

Chapter 2

CONSULTANT SERVICES

A. INTRODUCTION

1. In order to supplement the work of the OGS D&C professional design staff, private sector Architectural/Engineering (A/E) Consultants are frequently employed to supply design services for our Client Agency design and construction projects. Written agreements between OGS D&C and selected consultant firms are negotiated and drafted by Consultant Procurement. The selection process is open to all qualified firms. Firms may be selected for specific stand-alone contracts or term contracts with multiple work order assignments.

B. CONSULTANT PROCUREMENT UNIT

1. The Consultant Procurement Unit is typically the A/E Design Consultant's first point of contact with OGS D&C. Consultant Procurement is primarily responsible for the selection, initiation and review of consultant agreements for OGS D&C. The selection process involves establishing the scope of services for Consultant Agreements, retaining qualified design consultants and ensuring compliance with the provisions of the Consultant Agreement. Questions relating to the specific provisions of a consultant agreement scope of services, submission requirements or fee proposals should be directed to:

Bruce Trobridge, P.E.
Director, Consultant Procurement
OGS Design and Construction
35th Floor, Corning Tower
Empire State Plaza
Albany, New York 12242
Tel: (518) 474-0306

C. CONSULTANT ORIENTATION MEETING

1. This meeting is held after award of contract with the principals of the firm and design team to provide an overview of OGS D&C's expectations and important design procedures and guidelines. This meeting is conducted by an OGS D&C representative who is most often a senior manager.

D. CONSULTANT OMBUDSMAN PROGRAM

1. An OGS Term Consultant Ombudsman (TCO) is assigned by the Consultant Procurement Unit immediately following OSC's approval of a term consultant contract. The TCO is typically a senior staff employee who may have been on the consultant selection board.
The assigned TCO to a particular consultant contract can be found via the D&C Sharepoint / Contract Management tab. Click Consultant Procurement

then click on Consultant Information. Click contract number (left side) adjacent to the firm's name (SAxxx number). This brings you to the Consultant Contract Information screen which lists the assigned TCO.

2. TCO's Role:
 - a. Single point of contact for general contract questions
 - b. Provides general familiarization with OGS's D&C process, procedures, guidelines and work process.
 - 1) Supplement information that is available in the Design Manual.
 - 2) Respond to or direct questions regarding OGS D&C procedures.
 - 3) Provide feedback to OGS D&C teams when valid concerns are raised (Consultant Services, Design Manual Committee, etc.).
 - 4) May assist consultant manager in resolving contract issues.
 - c. Assist with identifying initial assignments (when necessary)
 - d. Assist with resolution of impasse issues
 - e. NOT involved with each specific project assignment, fee negotiation or problems

3. The TCO is assigned as a resource for OGS D&C staff to assist in addressing appropriateness of specific assignments.
 - a. Become familiar with specific consultant expertise and their access to specialty services.
 - b. Familiarity of consultant workload (work orders) and anticipated assignments.
 - c. May assist in prioritizing consultant efforts.
 - 1) Debrief OGS D&C management regarding prioritization of projects, and advise consultant manager accordingly.
 - 2) Emphasize the importance of meeting deadlines and commitments for consultant work.

4. The TCO may provide periodic feedback to consultant on overall performance.
 - a. Review Performance Evaluations.
 - b. Solicit feedback from staff and advise consultant manager accordingly.
 - c. Check work order assignments to verify that evaluations are completed for Program Phase and 100% Submission Phases.
 - d. Advise future consultant selection boards as to overall consultant performance.
 - e. Review Consultants QA/QC program and evaluate effectiveness with regard to specific OGS D&C assignments.

5. The TCO may solicit feedback from Consultant regarding OGS D&C performance in the form of suggestions for improvement opportunities. Distribute feedback as appropriate.

6. Responsibilities that the TCO's role does NOT include initiating assignments, scope preparation or review of fee negotiation and approval.

E. PROJECT STAKEHOLDERS



F. EFFECTIVE COMMUNICATIONS

1. Is about the right people getting the right information at the right time.
2. Information – determine who needs to know what.
3. Accuracy - the wrong message may be worse than none at all.
4. Timeliness - too early or too late may add to confusion.
5. Confirmation - make sure the right people have the information they need
6. Coordination - keep others informed on what they need to know without overburdening them with unnecessary information

G. D&C'S EXPECTATIONS OF THE CONSULTANT TEAM

1. Provide sufficient staffing resources with appropriate skills for all accepted assignments.
2. Comply with D&C's procedures, standards and formats. The Consultant is responsible to educate all team members on D&C's policies and procedures.
3. Focus on communication – provide frequent status updates to PMs and EICs.
4. Comply with schedule commitments and work within budget.
5. Focus on D&C's clients' needs.
6. Comply with building codes and good-practice standards.
7. Produce high quality design solutions and efficient execution of the work.
8. Perform a Quality Assurance / Quality Control (QA/QC) review of all deliverables including sub-consultant document coordination.
9. Hire sub-consultants / specialists when you don't have the expertise (example: acoustic consultant). These consultants would require D&C's approval.
10. Accept project assignments ONLY when you can meet all listed criteria above.

H. WHAT THE CONSULTANT CAN EXPECT FROM D&C

1. To be an essential member of the project team.
2. Respect for consultant's knowledge and professional expertise.
3. Fair and reasonable fees for services rendered.
4. Additional fee for additional scope.
5. Feedback on consultant performance and improvement opportunities.
6. Fair and reasonable project schedules.
7. Term assignments with clear technical scope, duration, fee, and description of deliverables

I. QUALITY DESIGN

1. Provide technically sound design solutions.

2. Follow firms internal QA/QC processes (OGS is NOT your QA/QC)
3. Manage the low responsive bidder environment
 - a. May at times reduce the quality of construction and puts more risk on the State and the Consultant/Designer
 - b. Need a “tight” set of bid documents
 - c. Need to show much greater detail than private work
4. Bid Documents need to meet the 4C’s:
 - a. Clear
 - b. Concise
 - c. Complete
 - d. Correct
5. Provide QA/QC Certification Letter(s) - principal of firm including sub-consultants
6. Contact the Quality Manager Stephen Melnick @ 518-474-7646 if there are concerns or roadblocks to providing a quality project.
7. Provide Quality Investigations:
 - a. Consultant/Designer is tasked to resolve the many project unknowns. Some examples are included below:
 - 1) Hazardous Materials
 - 2) Geotechnical: borings, drilling, ground water levels
 - 3) Non-invasive and invasive probes and testing
 - 4) Subsurface Utility Engineering (SUE) - Determine appropriate Quality Level A, B, C or D
 - 5) Environmental
 - 6) Soil sampling and testing at underground fuel storage and piping, firing ranges, etc.
 - 7) Topographic Surveys
 - 8) Masonry and mortar testing: material analysis, absorption, etc.
 - 9) May need contractor involvement (recommendation is to get 3 price quotes). Caution: Conflict of Interest - Contractors performing the work are not allowed to bid as a prime or sub-contract the project unless a waiver is granted or they determine that they will not bid the project
 - 10) Some Investigation Types: roof scans, cores, sanitary/storm video inspections, excavations, building cleaning mockups, dye testing, electric manhole as-builts, window removals, masonry investigations, mandreling spare conduit, etc.

J. GETTING STARTED

1. Understand your contract.
2. Become familiar with the Design Procedures Manual.

K. WORK ORDERS

1. Types of projects / Work Order (WO) assignments which are most often less than \$ 200,000. In value.
2. Lump Sum (preferred) vs Not To Exceed assignments
3. Do not perform work without an approved WO
4. WO Forms: BDC 41 and BDC 41.1 Modifications (Mods)
5. BDC 65 Consultant Fee Estimate Worksheet (good tool to use for fee breakdown; task, staff level, hours)
6. Scope, deliverables, dates/duration of deliverables and fee breakdown
7. Basic vs Additional fees are segregated for review of fee breakdown.
8. Sub-consultants need written approval from D&C prior to performing work

L. OGS D&C PUBLIC WEBSITE

1. The OGS D&C Public Website link www.ogs.ny.gov/BU/DC/ contains the following information:
 - a. Design Procedures Manual
 - b. OGS Master Specifications
 - c. Consultant Forms: Code Compliance and Permitting, Special Inspections, Contract, Design, Estimating and MWBE
 - d. Green Building Design Guidelines
 - e. Contractor Opportunities: Bidding Information, Plan Purchasers, Bidder Questions, Posted Addenda, Bid Results and Award Results

M. INVOICES AND PAYMENTS

1. Follow invoice and payments procedure guidelines provided at time of contract award to minimize delays. Do not send invoices to the PM.

N. SCOPE OF SERVICES

1. A Scope of Services is required for all work involving a Consultant. The purpose is to set forth a common understanding regarding the deliverable(s) and the schedule.
2. The Scope of Services must include a description of the deliverable(s), dates of anticipated delivery or durations and fee breakdown as required. All consultant recommendations should be evaluated as options, including alternatives (if any) and cost estimates.

3. Elements to be included:

- a.** Project number and title.
- b.** Identify OGS as the Client Agency. Identify the agency or department for whom the work is being performed. Use a format that clearly identifies that the agreement is solely between OGS and the consultant regardless of the identity of the facility end user.
- c.** Identify all types of work to be performed (i.e. study, program report, construction documents, etc.).
- d.** Maximum construction cost (MCC). Always indicate that the MCC includes a contingency allowance. Inclusion often ensures that the contingency allowance does not cause the project to exceed the MCC at the final document stage.
- e.** Program Objective. Identify the issue or problem to be resolved by answering the question: "Why are we doing this project?" This information requires client agency or end user input.
- f.** Project Scope:
 - 1)** General Work:

Provide a brief description of the facility, its purpose, and hours of operation. If it is a residential facility for wards of the State, identify the number of residents that are housed at the facility.
 - 2)** Specific Work:

Identify all specific work that is to be included in the project.
 - 3)** Design Meetings:

Identify all meetings, such as kick-off, presentations, etc., that will be required (best estimate). If additional meetings may be anticipated, provide a number for these meetings with a NTE amount.
 - 4)** Submissions:

Identify what submissions and deliverables will be required for the project. Identify the number of copies needed for each submission.

 - (a)** Lump sum fees are preferred for design work and should be linked to the requested deliverable(s). These fees include all printing and copying costs so additional copies will cost additional money. Determine payment structure (i.e. 50% on delivery and 50% on approval).
 - (b)** Identify the total number of copies needed by:
 - OGS D&C for internal review (Architecture, Structures, Electric, HVAC, Plumbing, Landscape Architecture, Site Engineering, Estimating).
 - Field check of the 100% submission.
 - Client review.
 - Environmental permitting submission(s).
 - (c)** Quality Review Certification:

Upon submission of the 100% Submission Phase, the Design Consultant shall certify to OGS, in writing on the Consultant's letterhead, that all Construction Documents have been thoroughly checked for constructability, for accuracy, for the coordination of all

their parts and details, for conformity to all program requirements, and for conformity to all applicable laws, codes, and regulations. Where a sub-consultant firm has provided a portion of the work, the prime consultant shall obtain a similar certification letter from the sub consultant to be forwarded to OGS together with the prime consultant's certification letter. These certification letters shall be signed by a Principal of the firm and accompany the 100% Submission.

- 5) Bid Period Services:
 - (a) Identify if attendance at a pre-bid meeting or site visit is required and if so, by whom (i.e. are representatives from all disciplines required).
 - (b) Review [Chapter 7 Bid Phase Guidelines](#) and identify any changes in Scope of Services.
- 6) Construction Period Services:
 - (a) Identify the number of site visits that will be required and incorporated into the basic fee structure. Is an initial job meeting needed? Are meetings to be held at the request of the Director's Representative?
 - (b) Review [Chapter 8 Construction Phase Guidelines](#) and identify any changes in Scope of Services.
- 7) Testing:
 - (a) OGS D&C maintains term contracts for asbestos and lead paint testing. These contracts may be used for this testing. Coordinate requests for testing with the designated OGS Team Leader.
 - (b) Specific testing that will be required should be included in the Scope of Services. Coordinate with the designated OGS Team Leader.
 - (c) Access to the location of suspect materials for testing should be identified. A provision for area restoration may also be needed.
- 8) Information and Existing Conditions:
 - (a) Advise Consultant of the information that will be made available.
 - (b) Identify responsibility and include contact information for obtaining existing site information, geotechnical information and/or survey data. If a survey is required, coordinate with OGS Geotechnical Group. See [Chapter 9.15 Geotechnical Guide](#) for more detailed information.
- 9) Codes:
 - (a) Conform to all codes that are applicable to the project.
 - (b) This portion of the Scope of Services can be used to call attention to specific codes.
 - (c) See [Chapter 9.9 Codes Guide](#) for more detailed information.
- 10) Site Related Issues and Environmental Permits:
 - (a) Identify that OGS D&C prepares SEQRA documents.

- (b) Identify Designer's responsibility for providing site analysis for various issues including, but not limited to, storm water management compliance.
 - (c) Identify any wetlands issues, identify those responsible for coordination with the Army Corp of Engineers and/or the Department of Environmental Conservation.
 - (d) Identify responsibility for compliance with site permitting and changes that may be required as project progresses.
 - (e) See [Chapter 9.12 Environmental Guide](#) (reserved).
- 11) Approval by Others:
- (a) Identify responsibility for obtaining necessary approvals and permits from other governmental entities and organizations.
 - (b) Identify responsibility for modifying documents to obtain approvals and permits.
- 12) Design Time Period:
- (a) Identify design schedule for the project.

4. Basic Services

a. **General Provisions** - There are a number of general requirements and standards, which govern the basic services:

- 1) The Consultant shall prepare a schedule for each submission phase. This schedule shall be submitted to the designated OGS Team Leader for approval.
- 2) The Consultant shall attend all conferences required by OGS D&C and shall subsequently prepare and distribute minutes of such conferences.
- 3) The Consultant shall have a project representative responsible for coordinating all of the consultants work and also, in some cases the work of OGS Designers. The consultant project representative shall be available to OGS D&C.
- 4) The Consultant shall not retain any additional sub-consultants without the prior written approval of OGS D&C.
- 5) Design work shall not exceed the MCC noted in the Scope of Services.
- 6) Documentation:
 - (a) Drawings and specifications for the project shall be prepared according to Wicks Law requirements and as approved by the OGS Team Leader. See [Chapter 9.3 Multiple Prime Contracts Guide](#).
 - (b) The Consultant shall supply reproducible project drawings and copies of specifications and other materials prepared for each submission phase. All submissions shall be made in accordance with the Design Procedures Manual.
 - (c) Submission documents shall be revised/corrected, without additional compensation, until the documents are approved by designated OGS Team Leader. Client

revisions to documents after approval and incorporation of initial comments may merit additional compensation.

- (d) OGS D&C's review does not in any way relieve the consulting-firm/design-professional from full responsibility that they insure their design-work as indicated on their final construction documents (drawings and specifications) meets all the requirements of the latest editions of the New York State Building Code and all applicable other codes referenced in the New York State Building Code.
 - (e) The costs for furnishing reproductions for all documents for all submissions including, the electronic versions, are included in the basic fee agreement.
 - (f) **All** materials, calculations, models, drafts, renderings, survey results, test data, and documents, including any furnished by OGS D&C or prepared in conjunction with the project are the property of OGS D&C. All documents, both hard copy and electronic versions, shall be provided to OGS D&C when the project is terminated regardless of the project stage.
- b. See each Submission Phase for required Basic Services (reserved)

5. Additional Compensation

- a. The retention of a specialized sub-consultant, as directed and approved by OGS D&C, which is not ordinarily required for projects of comparable type shall merit additional compensation.
- b. Contract printing (when required by the designated OGS Team Leader) shall merit additional consultant compensation.
- c. Client modifications to work already approved shall merit additional compensation. However, any errors and omissions are not compensated.
- d. Preparation of Change Orders or Addenda not due to errors and omissions or other deficiencies in the documents shall merit additional compensation.

6. Additional Services

- a. See [Chapter 8 Construction Phase Guidelines](#) consultant optional services.
- b. See each Submission Phases for listed Optional Services (reserved)

7. Sample Scope of Services

- a. See [Initial Field Trip Sample Scope](#) (reserved).
- b. See [Program Report Sample Scope](#) (reserved).

O. OFFICE OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES (M/WBE)

- 1. The Commissioner of General Services requires that minority and women-owned Architectural/Engineering firms be given the opportunity to participate in the

Consultant Services Program. Accordingly, percentage goals for M/WBE participation are assigned to all consultant contracts with fees of \$25,000 or more. Contractors are required to participate when all the construction contracts total \$100,000 or more. Inquiries regarding project-specific M/WBE goals should be directed to:

OGS Design and Construction
Office of Minority and Women-Owned
Business Enterprises
Corning Tower Building, Room 3580
Empire State Plaza
Albany, New York 12242
Tel: (518) 473-7083

P. CONSULTANT AGREEMENT AND FEES

1. **Consultant Agreement Process** - Consultants retained by OGS D&C are required to comply with an *executed* Consultant Agreement (contract). OGS D&C uses both stand-alone (project specific) and term contracts depending on the size, complexity, and value of the project work to be accomplished. What follows is a description of the procedures followed in the development of a Consultant Agreement. Please note that the Consultant's active participation in the initial and final steps is essential to facilitate this process. The following forms are used in developing the contract:
 - a. [Consultant Multiplier Calculation Form](#) (BDC 63): The Consultant Multiplier Calculation Form provides a framework for calculation of a multiplier. It is based on billable direct labor and non-billable indirect labor and operating expenses. Refer to instructions on the form.
 - b. [Consultant Employee Wage Rate Schedule](#) (BDC 66.1): The Consultant Employee Wage Rate Schedule is used as the basis for the Contract Wage Rate Schedule and establishes the *maximum* hourly rate to be billed (for those titles anticipated providing direct technical services) for the duration of the contract. If officers, partners, and/or principals will be providing technical services to the project, these should also be listed along with their hourly compensatory rates. Refer to instructions on the form.
2. **Fee Negotiation** - The OGS PM and TL and Consultant Procurement staff will work with the Consultant firm to reach an agreement on a fair and reasonable fee offer based on the scope of work to be accomplished and budgetary needs. Other terms of the contract are not negotiable. Various tools are available to facilitate design services and fees. One of those tools, the [Consultant Fee Estimate Worksheet and Consultant Fee Breakdown](#) can help develop a design plan for a specific project. Optional design services may also be included to formulate the plan and fee negotiation.
 - a. [Consultant Fee Estimate Worksheet](#) (Form BDC 65-66): The Consultant Fee Breakdown is designed to summarize the Estimate Worksheets and include any additional line item fees that may be required. This form also includes the Consultant Fee Estimate Worksheet that provides a framework for estimating



employee hours, total direct cost, and total labor cost for each phase of a particular project.

- b. If the selected consultant for a stand-alone project declines the work or is unable to negotiate a fair and reasonable fee, then the consultant firm ranked second by the slate selection board will be offered the project. If the second-ranked firm declines, the third-ranked firm will be offered the project. Declination does not negatively impact consideration for future opportunities. Once a fee has been negotiated and the consultant employee wage rates and multiplier are approved, Consultant Procurement will initiate a request for funding and a request for a written Consultant Agreement. This process can require as much as three or four weeks.
- c. If a term consultant declines a work assignment or is unable to negotiate a fair and reasonable fee, then another term consultant will be selected. Declination does not negatively impact consideration for future work orders.

Q. CONSULTANT EVALUATIONS

- 1. Consultant evaluations are encouraged to be initiated for all phases of design. The Consultant Evaluation is a tool to be used by the PM or the TL when communicated expectations have not been met. At a minimum, the PM completes an evaluation at the end of the Program and the 100% Submission Phases using the electronic evaluation process in DCNet.

Revision History:

<i>Rev</i>	<i>Date</i>	<i>Description</i>	<i>Reviewed by:</i>	<i>Approved by:</i>
0	12/03/12	Last revised date		
1	02/17/15	Major revisions	Parnett	Parnett
2	04/2-/16	Deleted Claude's name. Changed to Steve Melnick.	Harrington	Harrington