

## Chapter 5. Local Government Consultants - Contents

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## Chapter 5. Local Government Consultants

### 5.1 Local Government Consultants

To be eligible for reimbursement of FHWA funds for payments to a consultant, the Brooks Act and these procedures are to be followed. It is the policy of the GDOT that LG will procure all consultant professional services from firms pre-qualified by the GDOT. If a LG elects to retain the consultant at its own cost, state law must be followed.

This chapter covers agreements for architects, landscape architects, land surveying, and professional engineering services. These services fall within the scope of the following practices:

- (A) Architecture, as defined in paragraph (6) of [Georgia Code Section 43-4-1](#);
- (B) Registered interior design, as defined in [Georgia Code Section 43-4-30](#);
- (C) Professional engineering, as defined in paragraph (11) of [Georgia Code Section 43-15-2](#);
- (D) Land surveying, as defined in paragraph (6) of [Georgia Code Section 43-15-2](#); or
- (E) Landscape architecture, as defined in paragraph (3) of [Georgia Code Section 43-23-1](#).

These will be referred to as architectural and engineering (A&E) services, or consultant engineering services. Agreements for other services may be entered into for services such as long-range planning, economic analyses, real estate negotiations, and environmental assessments. These will be referred to as consultant personal services (not engineering). Throughout this discussion the term "project" means the work to be undertaken by the consultant. An A&E services project may include construction engineering, but will not include the contracted construction work.

It is the policy of the GDOT that the LG will procure all consultant professional services using the Qualification Based Selection (QBS) process as required by the Brooks Act. This means that procurement of these services will be based on open competitive negotiations and the firm(s)'s demonstrated competence and qualification for the type of professional services required at a fair and reasonable price.

The Federal laws and regulations that govern the procurement of design-related services with Federal-aid highway funds are:

- [Title 23 United States Code, Section 112 \(23 U.S.C. 112\)](#), "Letting of Contracts,"
- [Title 23 Code of Federal Regulations, Part 172 \(23 CFR 172\)](#) "Administration of Engineering and Design-Related Service Contracts,"
- [Title 49 Code of Federal Regulations, Part 18 \(49 CFR 18\)](#) "Uniform Administration Requirements for Grants and Cooperative Agreements to State and LGs," or what is commonly called the "Common Rule,"
- Title 40 United States Code, [Chapter 11, Sections 1101-1104](#) commonly called the "Brooks Act."
- Title 48 Code of Federal Regulations, Part 31 (CFR 31) "Contract Cost Principles and Procedures."

The GDOT policies and procedures govern the acquisition of professional services provided by consultants for architectural and engineering (A&E) work that is financed in part or fully with Federal-aid highway or State funds. The details of these policies and procedures are found in

GDOT POLICY AND PROCEDURE Policy [4020-1](#) and the LG must comply with these Federal and State laws and regulations to qualify for reimbursement with Federal funds.

Public Law 101-121 Section 319 prohibits the use of Federal funds by consultants or sub-consultants who receive a Federal contract, grant, loan, or cooperative agreement pay, to any person for influencing or attempting to influence a Federal LG or Congress in connection with awarding any of the above.

The basic steps to procure consultant service are:

1. Determine the Need For Services.
2. Advertise the Need For Services.
3. Evaluate the Applicants' Qualifications.
4. Select the Most Qualified Firm.
5. Negotiate with the Most Qualified Firm.
6. Execute the Contract

Architectural and Engineering consultant services include the following:

1. Professional or technical expertise to accomplish a specific study, project, task, or other work statement.
2. Any phase of project development, as well as special studies or other assignments within any phase.
3. Periodic examination and consultation or full-time technical inspection during the construction phase.
4. Consultant design and preparation of plans, specifications, and estimates is common when a LG staff is small or when a LG needs additional expertise. Consultant services do not include purchased services provided by a vendor to accomplish routine, continuing, and necessary services.

Before a Local Government advertises for A&E consultant services, it must have a clear definition of the tasks to be accomplished. This includes identification of:

1. The nature and scope of effort required,
2. The technical requirements and qualifications of the consultant services needed,
3. The level of funding resources available,
4. The time frame for performing the work, and
5. The expected results and products to be received.

If assistance is needed in describing the desired scope of work, the LG should seek information from the GDOT Project Manager. Because selection of the most qualified consultant firm is based on evaluations by the LG, it must develop clear selection guidelines (refer to GDOT POLICY AND PROCEDURE Policy [4020-1](#) and the GDOT's Manual of Guidance for Prequalification of Consultants <http://www.dot.ga.gov/PS/Business/Prequalification>). The selection criteria should enable the LG to identify and select the consultant best qualified to meet the LG needs and ensure

that the selected consultant understands and provides services for the LG needs in the most cost-effective manner.

The basic agreement types are lump sum, cost plus fixed fee, provisional hourly rates, negotiated hourly rates, and cost per unit of work. The LG should determine the type of agreement to be developed with the consultant (though this may be modified during negotiations with the selected consultant). Consultant selection shall provide for maximum open and free competition and should provide opportunities for small and disadvantaged business enterprises to obtain an equitable share of the work, consistent with the project scope and capabilities of available small and disadvantaged owned firms.

Architectural and Engineering consultants may be solicited for:

1. A specific project,
2. A specific stage of a project (i.e., Design Report),
3. General engineering services (i.e., supporting services of a LG staff in studies, design, etc.),
4. For more than one project (i.e., several small bridge design projects) or
5. Multiple phases of a single project, or
6. For a combination of the above.

In the case of projects covering two or more distinct phases, when the cost for the second phase depends on decisions reached during the first phase, the agreement should cover only the first phase. The agreement for preliminary engineering should state that the consultant may be considered for subsequent phases provided this option was identified in the advertised solicitation. The consultant's engagement to complete subsequent phases depends upon the consultant's satisfactory performance on prior work and upon negotiation of an agreement for the subsequent phase(s). The LG is not obligated to use the same consultant firm for all phases. Separate consultant agreements may be considered for each phase (e.g., one for preliminary engineering and another for construction engineering).

Throughout the NEPA process for a project, analyses will need to be completed to address specific impacts. The results of these analyses shall influence the location and design of a project. The project consultant can complete the analyses and related documentation. Specific reports are described as environmental studies to support the overall NEPA document. The subjects will vary by project, but they will typically include purpose and need, archaeology, air quality, noise, ecology, history, environmental justice, hazardous materials, etc.

The studies typically need to be completed during the first phase of the project. They provide key information for use in the Section 106, Section 404, and concept report coordination. Within the actual NEPA document, the special study findings are summarized in text. Copies of the technical reports for each of the environmental studies are referred to in the NEPA document and maintained at GDOT and FHWA.

While an engineering management consultant may assist a LG in fulfilling its responsibilities, the LG cannot delegate these responsibilities to a consultant or to another LG. A consultant serving in a management role for a LG, and then managing consultant agreements with its own firm, is a conflict of interest.

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## 5.2 Advertising Professional Services

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Georgia State Law, Code Section 50-22-4, requires the advertising of all licensed and unlicensed professional architectural and engineering (A&E) services with estimated value of \$75,000 or greater through the State of [Georgia Procurement Registry](#) administered by the Department of Administrative Services (DOAS) for a period of no less than thirty (30) days, except for procurements that require the use of the Simplified Acquisition method, or for Emergency Acquisition, or if a waiver for the 30-day duration has been granted by the Commissioner or her designee. The threshold for simplified acquisition is \$75,000. For detailed procedures, refer to section 3.3 of the Consultant Procurement and Contract Management (CPCM) Manual.

The advertisement should contain the following information:

1. A project title, estimated project cost, and estimated start and end dates.
2. The general scope and nature of the project or work for which services are required and the address of a representative of the LG who can provide further details.
3. Solicitations of qualification statements, referred to as Requests for Qualifications (RFQ) from consultants, must incorporate a clear and accurate description of the technical requirements for the service to be procured, including any special conditions or certifications required.
4. Solicitations must clearly set forth sufficient detail on how applicant qualifications will be evaluated. These may include but are not limited to key personnel, firm experience, ability to meet schedule, past performance, in-house expertise, familiarity with GDOT/ FHWA standards, and DBE approach and commitment.
5. Non-engineering service applicants should be asked to provide estimates for the man-hours and classifications needed to complete the project.
6. In the event that a project covers multiple phases (see 31.11a), the LG is not obligated to utilize the original consultant for subsequent phases. If the LG desires this option, the advertisement must state the possibility of a multi-phase agreement at the discretion of the contracting LG.
7. All prospective consultants must be advised that compliance with Federal EEO requirements is required for all Federal funded projects.
8. Consultants will also be held to ADA and Civil Rights language for the employing LG.
9. Response Due Date.
10. Publication dates.
11. Specific project cost estimates shall not be requested until a consultant has been selected.

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## 5.3 Architectural and Engineering Consultant Evaluation and Selection Process

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The LG shall establish guidelines for technical evaluation of the qualifications received, determination of finalists for the purpose of written or oral discussions, and selection for agreement award. Consultants will be pre-qualified by GDOT and will be selected based upon the qualifications they present. For A&E related services, fees for services cannot be considered during the selection

process. Connect with this website <http://www.dot.ga.gov/PS/Business/Prequalification> for more information about GDOT Prequalification Procedures.

The following are frequently utilized as part of the consultant selection process:

1. “Live” Interviews and Presentation of the RFQ by Consultant Individuals or Teams. This approach provides for interaction with the LG and showcases the consultant’s presentation skills. This approach is best for larger, more complex projects, but does increase travel time and costs to the applicant. Video presentation or teleconferencing may be considered as an alternative to reduce travel costs.
2. Telephone Interviews provides for interaction but eliminates travel time and cost. This approach is useful for smaller projects.

Exceptions to the competitive process used for consultant selection:

1. Subsequent Phasing. Selection of a consultant to perform subsequent project phases may only occur if this option was advertised originally (i.e., Phase 1 Preliminary Engineering, Phase 2 Right-of-Way, and Phase 3 Construction Engineering).
2. Contract Amendments - Amendments that do not significantly alter the scope of work can be renegotiated with the existing consultant. However, this should not be used to avoid the responsibility of providing competition for consultant selection.
3. Emergency - To address a set of unforeseen circumstances beyond the LG control which present a real, immediate threat to the proper performance of essential functions, or may result in the material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. (See GDOT Manual of Guidance for Prequalification of Consultants <http://www.dot.ga.gov/PS/Business/Consultants>)
4. Sole Source - Sole source agreements may be requested from the GDOT Project Manager when the consultant provides professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The LG must provide the GDOT Project Manager written justification for requesting this option based upon:
  - a. The unique nature of the services and/or the unique qualifications, abilities, or expertise of the consultant to meet the LG needs. (e.g., are they highly specialized or one-of-a-kind? What are their past performance, their cost effectiveness [learning curve], and/or the follow-up nature of the required services?).
  - b. Other special circumstances that may be relevant such as confidential investigations, copyright restrictions, or time constraints.
  - c. Availability of consultants in the location required. GDOT Project Manager must approve all consultant procedures that are exceptions to the competitive process.
5. Documentation of Selection. Following consultant selection, the LG shall retain the following documentation in the project file:
  - a. The names of a minimum of three consultants considered for the work, (excluding exceptions detailed above), and

- b. Consultant selected and reasons why this consultant was chosen over the others.

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#### **5.4 Oversight of the Agreement and Project Closure**

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The Local Agency shall assign a full time employee as the project administrator to work with the consultant. The project administrator's responsibilities are to:

1. Prepare supplements to existing agreements for services beyond the scope of the original agreement and include the Agency's independent estimate of the costs for the work involved.
2. Ensure that no work is done or costs incurred until the agreements and supplements are approved by the approving authority and executed by the proper parties.
3. Conduct regular meetings with the consultant to track progress and identify potential concerns.
4. Act as a liaison between the Agency and the consultant to assure compliance with the terms of the agreement, including EEO provisions and the use of mandatory forms.
5. Monitor the consultant's progress reports to ensure that problem areas are reported and corrective action taken.
6. Make sure that all work is within the agreement's scope of work.
7. Establish controls to monitor the time for completion of the agreement to ensure that the specified time limitations are not exceeded.
8. Ensure the accuracy of bills presented by the consultant and their consistency with the work performed.
9. Maintain cumulative cost records to assure that costs are allowable, allocable, and reasonable.
10. Track bills to ensure compliance with agreement and fixed fees.
11. Establish controls to prevent overpayment of the agreement and fixed fees.
12. Ensure that all terms and conditions of the agreement have been met prior to final release of the consultant.

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#### **5.5 Contract Close-Out**

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When final contract deliverables have been submitted by the consultant and determined to be satisfactory by the GDOT, the Project Manager shall initiate the contract closeout process by issuing a Stop Work Notice to the local government. For detailed procedures, refer to these online GDOT sites: [CPCM 6.0](#), [6.2](#), [6.3](#), and [6.4](#).

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#### **5.6 Performance Evaluations of Consultants**

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For Local Governments choosing to use consultants, consultant evaluation form must be completed annually while the work is being performed and/or at the completion of the work being performed. All consultants must be pre-qualified in the area in which they are performing work. In order for

GDOT to have a record of each consultant's and sub-consultant's performance, the LG should complete the evaluation form for each consultant and sub-consultant involved with the project and submit to the GDOT Project Manager. The evaluation form can be found at the following link:

<http://www.dot.ga.gov/PS/DesignManuals/DesignGuides>

For further information contact:

Georgia Department of Transportation  
Office of Transportation Services  
Prequalification

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