

## Special Award Conditions

**Award Number:** NT10BIX5570023

**Amendment Number:** 4

### 1) NFBA Corrective Action SAC

REQUIRED CORRECTIVE ACTION: Please work with your NTIA Program Officer and/or NOAA Grants Specialist to provide additional information to satisfy your CAP requirements. The specific CAP deficiencies are as follows:

#### 1. Vendor Oversight

NTIA and NOAA continue to have concerns about NFBA's oversight of its primary contractors: Government Services Group (GSG), Nabors, Giblin, and Nickerson (NGN), and CST Tallahassee LLC (CST)

- a. On page 4 of your response, you state that GSG merely implements the direction it receives from the NFBA Board, that GSG does not act independently of the NFBA Board and the NFBA Board does not always accept GSG's recommendations.
  - i. Please confirm and document that there are no situations where GSG can act independently of the NFBA Board. NTIA seeks such clarification because it was previously informed by NFBA that GSG could act independently with regard to termination of vendors, as in the August 3, 2011 letter submitted to Rapid Systems by Robert Sheets regarding the removal of Lazaro Sanchez from the NFBA project. While NTIA understands that Mr. Sheets informed Chairman Fulford of this action, NFBA informed NTIA that Mr. Sheets was not required to do so.
  - ii. On page 7 of your response, you state that the General Manager is responsible for the Board Administration and overall Program Administration. The responsibility to oversee and hold vendors accountable to the Board lies with the General Manager. Please explain what authority the General Manager (GSG) has to carry out the above responsibilities.
- b. On page 6, NFBA states that the Chairman of the Board of Directors is the primary signatory for all obligations and contracts entered into by the Board.
  - i. For NFBA's response to Question 3 of Waste, Fraud, and Abuse allegations, NFBA included a copy of the Keenwire and Airwire termination agreement as part of the appendices. Why did Mr. Sheets sign the Keenwire termination agreement? Why did Mr. Lien sign the Airwire termination agreement? Please provide the board's authorization for these specific actions.
  - c. On page 6, NFBA states that the Operations Committee has direct responsibility for oversight of the performance of the General Manager and its contract performance. Please explain how GSG's performance is reviewed and what metrics it is measured against, if any. Also, please provide the remedies (contractual or otherwise) that are available to the Operations Committee and/or the NFBA Board to address any concerns regarding GSG's performance.
  - d. Please clarify who drafted the GSG contract with NFBA. Please explain why the GSG contract does not contain the required contract provisions of 15 C.F.R. §24.36(i), including, but not limited to,
    - i. Termination for cause and/or convenience of the recipient (all contracts over \$10,000 must contain this provision)

- ii. Equal Employment Opportunity provisions (all contracts over \$10,000 must contain this provision)
- iii. Compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act
- iv. Notice of awarding agency requirements and regulations pertaining to reporting and intellectual property
- v. Retention of documents requirements
- vi. Violation/breach of contract provisions?

e. You state that all work authorizations above \$25,000 must be approved by the NFBA Board of Directors following a positive recommendation by the Operations Committee. Please provide an explanation regarding how work authorizations of \$25,000 and less are approved, and by whom.

f. You state that the NFBA Board has a separate contract with Nabors, Giblin, and Nickerson (NGN) to serve as legal counsel. Does NGN currently represent, or has it previously represented, CST, GSG or Meridian Community Services Group as legal counsel? If the answer is yes, please describe when and how such legal representation was established with each entity, along with the nature of that representation, and when it was terminated, if applicable.

g. On page 6 of your response, you state that a Board Special Master has been appointed to resolve disputes and independently evaluate the performance of the General Manager and their relationships with all other vendors on the project.

- i. Please clarify how this Special Master process has been implemented and communicated to NFBA s vendors.
- ii. Has the process be utilized by any vendors?
- iii. What is the process of the Special Master for independently evaluating the performance of the General Manager and their relationships with the vendors on the project? Has the Special Master engaged in a review of the General Manager s performance to date?
- iv. How does the responsibility of the Special Master relating to the evaluation of the performance of the General Manager differ from the responsibilities of the Operations Committee relating to the oversight of the performance of the General Manager?

## 2. Allegations of Waste

a. With regard to question No. 7, is NFBA aware of any other allegations made by Mr. Thurow beyond those listed? It is NTIA s understanding that Mr. Thurow raised various concerns with NFBA s counsel, to which NGN responded to Mr. Thurow in writing on June 7, 2011. Did NGN, as NFBA s counsel, communicate Mr. Thurow s concerns to the entire Board during a board meeting? If not, why not?

b. On page 7 and on page 11 under the heading Addressing Issues, NFBA states that Mr. Thurow has been removed as Operations Committee Chairman. During NTIA s July 27, 2011 visit, NTIA understood that Mr. Thurow was no longer the Chairman of the Operations Committee because his term expired, not through an action by the NFBA. Please clarify the circumstances under which Mr. Thurow was removed as Chairman of the Operations Committee.

c. On page 11 of your response, you state that NFBA [w]ill adopt the non-interference policy which clearly identifies roles and responsibilities and prohibits interference by and individual Board member. Please clarify for NTIA what the

Non-Interference policy is, how it is intended to operate, and who drafted the policy. Please provide a copy of such policy.

d. With respect to Question 12, on page 32, the NFBA response states that both Robert Sheets and Lisa Blair are shareholders in Meridian Community Services Group. In our July 27, 2011 meeting, it was noted that Lisa Blair, provided information to scope the RFP for a compliance vendor (your response in Question 6 provides details on this issue). Please describe what, if any, involvement Meridian has had in the BTOP project, including, but not limited to, drafting or providing RFP language.

i. As part of the response to Question 6, it was noted that the GM knew all the firms that submitted and worked with CST because it was a subcontractor for the FRBA award. If CST was formed in May, 2010, how long had the GM worked with CST at that point in the process? Did the GM also disclose its previous relationship with Lisa Blair and/or Meridian?

e. Please provide copies of the physical invoices received and paid with or to be paid with BTOP funds. Please match the appropriate work order to the invoices.

### 3. Sustainability

a. On page 3 of your response, NFBA describes the increased role of Jacobs as the project manager. As a consequence, the role of GSG will be reduced going forward. GSG's contract amendments indicate that its rate was increased due to its increased role in the project. Please explain how GSG's contract will be modified to reflect its reduced role in the project. Will the Jacobs contract also need to be modified accordingly?

### 4. Document Fiscal Oversight Measures and Detailed Spending Activity as of July 30, 2011

a. Your response at pages 1-3 and the accompanying flow chart outline the procedure for the receipt and processing of invoice payments. All steps regarding the reviewing of invoices, proof of delivery, approval of invoices, inputting of authorized invoices into an accounts payable system, etc., are all handled by vendors, mainly GSG, and NFBA appears to have no role in these functions. NFBA's role appears to be limited to the signing of the checks that have been presented to it by its vendor, GSG. Please provide a response addressing how NFBA will take a more active oversight role in the review and approval of invoices, including whether it reviews the underlying documentation supporting vendor requests for payment for services rendered or for goods delivered.