

The House Committee on Governmental Affairs offers the following substitute to HB 995:

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 governmental entities
5 to prepare or develop specifications or requirements for bids, requests for proposals,
6 procurement orders, or purchasing orders; to provide for related matters; to repeal conflicting
7 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 Consultants who enter into contracts or arrangements with counties, municipalities, and
15 other governmental entities to prepare or develop specifications or requirements for bids,
16 requests for proposals, procurement orders, or purchasing orders for such county,
17 municipality, or other governmental entity shall, at the time of entering into such contract
18 or arrangement, execute an agreement which provides that:

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

22 (2) The consultant shall immediately disclose to such county, municipality, or other
23 governmental entity any material transaction or relationship, including, but not limited
24 to, that of the consultant, the consultant's employees, or the consultant's agents or
25 subsidiaries, that reasonably could be expected to give rise to a conflict of interest,
26 including, but not limited to, past, present, or prospective engagements, involvement in

27 litigation or other dispute, client relationships, or other business or financial interest, and
28 shall immediately disclose any material transaction or relationship subsequently
29 discovered during the pendency of the contract or arrangement;

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

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

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

52 (6) In the course of participating in the procurement process, the consultant may have
53 access to protected information which means all proprietary or confidential information
54 provided by the county, municipality, or other governmental entity or the supplier,
55 including (A) information relating to such county, municipality, or other governmental
56 entity and its business, products, or employees that becomes available to the consultant
57 due to the consultant's access to such county's, municipality's, or other governmental
58 entity's property, products, or employees; (B) information that was or is created,
59 conceived, developed, reduced to practice, or discovered by the consultant, whether alone
60 or jointly with others, using any protected information or any property or materials
61 supplied to the consultant by such county, municipality, or other governmental entity or
62 the supplier; and (C) information that was or is created, conceived, developed, reduced
63 to practice, or discovered by the consultant, whether alone or jointly with others, during

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

101 during the procurement process after issuance of the solicitation, this potential conflict
 102 shall be immediately disclosed to such county, municipality, or other governmental entity
 103 for appropriate action in accordance with the conflicts of interest provisions of the
 104 agreement. If the consultant is contacted for any reason by a supplier potentially
 105 interested in the solicitation, including, but not limited to, potential future employment
 106 or other personal or financial interest in the supplier, the consultant shall promptly report
 107 the information to such county, municipality, or other governmental entity. Such county,
 108 municipality, or other governmental entity may consider removing individuals who have
 109 received such contact from any further participation in the solicitation or evaluation
 110 process;

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

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

131 (10) Any violation or threatened violation of the agreement may cause irreparable injury
 132 to the county, municipality, or other governmental entity, entitling such county,
 133 municipality, or other governmental entity to seek injunctive relief in addition to all other
 134 legal remedies."

135 **SECTION 2.**

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