



## FLORIDA RESTORE ACT CENTERS OF EXCELLENCE PROGRAM

# ***RULES AND POLICIES – REVISED DECEMBER 2018***

Prepared by the Florida Institute of Oceanography, Gulf Coast State Entity for Florida's RESTORE Act Centers of Excellence Research Grants Program

### **SUMMARY**

The Florida Institute of Oceanography (FIO) serves as the host for Florida's Centers of Excellence Research Grants Program (CERGP), hereafter known as the Florida RESTORE Act Centers of Excellence Program (FLRACEP). The U.S. Treasury Department issued Interim Final RESTORE Act Rulemaking in October 2014, including the requirement for all CERGP host entities to produce Rules and Policies after public scoping, which FLRACEP initially conducted from October 15 to December 1, 2014. These Rules and Policies were based on the RESTORE Act, Treasury Rulemaking and guidance, and received public comments, and were approved by the FLRACEP Management Team (PMT). The FLRACEP Rules and Policies have been updated (hereafter: Revised Rules and Policies) and reflect incorporation of public input solicited from November 1 through December 17, 2018.

FLRACEP is the implementing entity for Florida's CERGP and awards Center of Excellence grants to eligible entities through a competitive process. With regard to the policies that will apply to grants for the Centers of Excellence, the Treasury Department Interim Final Rule requires each of the Gulf Coast States to describe the policies it will issue to the Centers of Excellence and any lower tier subrecipients to ensure compliance with the RESTORE Act and federal laws and policies for grants.

Accordingly, the purpose of these Revised Rules and Policies is to set forth the following:

- (1) The public review process for the policies.
- (2) The policies applicable to soliciting and awarding Centers of Excellence by FLRACEP and the policies for any lower tier subawards the Centers of Excellence issue.
- (3) The establishment and implementation of a program for FLRACEP to monitor compliance with its grant agreements.
- (4) The measures that FLRACEP will use to guard against conflicts of interest.
- (5) Additional policies applicable to the Centers of Excellence grants process and their lower tier subgrantees.

## **BACKGROUND AND PURPOSE**

### **RESTORE ACT**

The Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), established a Gulf Coast Restoration Trust Fund in the Treasury of the United States. Eighty percent of the civil penalties paid after July 6, 2012, under the Federal Water Pollution Control Act (33 U.S.C. 1321) in connection with the 2010 *Deepwater Horizon* oil spill will be deposited into this Trust Fund. RESTORE Act programs have five components, including the Centers of Excellence Research Grant Program (RESTORE Act regulations, sub-part H, section §34.700), mandated to receive 2.5% of Trust Fund principal plus 25% of the interest accrued, divided equally among the five Gulf Coast State Entities.

Treasury's RESTORE Act Rulemaking interprets RESTORE Act requirements for all components supported by the Trust Fund that Treasury is required to administer, which includes the CERGPs. In September 2014, Treasury posted guidance to the Gulf Coast State Entities (listed in RESTORE Act regulations, sub-part H, section §34.702) responsible for administering their state's CERGP. FIO, the designated Gulf Coast State Entity for Florida, is an Academic Infrastructure Support Organization established by the State of Florida Board of Governors to facilitate a diverse and collaborative statewide forum to address Florida's problems of concern in coastal oceanographic research and education. The University of South Florida serves as the administrative host for FIO, and supports some fiscal and administrative functions of the FLRACEP Centers of Excellence Research Grants Program award.

### **PUBLIC REVIEW AND COMMENT**

As required by the RESTORE Act Rulemaking and subsequent Treasury guidance, FIO provided the public with a 45 day public comment period on proposed "rules and policies, including the competitive selection process" (RESTORE Act regulations, sub-part H, section §34.703). Public comment was again solicited on the Revised Rules and Policies from November 1, 2018 through December 17, 2018. The final FLRACEP Rules and Policies are based on meaningful incorporation of public input, and approval by the FLRACEP Program Management Team (PMT). While this document serves as the official FLRACEP policy framework, these Revised Rules and Policies will be supplemented by internal program operation and procedural documentation, as well as individual Request for Proposal (RFP) solicitations.

### **FLRACEP POLICIES GOVERNING CENTERS OF EXCELLENCE GRANTS**

FLRACEP is the implementing entity for Florida's CERGP and awards Center of Excellence grants to eligible entities through a competitive process. These rules and policies are applicable to the grants issued to the Centers of Excellence and to any lower tier subawards the Centers of Excellence make to entities for the expenditure of funds under the Florida

RESTORE Act Centers of Excellence Program and shall be included in any legal agreements with lower tier subrecipients. Additionally, the Centers of Excellence shall comply, and require each of its lower tier subrecipients, contractors and subcontractors employed in the completion of the activity, project or program conducted with FLRACEP funds to comply with all federal statutes, federal regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance, Treasury's Standard Terms and Conditions, program-specific Terms and Conditions, and any Special Award Conditions of a Center of Excellence grant award, as applicable.

## 1. USE OF FUNDS AND ELIGIBLE ACTIVITIES

The Treasury Department's guidelines for implementing CERGP's require that FLRACEP seek to engage the broadest cross-section of participants with interest and expertise in science, technology, and monitoring (RESTORE Act regulations, sub-part H, section §34.704, also shown below) in at least one of the following eligible "priority disciplines":

1. Coastal and deltaic sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region;
2. Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region;
3. Offshore energy development, including research and technology to improve the sustainable and safe development of energy resources in the Gulf of Mexico;
4. Sustainable and resilient growth, economic and commercial development in the Gulf of Mexico; and
5. Comprehensive observation, monitoring, and mapping of the Gulf of Mexico.

Each Gulf Coast State entity is responsible for developing their work plan – including which discipline(s) they will support – and program rules and policies, with input from stakeholders. Based on public scoping and consent of the PMT, FLRACEP will focus on three of the five eligible disciplines:

- Coastal fisheries and wildlife ecosystem research and monitoring in the Gulf Coast Region;
- Comprehensive observation, monitoring, and mapping of the Gulf of Mexico; and
- Coastal sustainability, restoration and protection, including solutions and technology that allow citizens to live in a safe and sustainable manner in a coastal delta in the Gulf Coast Region.

Each Request for Proposals (RFPs) may address one or more of these priority disciplines, including specific priorities within these disciplines, based on available funding, public comment, and the PMT's assessment of current regional needs and gaps.

## 2. RELATIONSHIP BETWEEN FLRACEP AND THE CENTERS OF EXCELLENCE

FLRACEP serves as the granting organization for the Section 1605 RESTORE Act funding. As such, it is anticipated that FLRACEP will be responsible for conducting various activities, including but not limited to developing and issuing Requests for Proposals in the selected eligible disciplines, subawarding Centers of Excellence based on the competitive selection of proposals, monitoring the performance and compliance of Centers of Excellence and their lower tier subawards, submitting all required reporting to the Treasury Department, Gulf Coast Ecosystem Restoration Council (Council), and others as required, and representing Florida's Centers of Excellence in various regional collaboration and coordination efforts.

Centers of Excellence will be responsible for implementing projects as defined in the scope of work and associated metrics, deliverables, and deadlines as defined in their individual subagreements. FLRACEP-awarded Centers of Excellence must be led by a Florida-based public or private institution of higher education (i.e. headquartered and primarily operating in Florida with a lead PI from same) or other not-for-profit institution headquartered in Florida or with a regional office in Florida working on ocean and coastal issues with an established infrastructure and history of successful grant management. Grants may include other partnering entities (institutions, organizations, agencies, companies) from inside or outside Florida.

As required by the RESTORE Act, FLRACEP-sponsored field efforts must be located in the Gulf Coast Region (as defined at 31 C.F.R. §34.2), which includes oceans and coasts off coastal counties that border the Gulf of Mexico, from 25 nm inland from the coastline to the offshore boundary of the Exclusive Economic Zone. For FLRACEP, emphasis will be placed on waters off Florida from Monroe County (Gulf-side only in the Florida Keys including Florida Bay) north to Escambia County.

## 3. MANAGEMENT OF SUBAWARDS

### a. ADMINISTRATION OF SUBAWARDS

#### i. COMPETITIVE PROCESS FOR SELECTING SUBAWARDS AND LOWER TIER SUBAWARDS AND AWARD REQUIREMENTS

Any Center of Excellence selected by FLRACEP shall be selected according to the competitive process set out in these Revised Rules and Policies and further detailed in specific Requests for Proposals. FLRACEP will evaluate grant proposals using best practices to ensure no conflicts of interest and a fair, transparent, merit- and relevance- based competition, modeled, in part, after the

National Science Foundation's related policies (NSF Proposal and Award Policies and Procedures Guide, 2018). Key elements of the process include:

- Request for Proposals (RFP): Initial RFP concepts will be developed by the PMT in one or more of the three eligible disciplines selected after public comment and developed by program staff. The RFP will be shared broadly using similar avenues used for public scoping of these Rules and Policies.
- Letters of Intent (LoI): Letters of Intent may be required prior to submission of full proposals, based on PMT assessment of need. LoIs will be reviewed and ranked by the PMT, who will then make final decisions for PIs that are encouraged, highly encouraged, or discouraged from submitting full proposals. Formatting specifics will be included with each RFP. The principle purpose of the LoI is to inform selection of a review panel, and no PI will be prohibited from submitting a full proposal if they successfully submitted a required LoI.
- Full proposals: Full proposals will generally be due 60 days after solicitation or after LoI responses are issued (if applicable). Proposal formatting specifics will be included with, and unique to, each RFP. Assuming basic eligibility requirements are met, proposals will first be evaluated by an independent review panel based on merit, qualification, and broader impact criteria. The review panel will rank proposals based on criteria articulated in the RFP, and the PMT will make final award decisions on Centers of Excellence grants based on review panel recommendations, RFP-specific evaluation criteria, available funding, and how well the proposed activities integrate with program goals and complement other Gulf-wide science and restoration efforts.

Contracts for the Centers of Excellence and any lower tier subawards will be issued using standard program terms and conditions and these policies, and shall conform to: (i) Section 1605 of the RESTORE Act, (ii) 31 C.F.R. Part 34, Subpart H-Centers of Excellence Research Grants Program and Subpart I-Agreements, (iii) Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance, and (iv) Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions and these policies.

ii. **FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROL REQUIREMENTS**

The Centers of Excellence and their lower tier subgrantees shall expend and account for funds in accordance with state laws and procedures. In addition, pursuant to 2 C.F.R. §200.303, and Paragraph E of Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, the Centers of Excellence and their lower tier subgrantees

shall establish and maintain effective internal control over the federal award in a manner that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award. As provided in 2 C.F.R. §200.303, these internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Additionally, as provided in Paragraph C.9 of Treasury’s RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, each Center of Excellence shall comply with the following:

- a. The Center of Excellence must execute a legally binding written agreement with any lower tier subrecipient. This agreement must incorporate all the terms and conditions of the Center of Excellence’s award, including any Special Award Conditions, and must include the information at 2 C.F.R. § 200.331. The Center of Excellence must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200.
- b. The Center of Excellence must evaluate and document each lower tier subrecipient’s risk of noncompliance with federal statutes, federal regulations, and the terms and conditions of the subaward for purposes of determining the appropriate lower tier subrecipient monitoring strategy, as described in 2 C.F.R. § 200.331(b).
- c. The Center of Excellence must monitor the lower tier subrecipient’s use of federal funds through reporting, site visits, regular contact, or other means to provide reasonable assurance that the lower tier subrecipient is administering the lower tier subaward in compliance with the RESTORE Act, Treasury’s RESTORE Act regulations, Treasury’s Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and to ensure that performance goals are achieved.
- d. The Center of Excellence must provide training and technical assistance to the lower tier subrecipient as necessary.
- e. The Center of Excellence must, if necessary, take appropriate enforcement actions against non-compliant lower tier subrecipients.
- f. The Center of Excellence must apply the terms and conditions of Treasury’s RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, including any Special Award Conditions, to all lower tier subawards, and carry out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.

b. COMPLIANCE MONITORING

i. CENTERS OF EXCELLENCE COMPLIANCE MONITORING

The FIO Director, or designee, shall monitor compliance by the Centers of Excellence with these policies. This compliance monitoring will require the Centers of Excellence to submit to FLRACEP, on a schedule and dates to be provided but no less than once per year, a compliance report including financial statements in accordance with grant terms and conditions in a format to be provided by FLRACEP. At a minimum this compliance report shall be sufficient to permit the preparation of reports described herein and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to state and federal statutes, regulations, and the terms and conditions of the Center of Excellence federal award.

In addition, the Centers of Excellence shall perform the duties, or assist FLRACEP in the performance of those duties, as defined in (i) Section 1605 of the RESTORE Act, (ii) 31 C.F.R. Part 34, Subpart H-Centers of Excellence Research Grants Program and Subpart I-Agreements, including without limitation, 31 C.F.R. §34.703, 31 C.F.R. §34.704, 31 C.F.R. §34.705, 31 C.F.R. §34.706, 31 C.F.R. §34.707, 31 C.F.R. §34.708, 31 C.F.R. §34.803, (iii) Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance (including Section 6.0 – Centers of Excellence Applicant Certifications and Section 7.0 – RESTORE Act Centers of Excellence Periodic Reporting Documentation, including annual reports to the Council as further described in "Recordkeeping, Reporting and Audits" below), and (iv) Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions. Additionally, to the extent applicable, the Centers of Excellence shall comply with the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.

ii. LOWER TIER SUBAWARD COMPLIANCE MONITORING

The Centers of Excellence shall establish and monitor compliance with lower tier subawards regarding project timelines, financial and programmatic objectives and will describe the policies and procedures to be used to maintain and monitor compliance with the RESTORE Act and all applicable federal and state grant application requirements. The Centers of Excellence shall also provide compliance reports on their monitoring of lower tier subgrants to FLRACEP, on a schedule and dates to be provided by FLRACEP, but no less than once per year, a compliance report including financial statements in accordance with grant terms and conditions in a format to be provided by FLRACEP. At a minimum these compliance reports shall be sufficient to permit the preparation of reports described herein and the tracing of funds to a level of expenditures adequate to establish that such funds have

been used according to state and federal statutes, regulations, and the terms and conditions of the Center of Excellence federal award.

The Centers of Excellence shall require their lower tier subgrantees to comply with the requirements of the following, as applicable: (i) Section 1605 of the RESTORE Act, (ii) 31 C.F.R. Part 34, Subpart H-Centers of Excellence Research Grants Program and Subpart I-Agreements, including without limitation, 31 C.F.R. §34.703, 31 C.F.R. §34.704, 31 C.F.R. §34.705, 31 C.F.R. §34.706, 31 C.F.R. §34.707, 31 C.F.R. §34.708, 31 C.F.R. §34.803, (iii) Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance (including Section 6.0 – Centers of Excellence Applicant Certifications and Section 7.0 – RESTORE Act Centers of Excellence Periodic Reporting Documentation, including annual reports to the Council as further described in "Recordkeeping, Reporting and Audits" below), and (iv) Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions.

Compliance reporting requirements may also require the Centers of Excellence to obtain data from third parties that receive funding from subawards (i.e lower tier subrecipients or lower tier subgrantees). It shall be the Center of Excellence's obligation to implement any contractual arrangements it may need to gain use of, and access to, such data.

c. **RECORD KEEPING, REPORTING AND AUDITS**

Full compliance with all state and federal statutes, laws, rules, and regulations, and these policies shall be required, including but not limited to assurance that all documentation shall be sufficient to meet the requirements of both the RESTORE Act and the Treasury regulations for release of grant funds from the RESTORE Act's Trust Fund, including without limitation 31 C.F.R. §34.706, 31 C.F.R. §34.707, and 31 C.F.R. §34.708. The Centers of Excellence and their lower tier subgrantees shall act in good faith to supply FLRACEP and/or Treasury with any supporting material or documentation needed for release of grant funds or for legal compliance.

Treasury, including the Treasury Inspector General, may conduct audits and reviews of each recipient's (including the Centers of Excellence and their lower tier subgrantees) accounts and activities relating to the RESTORE Act as deemed appropriate by Treasury and may conduct oversight and monitoring of the progress and financial status of each grant through reporting requirements as provided under the RESTORE Act, the RESTORE Interim and Final Rule and as defined in Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance and Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions. Additionally, FLRACEP shall be entitled to audit the books, documents, paper and records of the Centers of Excellence and any lower tier



subgrantees which are reasonably related to the agreement between FLRACEP and the Centers of Excellence.

The Centers of Excellence and their lower tier subgrantees shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at their respective offices at all reasonable times during the contract period and for five (5) years from the date of final payment of RESTORE Act Center of Excellence funds for inspection by FLRACEP, and copies therefor shall be furnished if requested.

In addition to financial and performance reports required by the Office of Management and Budget "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" at 78 Fed. Reg. 78,590 (December 26, 2013), the Centers of Excellence shall, upon request, assist FLRACEP with providing (i) any performance report as required by Section 5.0 Treasury's RESTORE Act Centers of Excellence Research Grants Program Guidelines and Application to Receive Federal Financial Assistance, and (ii) an annual report to the Council in accordance with 31 C.F.R. § 34.706(a) in a form set by the Council no later than sixty (60) days after the end of the federal fiscal year, and provide a copy to Treasury.

When the subrecipient is a consortium, the annual report also shall identify the consortium members and the respective discipline(s) addressed. This information will be included in the Council's annual report to Congress. Additionally, the Centers of Excellence will, as requested, assist FLRACEP with the completion of any other reports as required by Treasury as provided in 31 C.F.R. § 34.706(b).

#### 4. CONFLICTS OF INTEREST AND ANTI-FRAUD POLICY

FLRACEP, all Centers of Excellence, and their lower tier subgrantees shall comply with state and federal law governing the performance of their employees involved in executing any award or administration of lower tier subawards in accordance with Paragraph C.9(g) of Treasury's RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions and 2 C.F.R. §200.318(c).

- i. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward.
- ii. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients or their officers, employees, or agents.

- iii. A recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.
- iv. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

In accordance with 31 C.F.R. §34.803(a), any indication of fraud, waste, abuse, or potentially any criminal activity pertaining to grant funds shall be reported to Treasury and the Treasury Inspector General.

## 5. PERFORMANCE MEASURES

The Centers of Excellence, in conjunction with FLRACEP, shall develop success metrics, including lower tier subawards. Performance metrics for the Centers of Excellence and their lower tier subawards may be similar to the performance metrics used by other research-focused organizations, may be quantitative in nature, and the metrics may be varied and determined by the type of work undertaken. Metrics for the progress of research may include, without limitation: on-time reporting and on-time completion of research. Metrics for the research accomplishments may include publications, citations, theses/dissertations, etc.

## 6. PROPERTY, DATA MANAGEMENT, RECORDS, AND REPORTING

Intellectual property funded by a FLRACEP grant will abide with the responsible investigator's home entity. FIO, in consultation with PIs, may at any time use photos, data, results, and appropriate documentation to highlight and publicly share program accomplishments and outcomes.

Unless otherwise specified, work conducted under FLRACEP grants is expected to result in publications in peer-reviewed (refereed) journals, or equivalent media. All data and derived data products and metadata must be made publicly available before publication that relies on the data or before the end of the grant period of performance, whichever is sooner. Data must be archived in a regional or national repository designed to promote integration with other regional science, oil spill response, and restoration programs, and advancement of knowledge and utility to engineers, researchers, agencies, and others. Protocols for sample and measurement collection and processing, record-keeping, and data management must be consistent with discipline standards and best practices.

Unless otherwise specified, grant recipients will be required to: submit quarterly progress reports with associated financial statements and in specified format to be defined in grant terms and conditions (in order to justify quarterly payments); participate in required FLRACEP all-hands meetings; and participate in scheduled calls or webinars as necessary.

## 7. LIMITATIONS ON OVERHEAD

Overhead charges for Centers of Excellence awards and lower-tier sub-awards, if applicable, will be no more than 10% of total direct costs. Student tuition and ship time expenses shall be excluded from the calculation of direct costs for the purpose of establishing indirect expenses. Administrative support should be provided from the overhead, unless specific exceptions are requested and accepted through the review and contract process.