement services of Leon County government as a way of having access to highly qualified and experienced procurement staff at minimal cost to the Consortium. Leon County Board of County Commissioners has formally agreed to provide such services to the Consortium. An interlocal agreement regarding procurement between Leon County and the Consortium is in its final stages of development and should soon be available for execution by the Chairs of both bodies.

In the meantime, the Manager and General Counsel have been working with the Leon County procurement staff to develop the Invitation to Negotiate that is the subject of another agenda item for this meeting. To put the Consortium on a strong legal foundation, this agenda item proposes a resolution establishing a procurement policy and process for the State Expenditure Plan. The resolution's policy heavily relies upon the Leon County procurement policy, adopting much of it verbatim and modifying it only where necessary to avoid confusion caused by the broad terms of the Leon policy which governs every purchase made by Leon County.

The scope of the policy in the resolution narrowly focuses on procuring for the State Expenditure Plan. It does not provide a general procurement policy for the

Consortium. Its primary function is to provide a process for addressing bid protests. The narrow focus allows the Consortium to limit its liability from the possibility of running afoul of the forthcoming Council regulation governing procurement.

**Analysis:** The resolution establishes a procurement policy for procuring services to assist the Consortium in the development and submission of the State Expenditure Plan. Because the Consortium is using the Leon county procurement staff infrastructure, the resolution relies heavily upon the Leon County procurement policy. The Leon County policy also includes contractual requirements, and the resolution follows suit. The attached policy is substantially the same policy discussed at the last meeting, with the exception of the issues listed in the first paragraph in **Background** above.

**Options:**

- (1) Adopt a motion to approving the Resolution establishing the Procurement Policy for the Gulf Consortium.
- (2) Provide other direction

**Fiscal Impact:** Unknown.

**Recommendation:** Adopt a motion approving the Resolution establishing the Procurement Policy for the Gulf Consortium.

**Prepared by:** Sarah M. Bleakley, Esq., Nabors, Giblin & Nickerson, P.A., Interim General Counsel. [sbleakley@ngnlaw.com](mailto:sbleakley@ngnlaw.com); 850.224.4070

**Date Prepared:** March 14, 2014

Moved \_\_\_\_\_; Seconded\_\_\_\_\_.

Action: Approved\_\_\_\_; Approved as amended\_\_\_\_; Defeated\_\_\_\_\_.

# Gulf Consortium

March 26, 2014 Board of Directors Meeting

## Agenda Item #10 Invitation to Negotiate

**Statement of Issue:** This agenda item presents an Invitation to Negotiate for procuring a consultant for the development of a State Expenditure Plan.

**Background:** The RESTORE Act requires each of the five Gulf Coast states to prepare a State Expenditure Plan for funding under the Act's Spill Impact Component. Florida's plan will be developed by the Gulf Consortium to be submitted by the Governor for approval to the Gulf Coast Ecosystem Restoration Council. This agenda item proposes to procure a consultant through the issuance of the Invitation to Negotiate to assist the Consortium in the development of the State Expenditure Plan. The Invitation to Negotiate has been developed in conjunction with the Consortium's procurement partners - Leon County and the Florida Department of Environmental Protection, the lead agency on the Consortium's coordinated state agency review team under the Memorandum of Understanding with Governor Scott.

**Executive Committee Recommendation:** At its meeting on March 10, the Executive Committee adopted a motion recommending the Board of Directors accept the Invitation to Negotiate as included in this agenda item.

**Analysis:** The procurement process consists of two phases with two separate procurement solicitation documents being issued during the course of the process. The first phase is the Invitation to Negotiate phase. The second phase is the Request for a Best and Final Offer phase.

**Phase One Invitation to Negotiate.** In the first phase, Leon County, on behalf of the Consortium, issues an Invitation to Negotiate (ITN), the document included in the packet. The ITN consists of three main components: the scope of services, the Firms' qualifications and SEP suggestions, and the evaluation process.

- A. **Scope of Services.** The first component is a scope of services, which is included on pages 15 through 18 of the ITN. The scope of services calls for the selected Firm to develop two draft State Expenditure Plans. The first is a draft initial plan which establishes the Consortium's approach to the State Expenditure Plan (SEP). It will be similar to a grant application and will include an estimate of the cost for development of the SEP. It will not contain a list of projects. The scope also calls for the development of

a final SEP, using the process and including the elements described in that section. The scope of services also provides for future revisions to the SEP as may be required.

- B. **Firm Qualifications and SEP Suggestions.** The second component of the Invitation to Negotiate begins on page 18- 21 and consists of a list of the requirements for Firms to include in their responses. The list includes the typical requirements for Firms to describe their qualifications and experience. It also requires Firms to present their suggestions for methods and approaches in developing the SEP, which has been described as “plan the plan”.
- C. **Evaluation Team.** The third major component of the Invitation to Negotiate is a description of the **process and evaluation criteria**. It is included on pages 21 through 23. In summary, the ITN process follows these steps:
  1. After the Consortium Board approves the procurement policy and the ITN, Leon County issues the ITN. Sixty days later, the firms will file their responses.
  2. The Evaluation Team evaluates and ranks the firms, based on the criteria in the ITN. The Team suggests the elimination of unqualified firms and that a reasonable number of shortlisted firms continue into the second phase of the process—the Request for Best and Final Offers (RBAFO).
  3. The Team’s suggested shortlist of firms is submitted to the Executive Committee.
  4. The Team then conducts interviews with the shortlisted firms for the purpose of refining the scope of services and developing the Request for Best and Final Offer.
  5. The refined scope of services and the Request for Best and Final Offer are submitted to the Board of Directors for approval.
- D. At that point, the first phase concludes and the Second Phase begins.

**Phase Two Request for a Best and Final Offer.** Leon County issues a Request for Best and Final Offer (RBAFO) to the shortlisted firms and the shortlisted firms respond 60 days later.

- A. The Team will again evaluate the responses. It may conduct oral interviews, and will rank the firms.
- B. The Team’s rankings are presented to the Board of Directors.
- C. The Manager negotiates a contract with the first ranked firm. If the Manager cannot reach an agreement with the firm ranked first, he proceeds to the second ranked firm and so on until an agreement is reached.
- D. The Manager presents the contract to the Board of Directors for approval.

**Conclusion.** At that point, the Consortium will have a consultant on board and the development of the SEP can proceed, assuming there are sufficient funds available to hire the consultant.

Staff estimates a firm can be selected in December under the process specified in the ITN.

**Options:**

- 1) Approve a motion adopting the Invitation to Negotiated as included in the agenda packet.
- 2) Approve a motion revising and adopting the Invitation to Negotiated as included in the agenda packet.
- 3) Provide other direction.

**Fiscal Impact:** The Consortium will be responsible for paying for the out-of-pocket expenses of Leon County in the procurement process. The County estimates that the costs will be minimal, unless a protest is filed.

**Recommendation:** Approve a motion adopting the Invitation to Negotiated as included in the agenda packet.

**Prepared by:** Sarah M. Bleakley, Nabors, Giblin & Nickerson, P.A., Interim General Counsel. [sbleakley@ngnlaw.com](mailto:sbleakley@ngnlaw.com); 850.224.4070

**Prepared on:** March 13, 2014



March 6, 2014

Law, Redd, Crona & Munroe, P.A.  
2075 Centre Pointe Boulevard, Suite 200  
Tallahassee, Florida 32308

This representation letter is provided in connection with your audit of the financial statements of The Gulf Consortium (the Consortium), which comprise the respective financial position of the business-type activities, as of September 30, 2013, and the change in financial position and cash flows for the year then ended, and the related notes to the financial statements, for the purpose of expressing opinions as to whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement. An omission or misstatement that is monetarily small in amount could be considered material as a result of qualitative factors.

We confirm, to the best of our knowledge and belief, as of March 6, 2014, the following representations made to you during your audit.

#### **Financial Statements**

- 1) We have fulfilled our responsibilities, as set out in the terms of the audit engagement letter dated September 9, 2013, including our responsibility for the preparation and fair presentation of the financial statements and for preparation of the supplementary information in accordance with the applicable criteria.
- 2) The financial statements referred to above are fairly presented in conformity with U.S. GAAP and include all properly classified funds and other financial information of the Gulf Consortium required by generally accepted accounting principles to be included in the financial reporting entity.
- 3) We acknowledge our responsibility for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- 4) We acknowledge our responsibility for the design, implementation, and maintenance of internal control to prevent and detect fraud.
- 5) Significant assumptions we used in making accounting estimates are reasonable.
- 6) Related party relationships and transactions, including revenues, expenditures/expenses, loans, transfers, leasing arrangements, and guarantees, and amounts receivable from or payable to related

parties have been appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.

7) All events subsequent to the date of the financial statements and for which U.S. GAAP requires adjustment or disclosure have been adjusted or disclosed. No events, including instances of noncompliance, have occurred subsequent to the balance sheet date and through the date of this letter that would require adjustment to or disclosure in the aforementioned financial statements.

8) The effects of uncorrected misstatements, if any, are immaterial, both individually and in the aggregate, to the financial statements for the Consortium.

9) We are not aware of any pending or threatened litigation, claims, or assessments or unasserted claims or assessments that are required to be accrued or disclosed in the financial statements, and we have not consulted a lawyer concerning litigation, claims or assessments.

10) Guarantees, whether written or oral, under which the Consortium is contingently liable, if any, have been properly recorded or disclosed.

#### **Information Provided**

11) We have provided you with:

- Access to all information, of which we are aware, that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, and other matters.
- Additional information that you have requested from us for the purpose of the audit.
- Unrestricted access to persons within the entity from whom you determined it necessary to obtain audit evidence.<sup>2</sup>
- Minutes of the meetings of the Board of Directors or summaries of actions of recent meetings for which minutes have not yet been prepared.

12) All material transactions have been recorded in the accounting records and are reflected in the financial statements.

13) We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.

14) We have no knowledge of any fraud or suspected fraud that affects the entity and involves:

- Management,
- Employees who have significant roles in internal control, or
- Others where the fraud could have a material effect on the financial statements.

15) We have no knowledge of any allegations of fraud or suspected fraud affecting the entity's financial statements communicated by employees, former employees, regulators, or others.

16) We have no knowledge of instances of noncompliance or suspected noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse, whose effects should be considered when preparing financial statements.

17) We have disclosed to you the identity of the entity's related parties and all the related party relationships and transactions of which we are aware.



**Government—specific**

- 18) We have made available to you all financial records and related data.
- 19) There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.
- 20) The Consortium has no plans or intentions that may materially affect the carrying value or classification of assets, liabilities, or equity.
- 21) We are responsible for compliance with the laws, regulations, and provisions of contracts and grant agreements applicable to us, including tax or debt limits and debt contracts; and we have identified and disclosed to you all laws, regulations and provisions of contracts and grant agreements that we believe have a direct and material effect on the determination of financial statement amounts or other financial data significant to the audit objectives, including legal and contractual provisions for reporting specific activities in separate funds.
- 22) As part of your audit, you assisted with preparation of the financial statements and related notes. We have designated an individual with suitable skill, knowledge, or experience to oversee your services and have assumed all management responsibilities. We have reviewed, approved, and accepted responsibility for those financial statements and related notes.
- 23) The Consortium has complied with all aspects of contractual agreements that would have a material effect on the financial statements in the event of noncompliance.
- 24) We have followed all applicable laws and regulations in adopting, approving, and amending budgets.
- 25) Components of net position (net investment in capital assets; restricted; and unrestricted) and equity amounts are properly classified and, if applicable, approved.
- 26) Expenses have been appropriately classified in or allocated to functions and programs in the statement of activities, and allocations have been made on a reasonable basis.
- 27) Deposits and investment securities and derivative instruments are properly classified as to risk and are properly disclosed.
- 28) We acknowledge our responsibility for the required supplementary information (RSI). The RSI is measured and presented within prescribed guidelines. We have disclosed to you any significant assumptions and interpretations underlying the measurement and presentation of the RSI and we believe the RSI (Management Discussion and Analysis), including its form and content, is fairly presented in accordance with accounting principles generally accepted in the United States of America.

Signature: 

Title: \_\_\_\_\_

Signature: 

Title: Chief Executive of Nevada  
Consortium

# Gulf Consortium Board Meeting Agenda Item

March 26, 2014

## Agenda Item #11: Visioning Activity & Roles of the Gulf Consortium Follow-up

**Executive Summary:** At the Gulf Consortium Meeting held January 24, 2014, the Board conducted a visioning and roles workshop which was facilitated by a National Oceanic and Atmospheric Administration staff member, Ms. Heidi Stiller.

### **Background:**

The attached documents are included as a record of the ideas and concepts discussed during the workshop.

### **Analysis:**

Staff has summarized the visioning session as follows:

1. ***“20 Years of RESTORE”*** An Economic and Environmental Success Story
2. ***“Florida Leads Nation in Employment”*** RESTORE Act Proves Worth
3. ***“Florida is #1 in Clean Water”*** RESTORE Act Credited

Possible Vision Statements:

***“Twenty years from now, the implementation of RESTORE in the State of Florida will be heralded as both an economic and an environmental success story. RESTORE funding will bring significant gains in environmental goals such as clean water and robust fisheries, as well as in economic goals such as full employment and sustained tourism revenues.”***

**OR**

***“RESTORE funding will bring significant economic and environmental benefits to Florida, and the Gulf Consortium will provide and foster coordination that is needed to maximize benefits.”***

**OR**

***“RESTORE funding will bring significant economic and environmental benefits to Florida, and the Gulf Consortium will provide and foster coordination that is needed to help maximize benefits for both individual counties and the Gulf region as a whole.”***

Additionally, staff has summarized the roles session:

1. Find similarities so Counties can work together to leverage funds/projects
2. Regional projects that tie Counties together strengthen regions
3. Need to work/coordinate on multiple levels...Local, Consortium, State & Federal

**Options:** The Consortium should continue refinement of these concepts in order to guide the consultant during the preparation of the State Expenditure Plan.

**Fiscal Impact:** None

**Recommendation:** N/A

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

RESULTS OF VISIONING ACTIVITY  
January 24, 2014  
**Newspaper Headlines 2034**

***“Florida Leads Nation in Employment”*** RESTORE Act Proves Worth

***“Gulf Fisheries Stock See Full Recovery from 2010”***

***“Panhandle Economy Booming”*** Diversification and Tourism Dramatically Increased Since 2010

***“RESTORE...SUCCESSFUL!!!!”***

***“RESTORE Act Funds Spent: Gulf Region Benefits Economically and Ecologically”***

***“Florida Gulf Coast Economy and Environment RESTORED for Future Generations”***

***“Projects from RESTORE Still Working”*** Environment and Economy Dramatically Improved

***“RESTOREation Accomplished!”*** Florida’s Gulf Coast Strengthened Environmentally and Economically

***“Florida is #1 in Clean Water”*** RESTORE Act Credited

***“20 Years of RESTORE”*** An Economic and Environmental Success Story

***“Florida Becomes Most Populated State in Nation”***

***“Environmental RESTOREations”*** Success in Florida

***“Gulf of Mexico Water Quality at All Time High”*** New Data Funded by Gulf Coast Ecosystem Educational Cooperative

***“Largest Ecosystem RESTOREation in History”*** Gulf Coast Residents Declare...Done Right

***“Best Oyster Harvest...EVER!!!”***

***“Gulf Residents Promised RESTORE Act Funds...Any Day Now”***

***“Gulf of Mexico RESTOREation”*** Fisheries and Water Quality Improvements Unparalleled from Escambia to the Beautiful Keys

***“Health of the Gulf Vastly Improved”*** RESTORE Act Funding Only Part of Story

***“Our State and Local Governments Do Work Together”*** RESTORE Act Plan Success May Never Be Seen Again

***“Protecting the Future”*** RESTORE Act Funding Set Aside for Future Issues from 2010 Oil Spill

***“Bay County Economy Explodes!”*** Ahead of Treasury Rules Completion

## WHAT WILL BE ROLE OF CONSORTIUM

- WHAT ARE WE GOING TO LOOK LIKE?
- HOW WILL PROCESS BE MANAGED WHEN PLAN IS FINISHED? HOW WILL GRANTS BE AWARDED?
- TRACKING DEADLINES
- FINDING SIMILARITIES SO COUNTIES CAN WORK TOGETHER TO LEVERAGE FUNDS
- REGIONAL PROJECTS THAT TIE COUNTIES TOGETHER TO STRENGTHEN REGIONS
- SEEK EXPERTISE NEEDED TO MAKE SMART DECISIONS
- USE PLANS AND PRIORITIES ALREADY IN PLACE
- FOCUS ON REGIONAL PROJECTS CANNOT OVERSHADOW LOCAL PROJECTS
- DIVIDE INTO EQUAL COUNTY PORTIONS OR USE FOR REGIONAL/GULF WIDE PROJECTS?
- WATER UNITES US ALL...
- WE HAVE TIME TO DO THIS RIGHT, SO LET'S DO IT RIGHT FOR THE ENTIRE GULF
- LISTEN TO CONSTITUENTS, NO SPECIAL INTERESTS, NO DEBT
- ITS TIME TO DECIDE WHAT WE WANT TO DO
- WHAT ARE WE ACCOMPLISHING? WE NEED TO HIRE OUR CONSULTANT AND GET ON WITH PROGRAM!
- IMPROVED WATER QUALITY IMPACTS ECONOMY, ENVIRONMENT, QUALITY OF LIFE AND SPECIES PROTECTION
- HOW DO WE LEVERAGE SPILL IMPACT COMPONENT FUNDS (POT #3) WITH LOCAL POT(#1) AND FEDERAL COUNCIL POT(#2)?
- KEEP OUR SCIENTIFIC COMMUNITY ENGAGED WITH CONSORTIUM
- WHAT IS BEST FOR FLORIDA?
- COORDINATION IS CRITICAL COMPONENT TO SUCCESS
- NEED FLEXIBILITY TO LEVERAGE RESTORE FUNDS TO OTHER PROGRAM FUNDING
- WATCH OTHER AREAS TO ENSURE WE DON'T LOSE OUR FOCUS ON WHAT FLORIDA NEEDS...i.e. TOURISM
- FISHERIES AND CLEAN WATER DRIVE TOURISM
- WE ARE, BELATEDLY, ADDRESSING "OUR ECONOMY IS OUR ENVIRONMENT"
- CLEAN WATER ACT HAS ADDRESSED WASTE WATER BUT NOT STORM WATER, SHOULD CONSORTIUM PRIORITIZE STORM WATER?
- EXXON VALDEZ BOOK "MISSION WITHOUT A MAP"
- FEDERAL COUNCIL IS FACING SIMILAR ISSUES AS WE ARE FACING IN CONSORTIUM

- WE NEED MORE EDUCATION ON WHAT CHALLENGES ARE OUT THERE, MAYBE THE EXPERTS AT THE STATE AND CENTERS OF EXCELLENCE
- PROCESS WILL BE AN ON-GOING DISCUSSION
- WATER, WATER, WATER
- TOURISM
- NEED TO WORK/COORDINATE ON MULTIPLE LEVELS...LOCAL, CONSORTIUM, STATE AND FEDERAL



**INVITATION TO NEGOTIATE**

**FOR**

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

**ITN NUMBER BC-XX-XX-14-XX**

**TABLE OF CONTENTS**

	<u>Page</u>
I. INTRODUCTION .....	1
A. BACKGROUND .....	1
B. FUNDING CONSTRAINTS.....	2
B. FUNDING CONSTRAINTS.....	2
C. PROJECT OVERVIEW.....	2
D. TERM OF CONTRACT .....	3
E. ITN PROCESS RESERVATIONS.....	3
F. EXHIBITS AND RESOURCES.....	3
II. DEFINITIONS.....	3
III. PROCUREMENT INSTRUCTIONS. ....	4
A. RESPONSE SUBMITTAL, FORMAT AND DEADLINE. ....	4
B. SCHEDULE OF EVENTS.....	5
C. PRE-PROPOSAL MEETING. ....	6
D. SPECIAL ACCOMMODATION. ....	7
E. INFORMATION, COMMUNICATION, AND ADDENDA. ....	7
F. PROHIBITED COMMUNICATIONS. ....	7
G. FIRM/VENDOR REGISTRATION.....	8
H. RECEIPT AND OPENING OF FIRM/VENDOR RESPONSES.....	8
I. PUBLIC RECORDS.....	9
J. TIMELY DELIVERY.....	9
K. PREPARATION COSTS.....	9
L. INTERVIEWS.....	9
M. PREPARATION AND CHANGES.....	9
N. RESERVATION OF RIGHTS.....	9
O. PUBLIC ENTITY CRIMES STATEMENT.....	9
P. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS.....	9
Q. LICENSES AND REGISTRATIONS.....	10
R. ADDENDA TO SPECIFICATIONS.....	10
S. UNAUTHORIZED ALIENS.....	10
T. AGREEMENT.....	10
U. AWARD OF ITN AND PROTEST.....	10
V. MINORITY/WOMEN BUSINESS ENTERPRISE AND EQUAL OPPORTUNITY POLICIES.....	11
W. INSURANCE.....	12
X. TRAVEL EXPENSES.....	14
Y. ETHICAL BUSINESS PRACTICES.....	14
Z. PURCHASES BY OTHER PUBLIC AGENCIES.....	15
AA. ERRORS AND OMISSIONS.....	15
IV. SCOPE OF SERVICES .....	15
A. DRAFT INITIAL STATE EXPENDITURE PLAN.....	15
B. DRAFT FINAL STATE EXPENDITURE PLAN.....	16
C. DRAFT FINAL STATE EXPENDITURE PLAN, REVISION, APPROVAL AND SUBMISSION.....	18
V. REQUIRED SUBMITTALS .....	18
A. TAB A - EXECUTIVE SUMMARY.....	19
B. TAB B - STRATEGY/STRATEGIES FOR PLAN DEVELOPMENT.....	19
C. TAB C - PROJECT NOMINATION PROCESS.....	19
D. TAB D - PROJECT EVALUATION PROCESS.....	20



E.	TAB E - PUBLIC INVOLVEMENT PLAN. ....	20
F.	TAB F – QUALIFICATIONS, EXPERIENCE AND REFERENCES OF PROPOSER AND TEAM. ....	20
G.	TAB G - COST PROPOSAL. ....	21
H.	REQUIRED FORMS. ....	21
VI.	SELECTION PROCESS .....	21
A.	EVALUATION TEAM MEETINGS. ....	21
B.	STEPS IN THE EVALUATION PROCESS. ....	21
C.	EVALUATION CRITERIA. ....	23
D.	ORDINAL SCORING. ....	23
VII.	CONTRACT PROVISIONS .....	24
A.	EMPLOYMENT ELIGIBILITY VERIFICATION USING THE FEDERAL E-VERIFY PROGRAM .....	24
B.	PERFORMANCE BOND. ....	24
C.	PROOF OF INSURANCE .....	24

**FORMS**

ITN RESPONSE COVER SHEET  
 EQUAL OPPORTUNITY/AFFIRMATIVE ACTION STATEMENT  
 INSURANCE CERTIFICATION FORM  
 CERTIFICATION REGARDIGN DEBARMENT, SUSPENSION, AND OTHER  
 RESPONSIBILITY MATTERS PRIMARY COVERED TRANSACTIONS  
 AFFIDAVIT CERTIFICATION IMMIGRATION LAWS  
 NON-COLLUSION AFFIDAVIT  
 DRUG-FREE WORKPLACE FORM

**ATTACHMENTS**

ATTACHMENT A            DRAFT AGREEMENT

## I. INTRODUCTION

Leon County is issuing this Invitation to Negotiate (ITN) as part of the procurement services it is providing to the Gulf Consortium (Consortium) pursuant to an interlocal agreement between them. The Consortium serves as the ultimate decision making body in the selection process for this ITN.

### A. BACKGROUND.

In response to the explosion of and the resulting oil spill from the Deepwater Horizon offshore drilling rig in the Gulf of Mexico on April 20, 2010 (Deepwater Horizon Oil Spill), the United States Congress enacted the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (title 1, subtitle F of Public Law 112-141) as part of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act. The RESTORE Act was passed by Congress on June 29, 2012 and signed into law on July 6, 2012 by the President.

The RESTORE Act establishes funding from a portion of the administrative and civil penalties under the Federal Water Pollution Control Act from the Deepwater Horizon Oil Spill for the ecological and economic restoration of the Gulf Coast region. The RESTORE Act directs funding for the development and implementation of the State Expenditure Plan in each of the five Gulf Coast States.

The Gulf Consortium is a public entity created in October 2012 by Interlocal Agreement among Florida's 23 Gulf Coast counties, from Escambia County in the western panhandle of Florida to Monroe County on the southern tip of Florida and the United States.

Florida's 23 Gulf Coast Counties formed the Consortium to meet requirements of the RESTORE Act for Florida to develop a State Expenditure Plan. The Consortium Board of Directors consists of one representative from each county government and six members appointed by the Governor. As a public entity, the Consortium must meet all government transparency requirements in Florida, including open public records and meetings, ethics and state auditing obligations.

The Gulf Consortium is working with Florida's Governor, state agencies and other restoration partners to advance common goals, reduce duplication, and maximize benefits to the Gulf Coast region. To this end, the Governor and the Consortium entered into a Memorandum of Understanding (MOU) on June 12, 2013 to further the collective objectives of maximizing efficiencies and revenue opportunities under the RESTORE Act. The Governor's appointees represent diverse interests to provide input and guidance to the Consortium on policies and criteria used to select projects, activities and programs for inclusion in the State Expenditure Plan.

The MOU provides for a coordinated review and input by the Florida Department of Environmental Protection (FDEP) and other state agencies during the development of the State Expenditure Plan (SEP). The MOU requires the Consortium to meet the following requirements at a minimum for the selection of projects, activities and programs for inclusion in the SEP:

- Consistency with the applicable laws and rules;
- Prioritization based on criteria established by the Consortium;
- Consideration of public comments;
- Approval by an affirmative vote of at least a majority of the Consortium Directors present at a duly noticed public meeting of the Consortium; and
- State agency involvement, input and review in the development the State Expenditure Plan, pursuant to the MOU.

After development of the SEP by the Consortium, the Governor is responsible for submitting it to the Gulf Coast Ecosystem Restoration Council (Council) for approval.

The RESTORE Act provides criteria for the State Expenditure Plans. Included among those criteria are requirements that the SEP take into consideration the Council's Comprehensive Plan and that the SEP be consistent with the goals and objectives of the Council's Comprehensive Plan.

B. FUNDING CONSTRAINTS.

The Consortium is a newly created governmental entity. At this point, the Consortium functions with modest resources provided directly by its 23 member counties. The current resources are not sufficient to fund the Scope of Services sought by this ITN. The Consortium anticipates that it will receive RESTORE Act funding for developing the State Expenditure Plan from the Gulf Coast Ecosystem Restoration Trust Fund (Trust Fund). Due to uncertainty associated with ongoing litigation, the ultimate amount of administrative and civil penalties that may be deposited into the Trust Fund, as well as the timing of their availability, are unknown. There are two other factors affecting the amount and availability of Trust Funds to the Consortium. The timing is dependent upon the finalization of the RESTORE Act Rule by the United States Department of the Treasury. The timing and amount may also be dependent upon the promulgation and finalization of the Council Regulation.

C. PROJECT OVERVIEW.

The Consortium has no employees but instead contracts for governmental managerial services with the Florida Association of Counties, Inc. and for general counsel services with Nabors, Giblin & Nickerson, P.A.

The Consortium wishes to hire a consultant to provide assistance for the development of the State Expenditure Plan for submission and approval to the Governor of Florida and, in turn, to the Council. This Invitation to Negotiate and the subsequent Request for Best and Final Offer is designed to solicit proposals from qualified firms for the Consortium to procure the necessary assistance for the development of the SEP.

D. TERM OF CONTRACT.

It is anticipated that the initial term of the agreement will be for two years from the date of contract execution with up to two optional one year renewal periods.

E. ITN PROCESS RESERVATIONS.

The Consortium reserves the right to negotiate concurrently or separately with competing firms, in accordance with the process set forth in Section III., below. By submitting a response to this ITN, firms acknowledge and accept that the Consortium reserves the right to finalize the negotiation process at any time in the proposed process that the Consortium determines such selection would be in the best interest of the Consortium.

By submitting a response to this ITN, the Firm acknowledges and accepts that the Consortium reserves the right to terminate the selection process or decide not to hire any firm for any reason, including, but not limited to, the unavailability of adequate funds, or the finalization of a Rule by the U. S. Department of the Treasury or Regulation by the Council that conditions funding on a competitive procurement process for the selection of consultants which is different from the ITN process used here.

F. EXHIBITS AND RESOURCES.

The following resources are listed below for informational purposes to assist firms in preparing responses. To download copies of the following resources, follow the link provided or go to the Leon County website at [www.leoncountyfl.gov/purchasing/plans&specs](http://www.leoncountyfl.gov/purchasing/plans&specs).

1. RESTORE ACT
2. Interlocal Agreement Establishing the Gulf Consortium
3. Memorandum of Understanding between the Gulf Consortium and Florida Governor Rick Scott
4. Proposed U.S. Treasury Rule
5. The Consortium's Purchasing Policy for State Expenditure Plan Consultant
6. Initial Comprehensive Plan: Restoring the Gulf Coast's Ecosystem and Economy by the Gulf Coast Ecosystem Restoration Council (August 2013)

**II. DEFINITIONS.**

- A. "Addendum" is a written document used to expand or more fully explain the terms of a bid instrument including an Invitation to Negotiate. An addendum is not a contract "Amendment."
- B. "Board" means the Board of Directors of the Consortium.
- C. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.

- D. "Contractor" means any person having a contract with the Consortium.
- E. "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.
- F. "Firm" means any corporation, partnership, limited liability company, individual, sole proprietorship, joint stock company, joint venture, business or any other private legal entity.
- G. "Intended Decision" means a written notice that states the Firm 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 Leon County website and on the Public Notice board in the Leon County Purchasing Division.
- H. "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.
- I. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
- J. "Plan Holder" or "Registered Plan Holder" means a firm, business, or individual who has either downloaded or requested a copy of the solicitation document from the Purchasing Director or the Leon County purchasing website.
- K. "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.
- L. "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.
- M. "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.

### III. PROCUREMENT INSTRUCTIONS.

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

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

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

ITN Number  
 Leon County Purchasing Division  
 1800-3 N. Blair Stone Road  
 Tallahassee, FL 32308

B. SCHEDULE OF EVENTS. Below in Table 1 is the current schedule of the events that will take place as part of this solicitation. Leon County, on behalf of the Consortium, reserves the right to make changes or alterations to the schedule as the Leon County determines is in the best interest of the public. If any changes to the Schedule of Events are made, Leon County will post the changes on the Leon County website either as a public meeting notice, or as an addendum, as applicable. **It is the responsibility of Registered Plan Holders and other interested persons and parties to review the Leon County Purchasing Division’s website to stay informed of the Schedule of Events, addenda to the ITN, and public meetings.** The website addresses follow:

**Addenda:** <http://www.leoncountyfl.gov/Purchasing/Addenda>

**Public Meetings:** <http://www.leoncountyfl.gov/Purchasing/PublicMeetingNotices>

<b>Table 1 - Schedule of Events</b>	
<b>Date and Time (all eastern time)</b>	<b>Event</b>
<b>TBD (April 2014)</b>	<b>Release of the RFP</b>
*TBD - Not later than:  Approx. 13 days after release of solicitation	<b>DEADLINE FOR PRE-PROPOSAL MEETING QUESTIONS:</b> Date and time by which Pre-Proposal Meeting questions must be received by Leon County
*TBD – Date and Time  Approx. 15 days after release.	<b>PRE-PROPOSAL MEETING:</b> Date and time the <b>MANDATORY</b> Pre-Proposal Meeting will be held in the Leon County Purchasing Division, located at 1800-3 North Blair Stone Road, Tallahassee, FL 32308. This will be a public meeting that the public is invited to attend.
*TBD - Not later than:  Approx 20 days after release	<b>QUESTIONS/INQUIRIES DEADLINE:</b> Date and time by which written questions and inquiries regarding the ITN must be received by the Leon County Purchasing Division via e-mail submittal to Shelly Kelley at <a href="mailto:kelleys@leoncountyfl.gov">kelleys@leoncountyfl.gov</a> and Don Tobin at <a href="mailto:tobind@leoncountyfl.gov">tobind@leoncountyfl.gov</a> Firms are requested to send the e-mail to both representatives.

*TBD - Not later than: Approx 30 days after release	<b>Anticipated Date Answers to Questions Submitted by Firms will be Posted</b>
*TBD - Not later than: 60 days after release of solicitation	<b>OPENING DATE:</b> Date and time by which <b>Responses</b> must be received by the Leon County Purchasing Division, located at 1800-3 North Blair Stone Road, Tallahassee, FL 32308.
1-7 days after opening (evaluation will continue for up to 20 days)	<b>Anticipated Date of Initial Evaluation Team Meeting</b>
TBD	<b>Anticipated Date of Posting of Short Listed Respondents</b>
10 – 30 days after posting of shortlist	<b>Anticipated Date of Consortium Executive Committee Meeting</b>
10 – 20 days after posting of shortlist	<b>Anticipated Date of Presentations of Short Listed Respondents to Evaluation Team</b>
20 – 30 days after posting of short list	<b>Draft Request for Best and Final Offer presented to Consortium Board of Directors</b>
20 – 30 days after posting of shortlist	<b>Anticipated Date of Release of Request for Best and Final Offer</b>
30 days from release of RBAFO	<b>Anticipated Date for Short Listed Firms to Submit Best and Final Offer</b>
20 – 30 days after posting of short list	<b>Draft Request for Best and Final Offer presented to Consortium Board of Directors</b>
1-7 days after BAFO opening (evaluation will continue for up to 20 days)	<b>Anticipated Date of Evaluation Team Meeting</b>
December 2014	<b>Anticipated Date of Consortium Board of Directors consideration of Evaluation Team recommendation</b>
TBD	<b>Anticipated Date of Consortium Decision</b>
TBD	<b>Anticipated Contract Start Date</b>

C. **PRE-PROPOSAL MEETING.** A Pre-Proposal Meeting will be held at the date, time and location identified in the Schedule of Events. Respondent’s attendance at the Pre-Proposal Meeting is **MANDATORY**. The Pre-Proposal Meeting will be a public meeting that the public is invited to attend either physically in person, or by dialing into an audio conference, at their option. Instructions for conferencing in will be provided as part of the public meeting notice, which will be posted on the website listed above for public meetings no less than 72 hours in advance of the Pre-Proposal Meeting. **All questions of Firms to be discussed at the Pre-Proposal meeting must be submitted in writing by the deadline identified in the Schedule of Events as the Deadline for Pre-Proposal Meeting Questions. Such questions shall be e-mailed to:** Shelly Kelley at [kelleys@leoncountyfl.gov](mailto:kelleys@leoncountyfl.gov) and Don Tobin at [tobind@leoncountyfl.gov](mailto:tobind@leoncountyfl.gov).

The purpose of the Pre-Proposal Meeting is to provide a forum to answer questions concerning

the ITN, instructions for submitting Responses, and other relevant issues. To the extent that any discussions or questions at the Pre-Proposal Meeting require, in Leon County's opinion, official additions, deletions, or clarifications of the ITN, Leon County will issue a written summary of questions and answers or an addendum to this ITN as the Leon County determines is appropriate. No oral representations or discussions, which take place at the Pre-Proposal Meeting, will be binding on Leon County or the Consortium. The Firms will be instructed to direct all questions after the meeting to Leon County Purchasing Division.

**During and after the Pre-Proposal Meeting, it is the responsibility of the Purchasing Division to ensure that Registered Plan Holders develop their Response with the same information. If a Registered Plan Holder receives information from Leon County relating to the ITN prior to the information cutoff date, Leon County will ensure that all Registered Plan Holders receive the same information in a timely fashion.**

D. SPECIAL ACCOMMODATION. Any person requiring a special accommodation at a Pre-Proposal Conference or ITN opening because of a disability should call the Division of Purchasing at (850) 606-1600 at least five (5) workdays prior to the Pre-Proposal Conference or ITN opening. If you are hearing or speech impaired, please contact the Purchasing Division by calling the County Administrator's Office using the Florida Relay Service which can be reached at 1(800) 955-8771 (TDD).

E. INFORMATION, COMMUNICATION, AND ADDENDA. Any questions concerning the ITN process, required submittals, evaluation criteria, proposal schedule, and selection process should be directed to Shelly W. Kelley and Don Tobin at (850) 606-1600; FAX (850) 606-1601; or e-mail at [kelleys@leoncountyfl.gov](mailto:kelleys@leoncountyfl.gov) and [tobind@leoncountyfl.gov](mailto:tobind@leoncountyfl.gov). **Firms are requested to send such requests to both representatives of the Purchasing Division.** Email inquiries are preferred.

Each Firm shall examine the ITN documents carefully. No later than thirty days prior to the date for receipt of proposals, the Firm shall make a written request to the Purchasing Director for interpretations or corrections of any ambiguity, inconsistency or error which he may discover. All interpretations or corrections will be issued as addenda. The Consortium will not be responsible for oral clarifications. No negotiations, decisions or actions shall be initiated or executed by the proposer as a result of any discussions with any County employee or Consortium representative prior to the opening of proposals. Only those communications which are in writing from the Purchasing Director may be considered as a duly authorized expression on the behalf of the County and Consortium. Also, only communications from a Firm which are in writing and signed will be recognized by the County and Consortium as duly authorized expressions on behalf of a Firm.

F. PROHIBITED COMMUNICATIONS. All forms of communication, except for written communication with the Purchasing Division requesting clarifications or questions, shall be prohibited regarding this ITN between:

1. Any person or person's representative seeking an award from such competitive solicitation.
2. (a) A County Commissioner or Commissioner's staff, or a county employee



authorized to act on behalf of the Commission, (b) a Director, Alternate, or Ex-official Member of the Gulf Consortium Board of Directors, the Consortium Manager or General Counsel or any employee of the Manager or General Counsel, or (c) a member of the Evaluation Team or Negotiation Team.

(b) For the purpose of this section, a person's representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.

(c) The prohibited communication restriction shall be in effect commencing as of the release of the ITN and terminate at the time the Consortium awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

(d) The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before the Evaluation Teams, contract negotiations during any public meetings, presentations made to the Consortium, and protest hearings. Further, the provisions of this section shall not apply to contract negotiations between the Consortium Manager and the intended awardee, any dispute resolution process following the filing of a protest between the person filing the protest and the Consortium Manager.

(e) The penalties for an intentional violation of this article shall be those specified in §125.69(1), Florida Statutes, as amended, and shall be deemed supplemental to the penalties set forth in Section 1-9 of the Code of Laws, Leon County, Florida.

G. FIRM/VENDOR REGISTRATION. Firms who obtain solicitation documents from sources other than the Leon County Purchasing Division or DemandStar.com MUST officially register with the County Purchasing Division in order to be placed on the Registered Plan Holders list for the solicitation. This list is used for communications from the County to prospective Firms. Also, Firms should be aware that solicitation documents obtained from sources other than those listed above may be drafts, incomplete, or in some other fashion different from the official solicitation document. Failure to register as a prospective Firm through the Purchasing Division or online through DemandStar.com may cause a firm's submittal to be rejected as non-responsive.

As a convenience to firms, Leon County has made available via the internet lists of all Registered Plan Holders for each invitation to bid, invitation to negotiate, or request for proposals. The information is available on-line at <http://www.leoncountyfl.gov/Purchasing/Bid.asp> by simply clicking the plan holder link to the right of the respective solicitation. A listing of the registered firms with their telephone and fax numbers is designed to assist Firms in preparation of their responses.

H. RECEIPT AND OPENING OF FIRM/VENDOR RESPONSES. Firm responses will be opened publicly at the date and time identified in the Schedule of Events as the Opening Date. A tabulation sheet of timely received Responses will be made public and will be posted on the Purchasing Division website at: <http://www.leoncountyfl.gov/Purchasing/TabulationSheets>. A firm may request, in their submittal, a copy of the tabulation sheet to be mailed in a firm provided, stamped self-

addressed envelope for their record.

Responses to the ITN received prior to the time of opening will be secured unopened. The Leon County Purchasing Agent, whose duty it is to open the responses, will decide when the specified time has arrived and no responses received thereafter will be considered. The Purchasing Agent will not be responsible for the premature opening of a response not properly addressed and identified by Response number on the outside of the envelope/package.

I. PUBLIC RECORDS. Sealed bids, proposals, responses, replies and Invitations to Negotiate received by the County pursuant to a competitive solicitation are exempt from public records disclosure until such time as the County posts an intended decision or until 30 days after opening of the documents, whichever is earlier.

J. TIMELY DELIVERY. It is the Firm's responsibility to assure that the response is delivered at the proper time and location. Responses received after the scheduled receipt time will be marked "TOO LATE." Late responses may be returned unopened to the firm.

K. PREPARATION COSTS. The County is not liable for any costs incurred by Respondents prior to the issuance of an executed contract.

L. INTERVIEWS. Firms responding to this ITN must be available for interviews by the Evaluation Team.

M. PREPARATION AND CHANGES. Response must be typed or printed in ink. All corrections made by the Firm prior to the opening must be initialed and dated by the Firm. No changes or corrections will be allowed after responses are opened.

N. RESERVATION OF RIGHTS. The County and the Consortium reserves the right to reject any and all responses, in whole or in part, when such rejection is in the best interest of the County. Further, the County and the Consortium reserves the right to withdraw this solicitation at any time prior to final award of contract.

O. PUBLIC ENTITY CRIMES STATEMENT. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. By submission of a response to this solicitation, the proposer certifies compliance with the above requirements as stated in Section 287.133, Florida Statutes.

P. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS. The prospective primary participant must certify to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency and meet all other such responsibility matters as contained on the

attached certification form.

Q. LICENSES AND REGISTRATIONS. The contractor shall be responsible for obtaining and maintaining throughout the contract period his or her city occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida.

If the contractor is operating under a fictitious name as defined in Section 865.09, Florida Statutes, proof of current registration with the Florida Secretary of State **shall be submitted** with the bid. A business formed by an attorney actively licensed to practice law in this state, by a person actively licensed by the Department of Business and Professional Regulation or the Department of Health for the purpose of practicing his or her licensed profession, or by any corporation, partnership, or other commercial entity that is actively organized or registered with the Department of State **shall submit** a copy of the current licensing from the appropriate agency and/or proof of current active status with the Division of Corporations of the State of Florida or such other state as applicable.

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

R. ADDENDA TO SPECIFICATIONS. If any addenda are issued after the initial ITN is released, the County will post the addenda on the Leon County website at <http://www.leoncountyfl.gov/purchasing/addenda>. It is the responsibility of the Firm prior to submission of any response to check the above website or contact the Leon County Purchasing Division at (850) 606-1600 to verify any addenda issued. The receipt of all addenda must be acknowledged on the response sheet.

S. UNAUTHORIZED ALIENS. The Contractor must agree that an unauthorized alien shall not be employed nor utilized in the performance of the requirements of this solicitation or any work authorized thereunder. The Consortium shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Consortium. As part of the response to this solicitation, please complete and submit the attached form "AFFIDAVIT CERTIFICATION IMMIGRATION LAWS."

T. AGREEMENT. After the solicitation award, the Consortium will, at its option, prepare a purchase order or an agreement specifying the terms and conditions resulting from the award of this solicitation. Every procurement of contractual services shall be evidenced by a written agreement. The respondent will have five calendar days after receipt to acknowledge the purchase order or execute the agreement.

The performance of the Consortium of any of its obligations under the purchase order or agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of the purchase order or agreement for the current and any future periods provided for within the solicitation specifications.

U. AWARD OF ITN AND PROTEST. The response will be awarded as soon as possible to the responsive, responsible respondent who rank highest in the evaluation process, unless otherwise stated elsewhere. The Consortium reserves the right to waive any informality in

responses and to award a proposal in whole or in part when either or both conditions are in the best interest of the Gulf Consortium.

1. Notice of the Intended Decision will be posted on the Leon County website at: <http://www.leoncountyfl.gov/purchasing/IntendedDecision> for a period of seventy-two (72) consecutive hours, which does not include weekends or County observed holidays. Any Bidder/Respondent who desires to protest the Intended Decision must file a notice of intent to protest in writing within seventy-two (72) hours after the posting of the Notice of Intended Decision. Any bid award recommendation may be protested on the grounds of irregularities in the specifications, solicitation procedure, or the evaluation of the solicitation. Such notice of intent of solicitation protest shall be made in writing to the Purchasing Director, 1800-3 Blair Stone Road, Tallahassee, Florida 32308.
2. A Protestor shall file a formal written bid protest within 10 days after the date in which the notice of intent of bid protest has been submitted. Failure to file a notice of intent of bid protest or failure to file a formal written bid protest shall constitute a waiver of all rights granted under this section. The Firm shall be responsible for inquiring as to any and all award recommendation and postings.
3. Should concerns or discrepancies arise during the solicitation process, Firms are encouraged to contact the Purchasing Division prior to the scheduled solicitation opening. Such matters will be addressed and remedied if necessary prior to a solicitation opening or award whenever practically possible. Firms are not to contact departments or divisions regarding the Firm's complaint.

V. MINORITY/WOMEN BUSINESS ENTERPRISE AND EQUAL OPPORTUNITY POLICIES.

1. Minority Business Enterprise (MBE) and Women (WBE) Business Enterprise.

Each Respondent is strongly encouraged to secure MBE and WBE participation through the purchase of those goods or services when opportunities are available.

2. Equal Opportunity/Affirmative Action Requirements.

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

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

In addition to completing the Equal Opportunity Statement, the Respondent shall include a copy of any affirmative action or equal opportunity policies of the Firm in

effect at the time of submission.

W. INSURANCE.

Respondent's attention is directed to the insurance requirements below. Respondents should confer with their respective insurance carriers or brokers to determine in advance of bid submission the availability of insurance certificates and endorsements as prescribed and provided herein. If an apparent bidder fails to strictly comply with the insurance requirements, that bidder may be disqualified from award of the contract, or otherwise found non-responsive.

Respondent shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Respondent, his agents, representatives, employees, or subcontractors. The cost of such insurance shall be included in the Respondent's pricing.

1. Minimum Limits of Insurance.

Contractor shall maintain limits no less than:

- a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Automobile Liability: One Million and 00/100 (\$1,000,000.00) Dollars combined single limit per accident for bodily injury and property damage. ***(Non-owned, Hired Car).***
- c. Workers' Compensation Employers Liability: Insurance covering all employees meeting Statutory Requirements in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. ***Waiver of Subrogation in lieu of Additional Insured is required.***
- d. Professional Liability Insurance, including errors and omissions: for all services provided under the terms of this agreement with minimum limits of One Million and 00/100 (\$1,000,000.00) Dollars per occurrence; or claims made form with "tail coverage" extending four (4) years beyond the term of the agreement. Proof of "tail coverage" must be submitted with the invoice for final payment. In lieu of "tail coverage", Contractor may submit annually to the Consortium a current Certificate of Insurance proving claims made insurance remains in force throughout the same four (4)-year period.

2. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the

Consortium. At the option of the Consortium, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Consortium, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

3. Other Insurance Provisions.

The policies are to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverages. The Consortium is to be named as Additional Insured.

1. The Consortium, its officers, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the County, its officers, officials, employees or volunteers.
2. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. Contractor hereby waives subrogation rights for loss or damage against the county.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the county, its officers, officials, employees or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Companies issuing the insurance policy, or policies, shall have no recourse against the County for payment of premiums or assessments for any deductibles with are all at the sole responsibility and risk of Contractor.

b. All Coverages.

Each insurance policy required by this clause shall be endorsed to state

that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

4. Acceptability of Insurers.

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

5. Verification of Coverage.

Contractor shall furnish the Consortium with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the County before work commences. The Consortium reserves the right to require complete, certified copies of all required insurance policies at any time.

6. Subcontractors

Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

X. TRAVEL EXPENSES.

Consultant travel which is not covered within the scope of the consultant's contract and which is billed separately to the Consortium on a cost reimbursement basis must receive prior approval from the Consortium Manager. If approved, travel expenses will be reimbursed in accordance with the Consortium Travel Policy pursuant to Section 112.061, Florida Statutes.

Y. ETHICAL BUSINESS PRACTICES.

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

2. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Consortium representative, or for any Consortium representative 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.

3. 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.

4. The Consortium reserves the right to deny award or immediately suspend any contract resulting from this proposal pending final determination of charges of unethical business practices. At its sole discretion, the Consortium may deny award or cancel the contract if it determines that unethical business practices were involved.

Z. PURCHASES BY OTHER PUBLIC AGENCIES. With the consent and agreement of the successful Firm(s), purchases may be made under this solicitation by other governmental agencies or political subdivisions within the State of Florida. Such purchases shall be governed by the same pricing, terms and conditions stated herein with no deviations allowed. This agreement in no way restricts or interferes with the right of any public agency or political subdivision to solicit any or all of the items or services independently.

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

#### **IV. SCOPE OF SERVICES**

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

##### **A. DRAFT INITIAL STATE EXPENDITURE PLAN.**

The Consultant will develop a Draft Initial State Expenditure Plan (SEP) that meets the requirements of the RESTORE Act, the U.S. Department of Treasury's Rule concerning the investment and use of amounts deposited in the Gulf Coast Restoration Trust Fund (31 CFR Part 34) and the Gulf Coast Ecosystem Restoration Council's Regulation, which the Consortium can submit to the Governor and, in turn, to the Council for the purpose of securing federal funds from the RESTORE Act Trust Fund for the further development and implementation of a Draft Final State Expenditure Plan. The Draft Initial SEP will not be focused on specific projects, programs and activities. It will include the following components, at a minimum:

1. A strategy for developing, refining and articulating the goals and objectives of



- the SEP, including both short and long-term outcomes.
2. A strategy for the logical and appropriate grouping of projects, programs and activities for the Consortium's consideration for inclusion in the Draft Final SEP.
  3. A process for the development of evaluation criteria by which submitted projects, programs and activities will be evaluated and ranked.
  4. A detailed timeline for the activities required for the development of the Draft Final State Expenditure Plan.
  5. An estimate of all resources necessary for the development of the Draft Final SEP including, but not limited to:
    - a. All costs to the Consortium
    - b. Amount and type of staffing to be provided by the Firm

Deliverable. The Consultant shall deliver a Draft Initial State Expenditure Plan to the Consortium within 90 days after the execution of an agreement for services with the Consortium.

B. DRAFT FINAL STATE EXPENDITURE PLAN.

After the Draft Initial State Expenditure Plan has been submitted to the Governor and, in turn, to the Council and approved by the Council, the Consultant shall develop a Draft Final State Expenditure Plan that considers and includes at a minimum:

1. **Existing Plans.** An inventory, compilation, and summary of Florida's Gulf Coast existing community, stakeholder and government plans and programs addressing projects eligible for RESTORE Act funds, including the plans being developed by The Nature Conservancy and the existing National Estuary Plans.
2. **Information Gaps.** The identification and list of any data gaps and issues requiring additional technical analysis including timeframes to complete that analysis.
3. **Law.** A list and compilation of federal and state law regarding planning and project implementation requirements and a strategy for compliance including, but not limited to:
  - a. Florida's Public Records and Open Meetings Laws
  - b. National Environmental Policy Act
  - c. Clean Water Act
  - d. Council Comprehensive Plan and Regulation
  - e. United States Department of Treasury Rule regarding the RESTORE Act
  - f. Chapter 373, Florida Statutes

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

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

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

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

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

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

V. **REQUIRED SUBMITTALS**

**One ORIGINAL, five (5) copies and one electronic copy** of the Response must be furnished on or before the deadline. Responses will be retained as property of the County. **The ORIGINAL of**

**the reply must be clearly marked “Original” on its face and must contain an original, non-electronic signature of an authorized representative of the responding vendor (firm or individual),** all other copies may be photocopies and should be printed double-sided. The contents of the response of the successful Firm will become part of the contractual obligations.

Each Applicant shall provide the following information using the same numbering/lettering scheme as the format below. The overall page limitation is 100 pages. The Executive Summary requirements in Subsection V(A) shall not exceed 10 pages. The remainder of the submittals required in Section V, Subsections (B) through (G), shall not exceed 90 pages.

A. TAB A - EXECUTIVE SUMMARY: NO MORE THAN 10 PAGES.

The Executive Summary shall consist of a narrative synopsis of the firm’s method of delivering the required services in compliance with the requirements and scope of services outlined in this ITN. The synopsis shall contain sufficient detail addressing all elements of the required service delivery and shall be prepared in such a manner that will clearly indicate the Firm’s understanding of the Scope of Services, and intent to comply with, the requirements set forth in this ITN. It is contemplated that the Executive Summary will be provided to the Consortium Directors, Alternates and Ex-officio Members at the conclusion of the initial ITN in conjunction with the list and ranking of responsive firms. Tab A shall also contain the following information:

1. Firm name or Joint Venture, business address and office location, telephone number and website address.
2. If a joint venture, list participating firms and outline specific areas of responsibility (including, for example, administrative, technical, and financial) of each firm.
3. Address of the office that is to perform the work.
4. Federal Identification Tax Number or Social Security Number.

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

Tab B must describe a method for developing a State Expenditure Plan using the requirements of the Gulf Coast Ecosystem Restoration Council and the RESTORE Act. Included in this part should be a description of the components of an initial grant request to the Gulf Coast Ecosystem Restoration Council for SEP Development.

C. TAB C - PROJECT NOMINATION PROCESS.

Tab C should describe how the Firm proposes to address the project nomination process, including systems for project applications, review, and tracking that can be updated with current funding decisions by any funding source.

D. TAB D - PROJECT EVALUATION PROCESS.

Tab D should describe how the Firm proposes to address the project evaluation process, including metrics and evaluation criteria it proposes to be used in evaluation and ranking.

E. TAB E - PUBLIC INVOLVEMENT PLAN.

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

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

Tab F should include a description of the Firm's qualifications and experience in developing complex, long-range plans like the State Expenditure Plan.

1. List the projects which are similar in nature to the services described in the Scope of Services that best illustrate the experience of the firm and current staff to be assigned to this project. List no more than 10 projects and do not include projects that were completed more than ten years ago.
  - a. Name, location, and brief description of the project
  - b. The nature of the firm's responsibility on this project
  - c. Project user agency's representative name, address, phone number and/or email
  - d. Date project was completed or is anticipated to be completed
  - e. Fee received by the Firm for this project
  - f. Provide a web link to one or more examples of plans completed under these projects.
2. Give brief resume/synopsis of the key persons to be assigned to the project including but, not limited to:
  - a. Name & title
  - b. How many years with this firm and with other firms
  - c. Experience
    - 1) Types of projects
    - 2) Size of projects (dollar value and scope of project)

3) What was the specific project involvement?

d. Education

e. Other experience and qualifications that are relevant to this project

3. List subcontractors/team members anticipated to be used on this project. When listing subcontractors/team members, give the respective specialty of the firm.

4. List three references for the firm using the specified form. Include a contact name, title, physical address, web site, and phone number for each reference.

G. TAB G - COST PROPOSAL.

Describe the anticipated cost to the Consortium for performing the Scope of Services, including the individual cost components and pricing methodology.

H. REQUIRED FORMS. Complete and submit the following included forms: Proposal Response Cover Sheet; Insurance Certification Form; Equal Opportunity/Affirmative Action Statement; Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Primary Covered Transactions; Affidavit Certification Immigration Laws.

**VI. SELECTION PROCESS**

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

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

Notice of all meetings shall be posted on the Leon County Purchasing Division website at: [www.leoncountyfl.gov/Purchasing/notices/index.asp](http://www.leoncountyfl.gov/Purchasing/notices/index.asp) and in the Leon County Purchasing Division Offices no less than 72 hours (excluding weekends and holidays).

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

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

- Step 1 Interested firms must submit their response to this solicitation to Leon County Purchasing Division, located at 1800-3 North Blair Stone Road, Tallahassee, FL 32308 at the time and date specified in the Calendar of Events.
- Step 2 The Evaluation Team will evaluate the replies received timely with the intention of selecting the best-qualified firms to proceed to Step 3 and participate in the Competitive Negotiations. The "short-list" selection will be posted as stated herein.
- Step 3 Each short listed Firm will each be asked to provide an oral presentation of the Firm's capabilities and participate in a question/answer session on the requested services. The meeting will be used to share information, exchange innovative ideas, clarify concepts, and improve understanding about the Consortium's needs, expectations, and the capabilities of the Firm. The Evaluation Team will participate in each presentation.
- Step 4 Following the presentations by all the short listed Firms, the Evaluation Team will revise the Scope of Services, as necessary, to eliminate unnecessary requirements and incorporate innovative ideas and approaches that the Evaluation Team believes would benefit the Consortium.
- Step 5 The Consortium Board of Directors shall consider a revised Scope of Services to be included in a Request for Best and Final Offer (RBAFO).
- Step 6 All participating short listed firms will be sent the RBAFO which includes, at a minimum, a revised Scope of Services and Pricing Options. The firm's Best and Final Offer (BAFO) shall contain the best pricing option the Firm is prepared to offer; however, after submission of Best and Final Offers, the Consortium reserves the right to clarify any element of required service delivery or further negotiate pricing with a single or all qualified Firms prior to final award.
- Step 7 The Evaluation Team will complete a written summary evaluation of each Firm's approach, capabilities, and price proposal.
- Step 8 The Evaluation Team will review the summary evaluations and rank the firms, in order of preference, based upon their approach and capabilities may repeat steps 3 through 6 as necessary.
- Step 9 The Consortium Board of Directors shall consider the highest firms on the ranked list.
- Step 10 The ranking will be posed as stated herein, stating the Consortium's intent to negotiate and award a contract to the first-ranked firm until an acceptable contract price is established or it is determined an acceptable agreement cannot be achieved with such firm.

If the Manager is unable to negotiate a satisfactory contract with the first-ranked firm considered to be fair, competitive and reasonable, negotiations with that firm shall be

formally terminated. The Manager shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm the Manager shall terminate negotiations. The Manager shall then undertake negotiations with the third most qualified firm. Should the Consortium be unable to negotiate a satisfactory contract with any of the selected firms, the Manager or Consortium Board of Directors may select additional firms to continue negotiations.

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

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

<b>Evaluation Criteria</b>	<b>Maximum Points*</b>
a. Strategy for Plan Development	30
b. Project Nomination Process	20
c. Project Evaluation Process	10
d. Public Involvement Plan	10
e. Qualifications, Experience and References of Firm	25
f. Cost Proposal	5
<b>g. Maximum Points Allowed</b>	<b>100</b>
<b>*Actual rating for each criteria may range from zero (lowest rating) to the maximum rating points for that criteria</b>	

- D. ORDINAL SCORING.

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

For example:

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

\*In the event that multiple firms have the same raw point score point, the rank positions



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

## **VII. CONTRACT PROVISIONS**

Attachment A provides a Draft Agreement in which definitions, Contractor responsibilities, payment terms, and other terms and conditions are more fully detailed. Proposers are responsible for using due diligence to become fully acquainted with the requirements of the Draft Agreement.

NOTE: Prior to contract execution, the successful Contractor shall provide:

- A. EMPLOYMENT ELIGIBILITY VERIFICATION USING THE FEDERAL E-VERIFY PROGRAM
- B. PERFORMANCE BOND
- C. PROOF OF INSURANCE

**ITN RESPONSE COVER SHEET**

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

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

Shelly W. Kelley, Leon County Purchasing Director

Christopher L. Holley, Interim Manager  
Gulf Consortium

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

\_\_\_\_\_  
(Firm Name)

BY \_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Printed or Typed Name)

ADDRESS \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

TELEPHONE \_\_\_\_\_

FAX \_\_\_\_\_

**ADDENDA ACKNOWLEDGMENTS: (IF APPLICABLE)**

Addendum #1 dated \_\_\_\_\_ Initials \_\_\_\_\_

Addendum #2 dated \_\_\_\_\_ Initials \_\_\_\_\_

Addendum #3 dated \_\_\_\_\_ Initials \_\_\_\_\_

**EQUAL OPPORTUNITY/AFFIRMATIVE ACTION STATEMENT**

1. The contractors and all subcontractors hereby agree to a commitment to the principles and practices of equal opportunity in employment and to comply with the letter and spirit of federal, state, and local laws and regulations prohibiting discrimination based on race, color, religion, national region, sex, age, handicap, marital status, and political affiliation or belief.
  
2. The contractor agrees to comply with Executive Order 11246, as amended, and to comply with specific affirmative action obligations contained therein.

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

**INSURANCE CERTIFICATION FORM**

To indicate that Bidder/Respondent understands and is able to comply with the required insurance, as stated in the bid/RFP document, Bidder/Respondent shall submit this insurances sign-off form, signed by the company Risk Manager or authorized manager with risk authority.

- A. Is the insurer to be used for all required insurance (except Workers' Compensation) listed by Best with a rating of no less than A:VII?

YES     NO

Commercial General    Indicate Best Rating:  
Liability:                    Indicate Best Financial Classification:

---

Business Auto:            Indicate Best Rating:  
                                  Indicate Best Financial Classification:

---

Professional Liability:    Indicate Best Rating:  
                                  Indicate Best Financial Classification:

---

1. Is the insurer to be used for Workers' Compensation insurance listed by Best with a rating of no less than A:VII?

YES     NO

Indicate Best Rating:  
Indicate Best Financial Classification:

If answer is NO, provide name and address of insurer:

2. Is the Respondent able to obtain insurance in the following limits (next page) as required for the services agreement?

YES     NO

Insurance will be placed with Florida admitted insurers unless otherwise accepted by Leon County. Insurers will have A.M. Best ratings of no less than A:VII unless otherwise accepted by Leon County.

Required Coverage and Limits

The required types and limits of coverage for this bid/request for proposals are contained within the solicitation package. Be sure to carefully review and ascertain that bidder/proposer either has coverage or will place coverage at these or higher levels.

Required Policy Endorsements and Documentation

Certificate of Insurance will be provided evidencing placement of each insurance policy responding to requirements of the contract.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Gulf Consortium. At the option of the Gulf Consortium, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Gulf Consortium, its officers, officials, contractors, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Endorsements to insurance policies will be provided as follows:

Additional insured (Gulf Consortium, its Officers, employees and volunteers) -  
General Liability & Automobile Liability

Primary and not contributing coverage-  
General Liability & Automobile Liability

Waiver of Subrogation (Gulf Consortium, its officers, representatives, employees and volunteers) -  
General Liability, Automobile Liability, Workers' Compensation and Employer's Liability

Thirty days advance written notice of cancellation to the Gulf Consortium - General Liability,  
Automobile Liability, Worker's Compensation & Employer's Liability.

Professional Liability Policy Declaration sheet as well as claims procedures for each applicable policy to be provided

Please mark the appropriate box:

Coverage is in place  Coverage will be placed, without exception

The undersigned declares under penalty of perjury that all of the above insurer information is true and correct.

Name \_\_\_\_\_ Signature \_\_\_\_\_  
                        Typed or Printed

Date \_\_\_\_\_

Authority)

Title \_\_\_\_\_

(Company Risk Manager or Manager with Risk

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
AND OTHER RESPONSIBILITY MATTERS  
PRIMARY COVERED TRANSACTIONS**

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b) Have not within a three-year period preceding this been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of these offenses enumerated in paragraph (1)(b) of this certification; and
  - d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. No subcontract will be issued for this project to any party which is debarred or suspended from eligibility to receive federally funded contracts.

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Signature

---

Title

---

Contractor/Firm

**AFFIDAVIT CERTIFICATION**  
**IMMIGRATION LAWS**

The Gulf Consortium will not intentionally award Gulf Consortium contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324 A(e) {Section 274a(e) of the Immigration and Nationality Act (“INA”).

The Gulf Consortium may consider the employment by any Contractor of Unauthorized Aliens a violation of Section 274A(e) of the INA. **Such violation by the Recipient of the employment provision contained in Section 274A(e) of the INA shall be ground for unilateral cancellation of the contract by the Gulf Consortium.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Personally known \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

OR Produced identification \_\_\_\_\_

Notary Public - State of \_\_\_\_\_

\_\_\_\_\_  
(Type of identification)

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed, typed, or stamped commissioned name of notary

The signee of this Affidavit guarantees, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made.

***THE GULF CONSORTIUM RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION,  
AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME.***



**NON-COLLUSION AFFIDAVIT**

I, \_\_\_\_\_ of the city of \_\_\_\_\_  
according to law on my oath, and under penalty of perjury, depose and say that:

1. I am \_\_\_\_\_  
of the firm of \_\_\_\_\_  
in response to the Request for Proposals for:

The Development of a State Expenditure Plan for the Spill Impact Component of the RESTORE Act, and that I executed the said proposal with full authority to do so.

2. This response has been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to qualifications or responses of any other responder or with any competitor; and, no attempt has been made nor will be made by the responder to induce any other person for Firm to submit, or not to submit, a response for the purpose of restricting competition;

3. The statements contained in this affidavit are true and correct, and made with full knowledge that the Gulf Consortium relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

\_\_\_\_\_  
(Signature of Responder)

\_\_\_\_\_  
(Date)

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority, \_\_\_\_\_ who,  
after first being sworn by me, (name of individual signing) affixed his/her signature in the space  
provided above on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

**DRUG-FREE WORKPLACE FORM**

The undersigned firm/vendor in accordance with Florida Statute 287.087 hereby certifies that:

---

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under response/bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under response/bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 (Florida Statutes) or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, or any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

---

Responder's Signature

---

Date

**ATTACHMENT A  
DRAFT AGREEMENT**

THIS AGREEMENT, by and between THE GULF CONSORTIUM, which is established pursuant to the Interlocal Agreement Relating to Establishment of the Gulf Consortium, hereinafter referred to as the "Consortium" and XXXXXXXXXX, hereinafter referred to as the "Contractor."

WHEREAS, the Consortium has determined that it would be in the best interest of the citizens of Florida, that the Consortium be able to utilize the services of private persons when such services cannot be reasonably provided by the Consortium; and

WHEREAS, the Consortium has determined that it would be better to contract for these services than to hire the necessary personnel to satisfy the needs of the Consortium: and

WHEREAS, in order to secure the lowest cost and the highest quality for these services, the Consortium has sought and received competitive bids from contractor for such services.

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The Contractor hereby agrees to provide to the Consortium the following services related to the development of a state expenditure plan for the Consortium in accordance with: 1) Invitation to Negotiate for the development of a state expenditure plan for implementation of the oil spill impact funding program of the 2012 RESTORE Act for the Gulf Consortium, Bid# BC-00-00-14-00 which is attached hereto and incorporated herein as Exhibit A, to the extent that it is not inconsistent with this Agreement; and 2) the Contractor's bid submission, which is attached hereto and incorporated herein as Exhibit B, to the extent that it is not inconsistent with this Agreement or with Exhibit A.

2. WORK

Any work to be performed shall be upon the written request of the Consortium Manager or his representative, which request shall set forth the commencing date of such work and the time within which such work shall be completed.

The performance of the Gulf Consortium of any of its obligations under this Agreement shall be subject to and contingent upon the availability of funds lawfully expendable for the purposes of this Agreement for the current and any future periods provided for within the bid specifications.

3. TIME:

The Agreement shall be for a period of two years, commencing on \_\_\_\_\_, 20\_\_ , and shall continue until \_\_\_\_\_, 20\_\_ . After the initial two year period, at the sole option of the Consortium, this Agreement may be extended for no more than two additional one year periods. Such one year extensions will be automatic unless the Consortium provides written notice of non-renewal to the Contractor no less than thirty (30) days prior to the expiration date of the then current term.

4. CONTRACT SUM

The Contractor agrees that for the performance of the Services as outlined in Section 1 above, it shall be remunerated by the Consortium according to the unit prices contained in the Contractor's bid proposal, Exhibit B, which is attached hereto.

OR

for a total sum of \$ \_\_\_\_\_ on completion of the work and acceptance as satisfactory

5. PAYMENTS

The Consortium shall make such payments within forty-five (45) days of submission and approval of invoice for services.

6. PROMPT PAYMENT INFORMATION REQUIREMENTS

A. The Consortium Project Manager is:

Name:  
Street Address:  
City, State, Zip Code:  
Telephone:  
E-mail:

I recommend leaving the contact information blank until we route the actual contract.

B. The Contractor's Project Manager is:

Name:  
Street Address:  
City, State, Zip Code:  
Telephone:  
E-mail:

C. Notices to the Contractor are to be submitted to:

Name:  
Street Address:  
City, State, Zip Code:  
Telephone:  
E-mail:

D. Invoices are to be submitted to:

Name:  
Street Address:  
City, State, Zip Code:  
Telephone:  
E-mail:

E. Proper form for an invoice is:

A numbered invoice document with date of invoice; reference of the Consortium contract number; itemized listing of all goods and services being billed with unit prices and extended pricing; firm's name, address, billing contact person information, and Federal tax identification number. The invoice must be properly addressed to the contact identified above and delivered to that address.

F. Payment Dispute Resolution: Section 15 of the Gulf Consortium Purchasing Policy for State Expenditure Plan Consultant details the policy and procedures for payment disputes under the contract.

7. STATUS

The contractor at all times relevant to this Agreement shall be an independent contractor and in no event shall the

Contractor nor any employees or sub-contractors under it be considered to be employees of the Gulf Consortium.

8. INSURANCE

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. (Non-owned, Hired Car).
3. Workers' Compensation and Employers Liability: Insurance covering all employees meeting Statutory Limits in compliance with the applicable state and federal laws and Employer's Liability with a limit of \$500,000 per accident, \$500,000 disease policy limit, \$500,000 disease each employee. Waiver of Subrogation in lieu of Additional Insured is required.

B. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Consortium. At the option of the Consortium, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Consortium, its officers, officials, employees and volunteers; or the Consortium shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages (the Consortium is to be named as Additional Insured).
  - a. The Consortium, its officers, officials, employees and volunteers are to be covered as insureds as respects; liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protections afforded the Consortium, its officers, officials, employees or volunteers.
  - b. The Contractor's insurance coverage shall be primary insurance as respects the Consortium, its officers, officials, employees and volunteers. Any insurance of self-insurance maintained by the Consortium, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Consortium, its officers, officials, employees or volunteers.
  - d. The Contractor's insurance shall apply separately to each insured against whom claims is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Consortium.

- D. Acceptability of Insurers. Insurance is to be placed with insurers with a Best's rating of no less than A:VII.
- E. Verification of Coverage. Contractor shall furnish the Consortium with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the Consortium before work commences. The Consortium reserves the right to require complete, certified copies of all required insurance policies at any time.
- F. Subcontractors. Contractors shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

9. PERMITS

The Contractor shall pay for all necessary permits as required by law.

10. LICENSES

The Contractor shall be responsible for obtaining and maintaining his city or county occupational license and any licenses required pursuant to the laws of Leon County, the City of Tallahassee, or the State of Florida. Should the Contractor, by reason of revocation, failure to renew, or any other reason, fail to maintain his license to operate, the contractor shall be in default as of the date such license is lost.

11. ASSIGNMENTS

This Agreement shall not be assigned or sublet as a whole or in part without the written consent of the Consortium nor shall the contractor assign any monies due or to become due to him hereunder without the previous written consent of the Consortium.

12. PERFORMANCE BOND

A Performance Bond in the amount of 100% of the estimated project cost shall be supplied by the Contractor at the time of Agreement execution.

Performance Bonds shall provide that, in the event of non-performance on the part of the Contractor the bond can be presented for honor and acceptance at an authorized representative or institution located in Tallahassee, Florida. The Performance Bond shall be in the following form:

PUBLIC CONSTRUCTION BOND  
Bond No.(enter bond number)

BY THIS BOND, We \_\_\_\_\_, as Principal and \_\_\_\_\_ a corporation, as Surety, are bound to \_\_\_\_\_, herein called Owner, in the sum of \$ \_\_\_\_\_, for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the contract dated \_\_\_\_\_, between Principal and Owner for construction of \_\_\_\_\_, the contract being made a party of this bond by reference, at the time and in the manner prescribed in the contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the contract; and
3. Pays Owner all losses, damages, expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a default by Principal under the contract; and
4. Performs the guarantee of all work and materials furnished under the contract for the time specified in the contract, then this bond is void; otherwise it remains in full force.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

DATED on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Name of Principal)

By:

(As Attorney-In-Fact)

(Name of Surety)

Payment bonds executed as a result of the requirements herein by a surety shall make reference to Section 255.05, Florida Statutes, by number and shall contain reference to the notice and time limitation provisions in Section 255.05, Florida Statutes.

13. INDEMNIFICATION

The Contractor agrees to indemnify, defend and hold harmless the Consortium and Leon County, their officials, officers, representatives, employees and agents, from and against any and all claims, damages, liabilities, losses, costs, or suits of any nature whatsoever arising out of, because of, or due to any acts or omissions of the Contractor, its delegates, employees and agents, arising out of or under this Agreement, including reasonable attorney's fees. The County may, at its sole option, defend itself or require the Contractor to provide the defense. The Contractor acknowledges that ten dollars (\$10.00) of the amount paid to the Contractor is sufficient consideration for the Contractor's indemnification of the County and the Consortium.

14. AUDITS, RECORDS, AND RECORDS RETENTION

The Contractor agrees:

- a. To establish and maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices, which sufficiently and properly reflect all revenues and expenditures of funds provided by the Consortium under this Agreement.
- b. To the extent the Contractor is performing services on behalf of the Consortium, the Contractor must:

- (i) Keep and maintain public records that ordinarily and necessarily would be required by the Consortium in order to perform the service;
  - (ii) Provide the public with access to public records on the same terms and conditions that the Consortium would provide the records and at a cost that not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - (iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law;
  - (iv) Meet all requirements for retaining public records and transfer, at no cost, to the Consortium all public records in possession of the Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Consortium in a format that is compatible with the Consortium's information technology systems.
- c. To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of five (5) years after termination of the Agreement, or if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement.
  - d. Upon completion or termination of the Agreement and at the request of the Consortium, the Contractor will cooperate with the Consortium to facilitate the duplication and transfer of any said records or documents during the required retention period as specified in this Section.
  - e. To assure that these records shall be subject at all reasonable times to inspection, review, or audit by Federal, state, or other personnel duly authorized by the Consortium.
  - f. Persons duly authorized by the Consortium and Federal auditors, pursuant to 45 CFR, Part 92.36(l)(10), shall have full access to and the right to examine any of provider's Agreement and related records and documents, regardless of the form in which kept, at all reasonable times for as long as records are retained.
  - g. To include these aforementioned audit and record keeping requirements in all approved subcontracts and assignments.

15. MONITORING

To permit persons duly authorized by the Consortium to inspect any records, papers, documents, facilities, goods, and services of the provider which are relevant to this Agreement, and interview any clients and employees of the provider to assure the Consortium of satisfactory performance of the terms and conditions of this Agreement.

Following such evaluation, the Consortium will deliver to the provider a written report of its findings and will include written recommendations with regard to the provider's performance of the terms and conditions of this Agreement. The provider will correct all noted deficiencies identified by the Consortium within the specified period of time set forth in the recommendations. The provider's failure to correct noted deficiencies may, at the sole and exclusive discretion of the Consortium, result in any one or any combination of the following: (1) the provider being deemed in breach or default of this Agreement; (2) the withholding of payments to the provider by the Consortium; and (3) the termination of this Agreement for cause.

16. TERMINATION

The Gulf Consortium may terminate this Agreement without cause, by giving the Contractor thirty (30) days written notice of termination. Either party may terminate this Agreement for cause by giving the other party hereto thirty (30) days written notice of termination. The Consortium shall not be required to give Contractor such thirty (30) day



written notice if, in the opinion of the Consortium, the Contractor is unable to perform its obligations hereunder, or if in the Consortium's opinion, the services being provided are not satisfactory. In such case, the Consortium may immediately terminate the Agreement by mailing a notice of termination to the Contractor.

17. PUBLIC ENTITY CRIMES STATEMENT

In accordance with Section 287.133, Florida Statutes, Contractor hereby certifies that to the best of his knowledge and belief neither Contractor nor his affiliates has been convicted of a public entity crime. Contractor and his affiliates shall provide the Consortium with a completed public entity crime statement form no later than January 15 of each year this Agreement is in effect. Violation of this section by the Contractor shall be grounds for cancellation of this Agreement by the Gulf Consortium.

18. UNAUTHORIZED ALIEN(S)

The Contractor agrees that unauthorized aliens shall not be employed nor utilized in the performance of the requirements of this solicitation. The Consortium shall consider the employment or utilization of unauthorized aliens a violation of Section 274A(e) of the Immigration and Naturalization Act (8 U.S.C. 1324a). Such violation shall be cause for unilateral termination of this Agreement by the Consortium.

19. EMPLOYMENT ELIGIBILITY VERIFICATION

- a. Contractor agrees that it will 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 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).
- b. 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.
- c. 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 Agreement by Contractor to perform employment duties within Florida; and (b) all persons (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement.
  - 1) Contractor must use E-Verify to initiate verification of employment eligibility for all persons employed during the term of the Agreement by Contractor to perform employment duties within Florida within 3 business days after the date of hire.
  - 2) Contractor must initiate verification of each person (including subcontractors) assigned by Contractor to perform work pursuant to the Agreement 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.
- d. 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 above, and to make such records available to the Consortium or other authorized state entity consistent with the terms of the Memorandum of Understanding.

- e. Compliance with the terms of this Employment Eligibility Verification provision is made an express condition of this contract and the Consortium may treat a failure to comply as a material breach of the contract.

20. NON-WAIVER

Failure by the Consortium to enforce or insist upon compliance with any of the terms or conditions of this Agreement or failure to give notice or declare this Agreement terminated shall not constitute a general waiver or relinquishment of the same, or of any other terms, conditions or acts; but the same shall be and remain at all times in full force and effect.

21. DELAY

No claim for damages or any claim other than for an extension of time shall be made or asserted against the Consortium by reason of any delays. The Contractor shall not be entitled to an increase in the contract sum or payment or compensation of any kind from the Consortium for direct, indirect, consequential, impact or other costs, expenses or damages, including but limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference or hindrance from any cause whatsoever, whether such delay, disruption, interference or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery of damages by the Contractor for hindrances or delays due solely to fraud, bad faith, or active interference on the part of the Consortium or its agents. Otherwise, the Contractor shall be entitled only to extensions of the contract time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

22. REVISIONS

In any case where, in fulfilling the requirements of this Agreement or of any guarantee, embraced in or required thereby it is necessary for the Contractor to deviate from the requirements of the bid, Contractor shall obtain the prior written consent of the Consortium.

23. VENUE

Venue for all actions arising under this Agreement shall lie in Leon County, Florida.

24. CONSTRUCTION

The validity, construction, and effect of this Agreement shall be governed by the laws of the State of Florida.

25. CONFLICTING TERMS AND CONDITIONS

In the instance that any other agreement exists concerning the matters herein, then the terms and conditions in this Agreement shall prevail over all other terms and conditions.

ATTACHMENTS

- Exhibit A -
- Exhibit B -
- Exhibit C -

**The remainder of this page intentionally left blank.**

WHERETO, the parties have set their hands and seals effective the date whereon the last party executes this Agreement.

**GULF CONSORTIUM**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**SECRETARY/TREASURER:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:  
Gulf Consortium Attorney

BY: \_\_\_\_\_  
Sarah M. Bleakley

**<Insert Firm Name>**

By: \_\_\_\_\_  
President or designee

Title: \_\_\_\_\_

Date: \_\_\_\_\_



# **PURCHASING POLICY FOR STATE EXPENDITURE PLAN CONSULTANT**

**Resolution 2014-01**

As adopted on \_\_\_\_\_, 2014

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

**TABLE OF CONTENTS**

SECTION 1.	PURPOSE.....	4
SECTION 2.	APPLICATION OF POLICY.....	5
SECTION 3.	DEFINITIONS AND CONSTRUCTION.....	5
SECTION 4.	AUTHORITY OF CONSORTIUM MANAGER AND LEON COUNTY PURCHASING DIRECTOR.....	8
SECTION 5.	BIDS.....	9
SECTION 5.01.	INVITATION TO NEGOTIATE AND REQUEST FOR BEST AND FINAL OFFER.....	9
SECTION 5.02.	COOPERATIVE PURCHASING.....	13
SECTION 5.03.	PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.....	14
SECTION 5.04.	CONTRACT CLAIMS.....	20
SECTION 5.05.	REMEDIES FOR SOLICITATIONS OR AWARDS IN VIOLATION OF LAW.....	21
SECTION 5.06.	EMPLOYMENT ELIGIBILITY AND VERIFICATION.....	22
SECTION 6.	CONTRACT ADMINISTRATION.....	23
SECTION 6.01.	CONTRACT PROVISIONS.....	23
SECTION 6.02.	PRICE ADJUSTMENTS.....	24
SECTION 6.03.	ASSIGNMENTS OF CONTRACTS.....	25
SECTION 6.04.	RIGHT TO INSPECT PLANT.....	25
SECTION 7.	RIGHTS OF THE BOARD OF DIRECTORS OF THE GULF CONSORTIUM.....	25
SECTION 8.	GULF CONSORTIUM PROCUREMENT RECORDS.....	25
SECTION 9.	SPECIFICATIONS.....	26
SECTION 9.01.	MAXIMUM PRACTICABLE COMPETITION.....	26
SECTION 10.	ETHICS IN PUBLIC CONTRACTING.....	26
SECTION 10.01.	CRIMINAL PENALTIES.....	26
SECTION 10.02.	EMPLOYEE CONFLICT OF INTEREST.....	26
SECTION 10.03.	CONTEMPORANEOUS EMPLOYMENT PROHIBITED.....	26
SECTION 10.04.	USE OF CONFIDENTIAL INFORMATION.....	26
SECTION 10.05.	WAIVERS FROM CONTEMPORANEOUS EMPLOYMENT PROHIBITION AND OTHER CONFLICTS OF INTEREST.....	26
SECTION 10.06.	GRATUITIES AND KICKBACKS.....	27
SECTION 10.07.	SANCTIONS.....	27
SECTION 10.08.	RECOVERY OF VALUE TRANSFERRED OR RECEIVED IN BREACH OF ETHICAL STANDARDS.....	28
SECTION 11.	.....	28
SECTION 11.01.	FEDERAL POLICY NOTICE PATENTS.....	28
SECTION 11.02.	NOTICE OF FEDERAL PUBLIC POLICY REQUIREMENTS.....	28
SECTION 12.	INSURANCE REQUIREMENTS.....	29

SECTION 13.	BONDS AND DEPOSITS. ....	29
SECTION 13.01.	TYPES OF BONDS AND DEPOSITS.....	29
SECTION 13.02.	AMOUNT OF BOND OR DEPOSIT.....	30
SECTION 13.03.	PROCESSING OF BONDS AND DEPOSITS.....	31
SECTION 14.	PAYMENT TO VENDORS.....	31
SECTION 15.	PAYMENT DISPUTE RESOLUTION.....	32
SECTION 16.	AUTHORIZATION TO DEBAR OR SUSPEND VENDOR. ....	34
SECTION 16.01.	APPEAL OF DECISION TO DEBAR OR SUSPEND.....	35
SECTION 17.	SEVERABILITY. ....	35
SECTION 18.	EFFECTIVE DATE. ....	35

**GULF CONSORTIUM RESOLUTION NO. 2014-01**

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

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

**SECTION 1. PURPOSE.**

This policy is adopted to promote the following purposes:

- A. To establish the process and procedure for procuring the services 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. "Consortium" means the Gulf Consortium created by the Interlocal Agreement.
  4. "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.

5. "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.
6. "Contractor" means any person having a contract with the Consortium.
7. "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.
8. "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.
9. "Cooperative Purchasing" is procurement conducted by, or on behalf of, more than one public procurement unit.
10. "Data" means recorded information, regardless of form or characteristic.
11. "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.
12. "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.
13. "Firm" means any corporation, partnership, limited liability company, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
14. "General Counsel" means the general counsel or interim general counsel, or her designee of the Gulf Consortium.

15. "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.
16. "Intended Decision" means a written notice that states the Firm 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.
17. "Interlocal Agreement" means the Interlocal Agreement Relating to Establishment of the Gulf Consortium dated as of September 19, 2012.
18. "Invitation to Negotiate" or "ITN" means a written solicitation that calls for responses to select one or more Firms with which to commence negotiations for the procurement of contractual services.
19. "Manager" and "Consortium Manager" mean the Manager or Interim Manager of the Consortium, or his designee.
20. "Person" means any Firm, individual, committee, club, other organization, or group of individuals.
21. "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.
22. "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.
23. "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.
24. "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.

25. "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.
26. "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.
27. "Responsive Bidder" means a person who has submitted a bid, which conforms in all material respects to the Invitation to Negotiate.
28. "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.
29. "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."
30. "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.
31. "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.
32. "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 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 and at the direction of the Board, 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 Firms 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 a public meeting 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, the Request for Best and Final Offer, 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 established in the Invitation to Negotiate.
    - b. Shortlisting. The best-qualified respondents shall be determined based upon the Evaluation Team's ability to differentiate qualifications applicable to the scope and nature of the services to be performed.
  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 Executive Committee or Board, as determined in the Invitation to Negotiate.
- 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 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 Firms 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 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. 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 and on the public notice board in the Leon County Purchasing Division. This written notice shall state the Firm to whom the Consortium intends to award the contract resulting from the solicitation and establishes the 72 consecutive hour period in which a notice of intent to protest may be timely filed.
  2. Notice of Right to Protest. Any bid award recommendation may be protested if the recommendation is alleged to be contrary to the Consortium's 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 Purchasing Director 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 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 AN INTENDED DECISION AND PROCUREMENT AWARD.**

- A. Right to Protest. Any person, hereinafter referred to as Protestor, who submits a timely response to an Invitation to Negotiate, a Request for a Best and Final Offer, 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 Leon County a notice of intent to protest in writing within 72 consecutive hours after the posting of the notice of Intended Decision or Procurement Award of the Gulf Consortium. A formal written protest shall be filed within 10 calendar days after the date the notice of intent to protest has been filed. Failure to timely file a notice of intent to protest or failure to file a formal written protest shall constitute a waiver of the right to proceedings under this Section. A notice of intent to protest and the formal written protest are deemed filed with Leon County when it is received by the Purchasing Division.

1. The notice of intent to protest shall contain at a minimum: the name of the Protestor; the Protestor's address and phone number; the name of the Protestor's representative to whom notices may be sent; the name and bid number of the solicitation; and, a brief factual summary of the basis of the protest.
2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$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; Procurement Appeal Board Proceeding.

1. Upon timely receipt of a notice of intent to protest an Intended Decision, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to 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 Manager. The term of office of the chairperson, members, and alternates of the Procurement Appeals Board shall be three years. For the initial appointments, the Manager shall appoint the chairperson for a term of three years, one member and one alternate for a term of two years, and one member and one alternate for a term of one year so that a term of office expires every year. Thereafter, their successors shall be appointed for terms of three years, or for the balance of any unexpired term, but members may continue to serve beyond their terms until their successors take office. Members may be reappointed for succeeding terms.
  - a. Acting by two or more of its members, the Procurement Appeals Board shall issue a decision in writing or take other appropriate action on each formal written protest submitted. A copy of any decision shall be provided to all parties and the Manager.
  - b. Procurement Appeals Board Proceeding Procedures.
    - i. The Procurement Appeals Board shall give reasonable notice to all substantially affected persons or Firms, including the Protestor, and any Intervenor.
    - ii. At or prior to the protest proceeding, the Protestor and Intervenor or both, as the case may be, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the issues raised.
    - iii. In the protest proceeding, the Protestor, and Intervenor, or both, as the case may be, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Procurement Appeals Board. The members of the Procurement Appeals Board may make whatever inquiries they deem pertinent to a determination of the protest.
    - iv. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Procurement Appeals Board shall base their decision on competent, substantial evidence. The protest proceeding shall be de novo. Any

prior determinations by administrative officials shall not be final or conclusive.

- v. Within seven working days of the conclusion of the protest proceeding, the Procurement Appeals Board shall render a decision. The Procurement Appeals Board decision shall be reduced to writing and provided to the Protestor and/or Intervenor, as the case may be, and the Gulf Consortium.
- vi. Any party may arrange for the proceedings to be stenographically recorded and shall bear the expense of such recording.

E. Protest of Procurement Award; Special Master Proceeding.

1. Upon timely receipt of a notice of intent to protest a Procurement Award of the Gulf Consortium, the Manager shall provide the Protestor with acknowledgement of receipt and a copy of the this Section. The Manager shall within one business day mail a copy of the notice of intent to protest to all persons who responded to an invitation to bid, a request for proposals, an Invitation to Negotiate, a Request for a Best and Final Offer, 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 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. Approval of the Board of Directors is required to settle any controversy in excess of \$10,000 in value.

- a. If such a controversy is not resolved by mutual agreement, the Manager shall promptly issue a decision in writing. A copy of the decision shall be mailed or otherwise be furnished to the contractor immediately. The decision shall:
    - i. State the reason for the action taken; and,
    - ii. Inform the Contractor of its right to administrative review as provided in this Section.
  - b. If the Purchasing Director does not issue a written decision required in paragraph (a) of this subsection within 30 days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.
  - c. The decision of the Manager may be appealed to the Procurement Appeals Board by the protestor by filing a formal written appeal with the Manager within five calendar days of receipt of the Manager's decision.
2. The Procurement Appeals Board is authorized to review any appeal of a decision on a contract controversy by the Manager or to hear any contract controversy in excess of \$10,000.
  3. The Procurement Appeals Board shall promptly decide the contract or breach of contract controversy. The proceeding shall be de novo and shall follow the proceeding procedures contained in Section 5.03(D)(3). Any prior determination by administrative officials shall not be final or conclusive.

**SECTION 5.05. 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 General Counsel, determines that a solicitation is in violation of federal, state, or local law or ordinance or the Interlocal Agreement, then the solicitation shall be canceled or revised to comply with applicable law.
- B. Prior to Award. If after bid opening or the closing date for receipt of proposals, but prior to the award of contract, the Manager, after consultation with the General Counsel, determines that a solicitation or a proposed award of a contract is in violation of federal, state, or municipal law or ordinance, then the solicitation or proposed award shall be canceled.



- C. After Award. If, after award, the Manager, after consultation with the General Counsel, determines that a solicitation or award of a contract was in violation of applicable law or ordinance, then:
1. If the person awarded the contract has not acted fraudulently or in bad faith:
    - a. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the Gulf Consortium; or
    - b. the contract may be terminated and the person awarded the contract shall be compensated for the actual costs reasonably incurred under the contract, plus a reasonable profit, prior to termination, but excluding attorney's fees; or
  2. If the person awarded the contract has acted fraudulently or in bad faith, the contract may be declared null and void or voidable, if such action is in the best interests of the Gulf Consortium.

**SECTION 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. All Contracts for a State Expenditure Plan Consultant shall be subject to approval by the Board.

- B. Standard Contract Clauses and Their Modification. The Manager, after consultation with the General Counsel, may establish standard contract clauses for use in Gulf Consortium contracts. However, the Manager may, upon consultation with the General Counsel, vary any such standard contract clauses for any particular contract.
- C. Contract Clauses. All Gulf Consortium contracts for services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Manager, after consultation with the General Counsel, may propose provisions appropriate for service contracts, addressing among others the following subjects:
1. the unilateral right of the Gulf Consortium to order, in writing, changes in the work within the scope of the contract;
  2. the unilateral right of the Gulf Consortium to order, in writing, temporary stopping of the work or delaying performance that does not alter the scope of the contract;
  3. variations occurring between estimated quantities or work in contract and actual quantities;
  4. defective pricing;
  5. time of performance and liquidated damages;
  6. specified excuses for delay or nonperformance;
  7. termination of the contract for default which shall require Board approval; and
  8. termination of the contract in whole or in part for the convenience of the Gulf Consortium.

**SECTION 6.02. 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, Firm, or organization with whom the Manager and the General Counsel and the employees of either or any member of a Gulf Consortium employee's immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement contract.
- 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 a Director, Alternate or Ex-Officio member of the Board, or for any employee of the Manager or the General Counsel, or a Director, Alternate or Ex-Officio member of the Board, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or performing in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, subcontract, or to any solicitation or proposal therefor.
- B. **Kickbacks.** It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. **Contract Clause.** The prohibition against gratuities and kickbacks prescribed in this Section shall be conspicuously set forth in every contract and solicitation therefore.

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

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

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

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

**SECTION 11.**

**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 Manage. 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 General Counsel. Surety bonds furnished will be reviewed by the 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 General Counsel will be notified. Upon the recommendation of the 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 Firms, including the vendor and Gulf Consortium project manager. Non-appearance by the vendor shall constitute a forfeiture of proceedings with prejudice.
  3. At or prior to the dispute proceeding, the vendor and project manager, may submit any written or physical materials, objects, statements, affidavits, and arguments which he/she deems relevant to the payment dispute.
  4. In the proceeding, the vendor and project manager, or his representative or counsel, may also make an oral presentation of his evidence and arguments. Further, only reasonable direct and cross-examination of witnesses shall be permitted, at the discretion of the Chairman of the Payment Dispute Resolution Committee. The members of the Payment Dispute Resolution Committee may make whatever inquiries they deem pertinent to a determination of the dispute.
    - a. The judicial rules of evidence shall not strictly apply; however, witnesses shall be sworn, and any testimony taken under oath and, the members of the Payment Dispute Resolution Committee shall base their decision on competent, substantial evidence. The proceeding shall be de novo. Any prior determinations by administrative officials shall not be final or conclusive.
    - b. Within three business days of the conclusion of the proceeding, the Payment Dispute Resolution Committee shall render a decision. The Payment Dispute Resolution Committee decision shall be reduced to writing and provided to the vendor and the Gulf Consortium project manager. The decision of the Payment Dispute

Resolution Committee shall be final and conclusive for all disputes valued less than \$100,000.

- c. For those disputes valued above \$100,000, the Payment Dispute Resolution Committee shall file a Recommended Order for approval by the Manager.

**SECTION 16. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.**

- A. **Suspension.** After consultation with the General Counsel, the Manager is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity, which might lead to debarment. The suspension shall be for a period not to exceed three months, and the Manager shall immediately inform the Board and provide notice to the affected person.
- B. **Debarment.** After reasonable notice and a reasonable opportunity for the suspended person to be heard, the Board shall either disbar such person or terminate the suspension. The debarment should be for a period of not more than three years.
- C. **Causes for Debarment.** The causes for debarment include:
  1. entry of a plea of guilty, no contest, or nolo contendere to or conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  2. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Gulf Consortium contractor;
  3. entry of a plea of guilty, no contest, or nolo contendere to or conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
  4. violation of contract provisions, as set forth below, of a character which is regarded by the Board to be so serious as to justify debarment action:
    - a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
    - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more

contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; and

5. any other cause the Manager or Board determines to be as serious and compelling as to affect responsibility as a Gulf Consortium contractor, including debarment by another governmental entity.
- D. Notice of Decision. The Manager shall issue a written notice to the person of the decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his/her rights concerning judicial or administrative review. The written decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

**SECTION 16.01. APPEAL OF DECISION TO DEBAR OR SUSPEND.** The Board's decision to debar or suspend a person or Firm shall be final and conclusive, unless the debarred person commences a timely action in court in accordance with applicable law.

**SECTION 17. SEVERABILITY.** The provisions of this Resolution are severable and it is the intention to confer the whole or any part of the Powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Resolution. It is hereby declared to be the legislative intent that this Resolution would have been adopted had such unconstitutional provision not been included therein.

**SECTION 18. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption.

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

Duly passed and adopted this 24<sup>th</sup> day of March, 2014.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Attest: Secretary-Treasurer

Approved as to form:

\_\_\_\_\_  
General Counsel



NFWF



# Gulf Environmental Benefit Fund *Overview*

March, 2014



# National Fish and Wildlife Foundation

## WHO WE ARE

- Chartered by Congress in 1984
- 30 member Board appointed by Secretary of the Interior
  - Includes FWS Director & NOAA Administrator

## WHAT WE DO

- **Sustain, restore and enhance the nation's natural heritage**
- Facilitate collaboration among public agencies & the private sector
- Ensure accountability and transparency of conservation investments

## HOW WE DO IT

- Leverage public funding with private money – average 3:1
- On-the-ground conservation projects through grant making
- Administration of legal settlements and mitigation funds
- 20+ years & over \$128 million in Gulf conservation investments



# New Funding for Gulf Coast Restoration



## **RESTORE** (Clean Water Act)

Purpose: Environment & economic development

Amount (est.): \$5-17B

Allocation:

- States – 35%
- RESTORE Council – 30%
- Impact-based – 30%
- RESTORE Science– 2.5%
- Centers of Excellence -2.5%

Timing:

- \$800M (Transocean)
- BP uncertain

## **Natural Resource Damage** (Oil Pollution Act )

Purpose: Mitigate impacts to resources and human use

Amount: TBD

Allocation: Allocation based on documented damages

Timing:

- \$1B for Early Restoration (\$670M obligated)
- Remaining funds pending resolution of assessment and litigation

## **Gulf Environmental Benefit Fund** (Criminal penalties)

Purpose: Natural resource projects

Amount: \$2.54B

Allocation:

- 50% for Louisiana
- 14% for projects in AL, FL and MS
- 8% for projects in TX

Timing:

- \$158M received
- Remaining funds over 5 years

# Gulf Environmental Benefit Fund: Key Provisions of Plea Agreements



Photo Credit: Terry Ross

- Funding: NFWF to receive a total of \$2.54B:
  - \$1.27B for barrier island & river diversion projects in Louisiana
  - Remaining funds allocated by formula:
    - 28% each for Alabama, Florida, Mississippi (\$356M/state)
    - 16% for Texas (\$203M)
- Purpose: Fund projects that remedy harm to the type of natural resources (habitats, species) that were affected by the spill
- Consultation: with State resource agencies, FWS and NOAA
- Timeline: Funds to be paid over a 5-year period



# Gulf Environmental Benefit Fund: Payment Timetable

	<b>Payment</b> (in millions of dollars)	<b>Louisiana</b>	<b>Alabama</b>	<b>Florida</b>	<b>Mississippi</b>	<b>Texas</b>
Apr. 2013	\$158.00	\$79.00	\$22.12	\$22.12	\$22.12	\$12.64
Feb. 2014	353.00	176.50	49.42	49.42	49.42	28.24
Feb. 2015	339.00	169.50	47.46	47.46	47.46	27.12
Feb. 2016	300.00	150.00	42.00	42.00	42.00	24.00
Feb. 2017	500.00	250.00	70.00	70.00	70.00	40.00
Feb. 2018	894.00	447.00	125.16	125.16	125.16	71.52
<b>Totals</b>	<b>\$2,544.00</b>	<b>\$1,272.00</b>	<b>\$356.16</b>	<b>\$356.16</b>	<b>\$356.16</b>	<b>\$203.52</b>

*BP = \$2,394M*

*Transocean = \$150M*

- \$511 million has been received to date
- More than half the funds to be received in yrs 4 & 5





# Program Implementation

- Consultation with state and federal resource agencies

## State agencies:

- Alabama – Department of Conservation & Natural Resources
- Florida – Fish & Wildlife Cons. Comm. & DEP
- Louisiana – Coastal Protection and Restoration Authority
- Mississippi – Department of Environmental Quality
- Texas – TXPWD, GLO and TCEQ

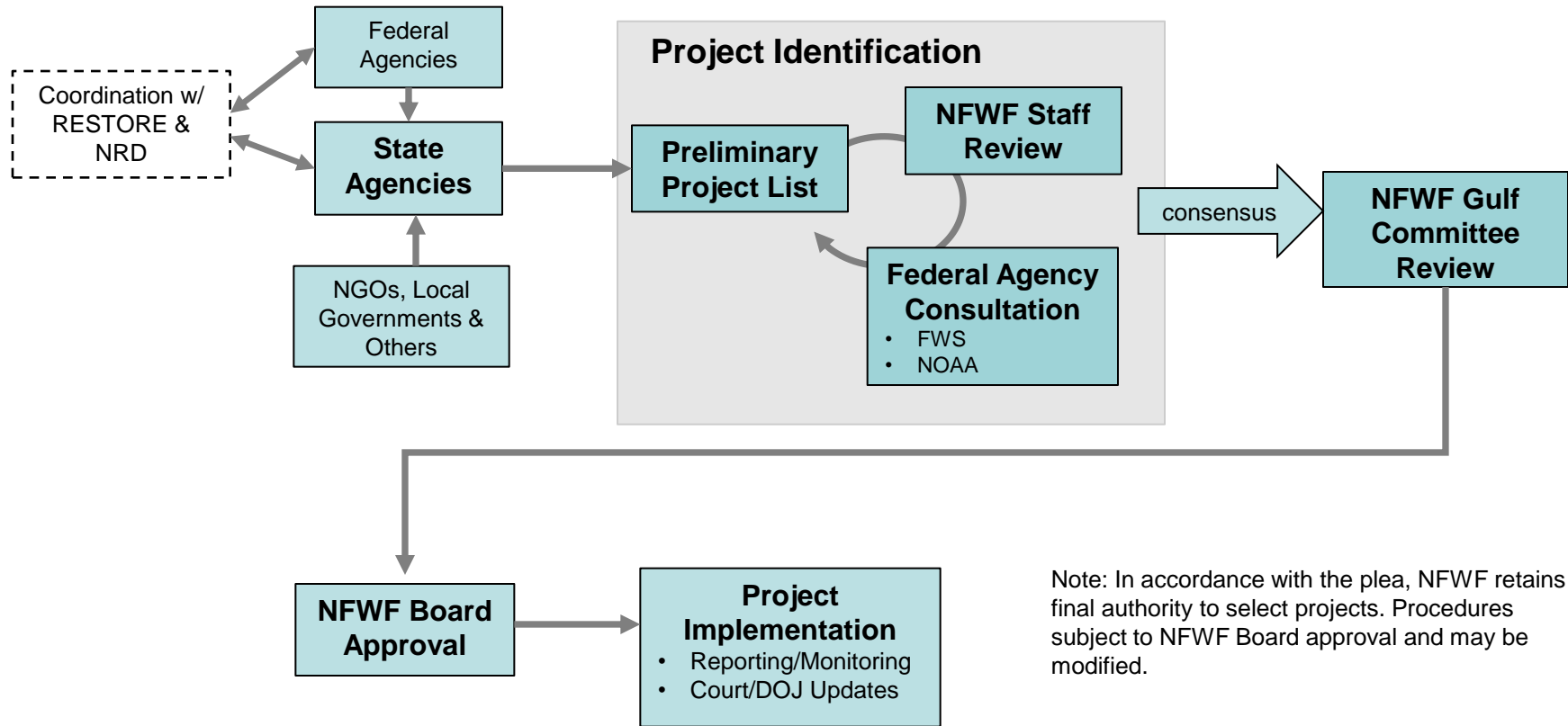
## Federal agencies:

- NOAA
  - U.S. Fish and Wildlife Service
- States establishing websites for submission of projects
  - NFWF to facilitate consensus on project slate

Photo Credit: thepipe26 (Flickr)



# Gulf Environmental Benefit Fund: Governance Flow Chart



# Project Selection Criteria



## Required (per plea agreements):

- Remedy harm to the type of natural resources (habitats, species) affected by oil spill
- Projects must occur within Gulf states and waters and be within reasonable proximity to impacts, as appropriate
- Infrastructure only as necessary to restore or protect natural resources
- Louisiana funds only for barrier island and river diversion projects included in the Master Plan

## Other:

- Alignment with restoration plans such as under RESTORE
- Science-based, measurable outcomes
- Cost-effective and potentially leveraged to maximize impact
- Reasonable expectation regarding permit approval





# Overarching Goals and Focal Areas

## 1. Restore and Conserve Coastal Habitat

- Barrier islands & beach/dune habitat
- Coastal marsh
- Coastal bays & estuaries

## 2. Enhance Populations of Priority Living Resources

- Oysters
  - Gulf Coast birds
  - Red snapper & reef fish
  - Sea turtles
  - Marine mammals
- 
- Intended to guide project selection and monitor outcomes
  - Priorities will be refined over time based on planning



NFWF



# 2013 Projects



- Initial Projects Announced November 2013
  - 22 projects selected in the five Gulf states
  - Total obligation of over \$112 million dollars
  - Project contracting and implementation underway
- In aggregate, these projects will:
  - Protect, restore or enhance significant acres of wetland habitat
  - Facilitate restoration of barrier island & beach/dune habitat
  - Advance priority river diversion projects to benefit coastal Louisiana
  - Protect nests for priority beach-nesting birds in Florida and Mississippi
  - Increase sea turtle hatchlings by reducing light pollution
  - Restore significant acreage of oyster reef

# Next Steps

- 2014 Timeline:
  - NFWF received 2<sup>nd</sup> payment in January/February 2014
  - Winter/Spring 2014 – States carry out public engagement and project solicitation
  - Spring/Summer 2014 – Proposal submission, review and negotiation
  - Fall 2014 – Final project slate review and approval
- 2015 and beyond is expected to follow a similar annual cycle, with opportunities to consider other timely project needs



# Contacts

Photo Credit: Patrick Wilken

## [Tom Kelsch](#)

Sr. Vice President, Gulf Environmental Benefit Fund

[Thomas.Kelsch@nfwf.org](mailto:Thomas.Kelsch@nfwf.org)

## [Tanner Johnson](#)

Director, Gulf Environmental Benefit Fund (LA, TX)

[Tanner.Johnson@nfwf.org](mailto:Tanner.Johnson@nfwf.org)

## [Mike Sharp](#)

Director, Gulf Environmental Benefit Fund (AL, FL, MS)

[Michael.Sharp@nfwf.org](mailto:Michael.Sharp@nfwf.org)

