



**PROCESS FOR
SECURING INDEPENDENT AUDITOR**

Resolution 2014-02

As adopted on September 17, 2014

**GULF CONSORTIUM
PROCESS FOR
SECURING INDEPENDENT AUDITOR**

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GULF CONSORTIUM RESOLUTION NO. 2014-___

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

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

SECTION 1. PURPOSE.

This policy is adopted to promote the following purposes:

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

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

SECTION 2. APPLICATION OF POLICY.

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

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

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

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

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

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

SECTION 5. BIDS.

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

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

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

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

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

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

SECTION 5.02. PROTESTING AN INTENDED DECISION AND PROCUREMENT AWARD.

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

2. The formal written protest shall: identify the Protestor and the solicitation involved; include a plain, clear statement of the grounds upon which the protest is based; refer to the statutes, laws, ordinances, or other legal authorities which the Protestor deems applicable to such grounds; and, specify the relief to which the Protestor deems himself entitled.
3. A formal written protest shall include the posting of a bond with the Purchasing Division at the time of filing the formal written protest, made payable to the Gulf Consortium in an amount equal to one percent (1 %) of the Gulf Consortium's estimate of the total dollar amount of the contract or \$1,000, whichever is greater. If after completion of the bid protest process and any court proceedings, the Gulf Consortium prevails, the Gulf Consortium shall be entitled to recover all court costs provided under Florida law, but in no event attorney fees, which shall be included in the final order of judgment rendered by the court. Upon payment of such court costs by the Protestor, the bond shall be returned to him. After completion of the bid protest process and any court proceedings, if the Protestor prevails, the protestor shall be entitled to have his bond returned and he shall be entitled to recover from the Gulf Consortium all court costs provided under Florida law, but in no event attorney fees, lost profits or bid preparation costs, which shall be included in the final order of judgment rendered by the court. In no case will the Protestor or Intervenor be entitled to any costs incurred with the solicitation, including bid preparation costs, lost profits, bid protest costs, and/or attorney's fees.
4. Timeliness of protest determinations. All determinations on the timeliness of notices of intent to protest and formal written protests will be made by the Manager.

C. General Provisions.

1. Intervenor. Any person, hereinafter referred to as Intervenor, who has submitted a timely response to the subject invitation to bid, request for proposals, Invitation to Negotiate, request for qualifications, or multi-step sealed bids, or multi-step requests for proposals, and who has a substantial interest in the Intended Decision or Procurement Award of the Gulf Consortium, may be granted the right to intervene by order of the Chairperson of the Procurement Appeals Board or Special Master in response to a petition to intervene. A petition to intervene shall be filed within five calendar days of the filing of a formal written protest. Failure to timely file a petition to intervene shall constitute a waiver of all rights to intervene in the subject protest proceeding. Petitions to intervene will be considered by the Chairman of the Procurement Appeals Board, and any decision concerning a Petition to Intervene shall be made by the Chairman and shall be deemed final.

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

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

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

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

E. Protest of Procurement Award; Special Master Proceeding.

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

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

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

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

SECTION 5.03. CONTRACT CLAIMS.

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

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

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

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

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

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

SECTION 6.01. CONTRACT PROVISIONS.

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

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

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

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

SECTION 8. GULF CONSORTIUM PROCUREMENT RECORDS.

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

SECTION 9. SPECIFICATIONS.

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

SECTION 10. ETHICS IN PUBLIC CONTRACTING.

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

SECTION 10.02. EMPLOYEE CONFLICT OF INTEREST.

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

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

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

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

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

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

SECTION 10.06. GRATUITIES AND KICKBACKS.

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

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

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

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

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

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

SECTION 11. INSURANCE REQUIREMENTS.

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

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

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

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

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

SECTION 14. PAYMENT DISPUTE RESOLUTION.

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

C. General Provisions.

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

D. Payment Dispute Resolution Proceeding Process.

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

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

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

SECTION 15. AUTHORIZATION TO DEBAR OR SUSPEND VENDOR.

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

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

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

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

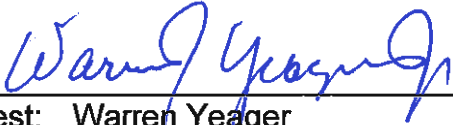
SECTION 17. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Susan Latvala (Pinellas) who moved its adoption. The motion was seconded by George Neugent (Monroe). The motion was adopted by a majority vote of the Board of Directors.

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



Grover C. Robinson IV
Chairman



Attest: Warren Yeager
Secretary-Treasurer

Approved as to form:



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