

House Bill 995 (AS PASSED HOUSE AND SENATE)

By: Representatives Newton of the 123<sup>rd</sup>, Rynders of the 152<sup>nd</sup>, Brockway of the 102<sup>nd</sup>, and Holcomb of the 81<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 80 of Title 36 of the Official Code of Georgia Annotated,  
2 relating to general provisions applicable to counties, municipal corporations, and other  
3 governmental entities, so as to provide for certain agreements from consultants who enter  
4 into contracts or arrangements with counties, municipalities, and other local governmental  
5 entities to prepare or develop specifications or requirements for bids, requests for proposals,  
6 procurement orders, or purchasing orders; to provide a definition; to provide for related  
7 matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Article 1 of Chapter 80 of Title 36 of the Official Code of Georgia Annotated, relating to  
11 general provisions applicable to counties, municipal corporations, and other governmental  
12 entities, is amended by adding a new Code section to read as follows:

13 "36-80-26.

14 (a) As used in this Code section, the term 'consultant' means an individual or company,  
15 whether paid or unpaid, that develops or drafts specifications or requirements for a  
16 solicitation or that serves in a consultative role during the bid or proposal evaluation or  
17 negotiation process.

18 (b) Consultants who enter into contracts or arrangements with counties, municipalities, and  
19 other local governmental entities to prepare or develop specifications or requirements for  
20 bids, requests for proposals, procurement orders, or purchasing orders for such county,  
21 municipality, or other local governmental entity shall, at the time of entering into such  
22 contract or arrangement, execute an agreement which provides that:

23 (1) The consultant shall avoid any appearance of impropriety and shall follow all policies  
24 and procedures of the county, municipality, or other local governmental entity with whom  
25 the consultant is entering into contract or arrangement;

26 (2) The consultant shall immediately disclose to such county, municipality, or other local  
27 governmental entity any material transaction or relationship, including, but not limited  
28 to, that of the consultant, the consultant's employees, or the consultant's agents or  
29 subsidiaries, that reasonably could be expected to give rise to a conflict of interest,  
30 including, but not limited to, past, present, or prospective engagements, involvement in  
31 litigation or other dispute, client relationships, or other business or financial interest, and  
32 shall immediately disclose any material transaction or relationship subsequently  
33 discovered during the pendency of the contract or arrangement;

34 (3) The consultant shall use best efforts to avoid a conflict of interest and that any funds  
35 paid to the consultant prior to discovery of a conflict of interest that is unable to be  
36 mitigated to the reasonable satisfaction of such county, municipality, or other local  
37 governmental entity shall be returned to such county, municipality, or other local  
38 governmental entity;

39 (4) The consultant shall not submit a bid or proposal in response to any solicitation in  
40 which the consultant has developed or drafted specifications or requirements thereof and  
41 shall not otherwise perform work on any contract or subcontract directly resulting from  
42 that particular solicitation document, unless such county, municipality, or other local  
43 governmental entity expressly waives such restriction in writing and the consultant agrees  
44 that a designated representative of such county, municipality, or other local governmental  
45 entity may interview the consultant's employees who will be participating in the  
46 solicitation development or evaluation or negotiation process in order to ensure that no  
47 impermissible conflicts of interest exist;

48 (5) Throughout the evaluation or negotiation process, the consultant shall maintain the  
49 confidentiality of the process and of the information contained in suppliers' responses.  
50 The consultant shall not transmit, communicate, or otherwise convey preliminary  
51 conclusions or results concerning suppliers' responses or the likely outcome of the  
52 evaluation or negotiation process and the consultant shall agree to keep confidential all  
53 internal workings of the evaluation or negotiation process until the results of such process  
54 have been officially announced by such county, municipality, or other local governmental  
55 entity;

56 (6) In the course of participating in the procurement process, the consultant may have  
57 access to protected information which means all proprietary or confidential information  
58 provided by the county, municipality, or other local governmental entity or the supplier,  
59 including (A) information relating to such county, municipality, or other local  
60 governmental entity and its business, products, or employees that becomes available to  
61 the consultant due to the consultant's access to such county's, municipality's, or other  
62 local governmental entity's property, products, or employees; (B) information that was

63 or is created, conceived, developed, reduced to practice, or discovered by the consultant,  
64 whether alone or jointly with others, using any protected information or any property or  
65 materials supplied to the consultant by such county, municipality, or other local  
66 governmental entity or the supplier; and (C) information that was or is created,  
67 conceived, developed, reduced to practice, or discovered by the consultant, whether alone  
68 or jointly with others, during the period of the consultant's assignment with such county,  
69 municipality, or other local governmental entity. For purposes of illustration, such  
70 protected information shall include without limitation: inventions, discoveries,  
71 developments, improvements, trade secrets, know-how, ideas, techniques, technology,  
72 designs, processes, formulae, data and software programs or subroutines, source or object  
73 code, algorithms; plans for research and development, new products, marketing and  
74 selling; budgeting and financial information; production and sales information, including  
75 prices, costs, and quantities, and information about suppliers and customers; information  
76 about business relationships; and information about skills and compensation of state  
77 employees, consultants, or other state personnel. The consultant shall agree to hold such  
78 protected information in strictest confidence and shall ensure that its employees who have  
79 access to such protected information have signed a nonuse and nondisclosure agreement  
80 similar in content to the provisions hereof, prior to any disclosure of such protected  
81 information to such employees; not to disclose protected information to any third party  
82 without the written consent of such county's, municipality's, or other local governmental  
83 entity's representatives authorized to grant such consent except as required by law; to take  
84 all reasonable steps to safeguard such protected information, taking at least those  
85 measures it takes to protect its own most highly confidential information; and to not use  
86 protected information for any purpose other than for purposes of completing the  
87 consultant's duties as part of the procurement process. The consultant shall not take,  
88 copy, or retain any such protected information in any written, electronic, or physical form  
89 whatsoever without the written permission of such county, municipality, or other local  
90 governmental entity and shall return all such protected information to such county,  
91 municipality, or other local governmental entity upon conclusion of negotiations of the  
92 procurement or upon request of such county, municipality, or other local governmental  
93 entity. In the event that such county, municipality, or other local governmental entity  
94 determines that the consultant's participation warrants the execution of a separate  
95 nondisclosure agreement, the consultant will enter into such agreement and shall ensure  
96 that its employees enter into such agreement;  
97 (7) In addition to maintaining the confidentiality of the evaluation or negotiation process,  
98 upon issuance of the solicitation by such county, municipality, or other local  
99 governmental entity, the consultant is strictly prohibited from having any contact with

100 suppliers participating in the solicitation process except through such county,  
101 municipality, or other local governmental entity. Contact includes, but is not limited to,  
102 any interaction with such suppliers such as telephonic communications, e-mails, faxes,  
103 letters, or personal meetings such as lunch, entertainment, or otherwise. Any questions  
104 from suppliers or anyone else shall be referred to such county, municipality, or other local  
105 governmental entity conducting such solicitation. If the consultant anticipates having  
106 contact with a potential supplier during the procurement process after issuance of the  
107 solicitation, this potential conflict shall be immediately disclosed to such county,  
108 municipality, or other local governmental entity for appropriate action in accordance with  
109 the conflicts of interest provisions of the agreement. If the consultant is contacted for any  
110 reason by a supplier potentially interested in the solicitation, including, but not limited  
111 to, potential future employment or other personal or financial interest in the supplier, the  
112 consultant shall promptly report the information to such county, municipality, or other  
113 local governmental entity. Such county, municipality, or other local governmental entity  
114 may consider removing individuals who have received such contact from any further  
115 participation in the solicitation or evaluation process;

116 (8) In the course of participating in the evaluation or negotiation process, the consultant  
117 acknowledges that the consultant may develop working documents, including, but not  
118 limited to, those which capture thoughts, questions, or discussions of the suppliers'  
119 responses. The consultant shall agree that all working documents are records of and the  
120 property of such county, municipality, or other local governmental entity and shall be  
121 submitted to such county, municipality, or other local governmental entity at the end of  
122 the evaluation or negotiation process. Such working documents are subject to public  
123 inspection as provided in Article 4 of Chapter 18 of Title 50;

124 (9) The obligations of the parties with respect to paragraphs (1), (2), and (3) shall survive  
125 until a contract award has been made or until the procurement has been abandoned by  
126 such county, municipality, or other local governmental entity. The obligations of the  
127 parties with respect to paragraph (4) shall survive expiration or termination of the  
128 agreement. The obligations of the parties with respect to paragraphs (5) and (6) shall  
129 survive until such time as all confidential information which was disclosed becomes  
130 publicly known and made generally available through no action or inaction of the  
131 receiving party. The obligations of the parties with respect to paragraph (7) shall survive  
132 until final contract award. The obligations of the parties with respect to paragraph (8)  
133 shall survive until the time that those records are no longer required to be maintained  
134 pursuant to such county's, municipality's, or other local governmental entity's records  
135 retention policies and procedures; and

136 (10) Any violation or threatened violation of the agreement may cause irreparable injury  
137 to the county, municipality, or other local governmental entity, entitling such county,  
138 municipality, or other local governmental entity to seek injunctive relief in addition to all  
139 other legal remedies."

140

**SECTION 2.**

141 All laws and parts of laws in conflict with this Act are repealed.