

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 projects or term contract / 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 selection, initiation and review of consultant agreements for OGS D&C. This 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 OPPORTUNITIES

1. Consultant opportunities are advertised in the New York State Contract Reporter and [The Empire State Builder](#) (OGS D&C's weekly newsletter available on the OGS Web Page). The advertisements contain a description of the services sought by OGS D&C, as well as formal submittal requirements for consultant firms seeking to do business with OGS D&C.
2. To be considered for **Architectural, Engineering and Land Surveying Services**:
 - a. Firms must be licensed in New York State to practice Architecture, Engineering and/or Land Surveying.
 - b. **NYSED CERTIFICATE OF AUTHORIZATION to Provide Engineering Services in New York State.** Additionally, Section 7210 of the New York State Education Law requires that all business entities (*not individual licensees*) legally permitted to provide *professional engineering services* in the State of

New York obtain a “Certificate of Authorization” to provide these services from the New York State Education Department (NYSED). This Law applies to the following types of business entities:

- 1) Domestic and foreign professional service corporations;
- 2) Domestic and foreign professional services liability companies;
- 3) Partnerships;
- 4) Registered limited liability partnerships;
- 5) New York registered foreign limited liability partnerships; and
- 6) General business corporations authorized under subdivision six of Section 7209 of the State Education Law (“grandfathered” corporations).

For more information regarding authorization requirements and submission of applications, contact the NYSED’s Professional Corporations Unit, a division of the NYSED, Office of the Professions at:

Telephone: (518) 474-3817 Ext. 400

E-Mail: <mailto:opc@nysed.gov>

- c. A letter of interest referencing the advertised project number, title and location should be submitted. The letter of interest should also include:
 - 1) Previous related project experience and performance.
 - 2) Specific reference should be made to budgeting, scheduling, phasing, and staff capabilities that would indicate the capacity of the firm to accomplish the work outlined.
- d. Any additional requirements as noted in the announcement should also be addressed. A *current* Modified Standard Form BDC 330 (*Architect, Engineer and Land Surveyor Services Questionnaire*) should also be submitted (<http://www.ogs.state.ny.us/dnc/generalinfo/forms/BDC330.html>).
- e. OGS utilizes the Request for Proposal (RFP) or Information for Bid (IFB) process when selecting Consultants for work other than design services. To be considered for work *Other than Design Services*:
 - 1) Submit a letter of interest identifying the advertised project number, title and location and addressing all items as specified in the advertisement.

D. DESIGN CONSULTANT SELECTION PROCESS

1. The OGS D&C Group selects qualified Consultants to provide services including architectural and engineering design, land surveying, construction management, hazardous materials sampling, and materials testing. Consultants are selected by OGS D&C in accordance with existing law and policy and based on the Consulting firm’s individual qualifications as related to the specific task(s) to be accomplished.
 - a. **Slate Selection** – Slate selection is decided by a Selection Board, comprised of OGS D&C practicing professional staff including Architects and Engineers. The Board is required to follow strict protocol for selection of only the most qualified and capable firm available for contract award. The Board is obligated to act in strict accordance with Section 136-a of the State

Finance Law, which governs Contracts for Architectural, Engineering, Landscape Architecture, and Land Surveying Services.

- 1) Following receipt of letters of interest, the Selection Board convenes to evaluate submitted materials and determine a short list of firms best qualified for the project. The senior member of the Board is responsible for insuring that slate selection according with established protocol. The Board considers the qualifications of each individual firm against the skills required for the Task(s) outlined in the advertisement.
- 2) Typically, four to five firms are considered to be the most qualified are recommended for the slate. Once the slate selection process has been made, certified and approved, the slated firms may be invited to interview with the Selection Board.

b. Consultant Interview - Interviews are generally required prior to completing the selection and proceeding with any binding Consultant Agreement. The objective of the interview is for the Consultant to respond to specific OGS D&C concerns and questions regarding the specific task(s) of interest. The interview is generally one-hour duration outlining the firm's related experience, capacity and competence. The one-hour interview also includes a half-hour of questions by the Selection Board.

- 1) Individuals or firms invited to participate in the interview process receive a letter informing them of the time, location, and the expected format of their presentation. Also included are the names of Selection Board members and meeting itinerary. In addition to the interview notification letter, a packet of materials is enclosed for the Consultant's attention including:
 - a) Project Scope of Services outlining the work to be accomplished.
 - b) A link to this *OGS Design Procedures Manual*.
 - c) Copy of New York State's Minority/Women-Owned Business Enterprise (M/WBE) Policy Statement.
 - d) Interview Attendance Sheet to be returned by email prior to the interview.
- 2) The following documentation is requested to be brought to the interview:
 - a) NYS Department of State Entity Information unless firm is a partnership or individual.
http://appsext8.dos.state.ny.us/corp_public/CORPSEARCH.ENTITY_SEARCH_ENTRY
 - b) Either of the following as proof of licensure in NYS
 - Certificate of Authorization to provide professional engineering services
 - State Education Department registration certificate for practice in NYS as a(n) professional engineer, architect, or land surveyor
 - c) Consultant's List of Sub consultants (BDC-325),
<http://www.ogs.state.ny.us/dnc/generalInfo/forms/BDC325.html>
 - d) Consultant Utilization Plan (BDC-327)
<http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc327.html>

- 3) In order to expedite the procurement process, the following documentation is requested to be brought to the interview in a sealed envelope, along with the required backup documentation.
 - a) Consultant Multiplier Calculation Form BDC-63,
<http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc63.html>
 - b) Consultant Employee Wage Rate Schedule BDC66.1,
<http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc661.html>
 - c) New York State Standard Vendor Responsibility Questionnaire
<http://www.ogs.state.ny.us/dnc/generalInfo/forms/NYSSVRQuestionnaire.html>
- c. **Selection Notification** - Upon the completion of the preliminary selection process, Selection Board members cast ballots to establish a ranking of the firm(s) best suited to the project. The Board makes its final recommendation to the OGS Deputy Commissioner for Design and Construction. Upon the Deputy Commissioner's formal approval, Consultant Services staff publishes the selection results in the Empire State Builder. The selection notification letter also indicates the insurance requirements (reserved) and requests proof of insurance that is to be submitted to the Director of Contract Administration.
- d. **Fee Negotiation and Contracting** – Following selection, for stand-alone projects a fee offer is proposed and negotiated before the contract is developed. No consultant services can commence until the contract is signed by OSC.

E. CONSULTANT CONTRACTS

1. Stand Alone Contracts

- a. Supplemental Agreements are often needed to add to the duration and/or the dollar value of existing contracts. In order to complete a supplement, the Consultant Procurement office requires justification and documentation of a scope of services and/or a fee schedule.

2. Term Contracts

- a. Description (reserved)
 - 1) A list of active terms is available to OGS staff through DCNet:
 - DCNet/Reports/Consultant Services/CSL.1
 - DCNet/Reports/Consultant Services/CSL.5
- b. Work Order Assignments
 - 1) Description (reserved).
 - 2) **Sample of Work Order** (reserved).
 - 3) Modifications (reserved).
- c. **Ombudsman Program**: An OGS Term Consultant Ombudsman (TCO) is assigned immediately following OSC approval of a term consultant contract. The ombudsman is assigned to mentor new term consultants. The ombudsman is typically a senior staff employee of OGS D&C providing the consultant firm with an orientation meeting. The meeting is held with principles of the firm to review procedures, resources, definitions,

expectations, MWBE requirements, evaluations, and compensation. Responsibilities of the TCO include the following:

- 1) Advise consultant manager as to roles and responsibilities within OGS D&C.
 - a) Supplement information that is available in the Design Manual.
 - b) Respond to or direct questions regarding OGS D&C procedures.
 - c) Provide feedback to OGS D&C teams when valid concerns are raised (Consultant Services, Design Manual Committee, etc.).
 - d) Assist consultant manager in resolving contract issues.

- 2) Resource person for OGS D&C staff addressing issues of 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) 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.
 - (3) Provide periodic feedback to consultant on overall performance.
 - (a) Receive a copy of all Performance Evaluations written on the consultant.
 - (b) Solicit feedback from OGS Team Leaders, and advise consultant manager accordingly.
 - (c) Check work order assignments to verify that evaluations are filed.
 - (d) Assist Business Unit Leaders in resolving of scope or performance disputes.
 - (4) Advise future consultant selection boards as to overall consultant performance
 - (a) Solicit feedback from Consultant regarding OGS D&C performance in the form of suggestions to improvements. Distribute feedback as appropriate.
 - (b) Review Consultants QA/QC program and evaluate effectiveness with regard to specific OGS D&C assignments.

- 3) Responsibilities that the Ombudsman role does NOT include:
 - a) Initiate assignments.
 - b) Scope preparation or review.
 - c) Fee negotiation, review, or approval.

- 4) [Term Consultant Ombudsman Initial Meeting Agenda](#)

- 5) The Consultant Procurement Unit maintains a current list of term ombudsman assignments in the
V:\DesignAndConst\Organization\ConsultantProcurement\ombudsman\ConsultantOmbudsmanTRackingLog.xls

F. 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.
 - 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:
 - (1) OGS D&C for internal review (Architecture, Structures, Electric, HVAC, Plumbing, Landscape Architecture, Site Engineering, Estimating).
 - (2) Field check of the 100% submission.
 - (3) Client review.
 - (4) 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.
 - (1) 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.
- g. Design Time Period:
- 1) 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 Wick's 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. Optional 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).

G. 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

H. 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](http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc63.html) (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, <http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc63.html>.
 - b. [Consultant Employee Wage Rate Schedule](http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc661.html) (Form 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, <http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc661.html>.
2. **Fee Negotiation** - The OGS Team Leader 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 Breakdown](http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc6566.html) (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, <http://www.ogs.state.ny.us/dnc/generalInfo/forms/bdc6566.html>.
 - 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.

