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4. Consultant fees and other issues

The following is a general guide to appropriate fee structures for services, which may be provided by the various consultants.

As a result of changing priorities or funding availability, project development may not be continuous. Health services / agencies are to obtain professional services in a manner that will provide for consulting services to be interrupted or terminated recognising the 'stop start' nature of project development.

As a consequence, the fee structure and consultant’s contract should reflect the various distinct stages of a project.

It is the project control group (PCG) responsibility to confirm that the fees incorporate all services required by each consultant. Such fees should reflect their actual responsibilities (e.g. management, reporting, design, documentation, contract administration superintendent, co-ordination, and commissioning).

General fee arrangements

**Planning / functional briefs**

Fees for the development of planning and functional briefs are usually a fixed lump sum related to services to be provided. There need be no commitment to the project proceeding beyond this stage.

**Master plan / feasibility studies**

Fees for this stage are anticipated to be on a fixed fee basis related to the services provided. There would be no commitment to the project proceeding to the next stage.

**Design stage**

The fee for the design stage is generally 25 per cent of the total percentage fee.

- **Schematic design**
  
  Fees of approximately 12 per cent of the total percentage are based on the approved cost estimate of construction. This will be the net project cost (excluding fees, land acquisition and prolongation factors) in accordance with cost plan C (limit of cost estimate).

- **Design development**
  
  Fees of approximately 13 per cent of the total percentage are based on the cost estimate of construction. This will be the net project building cost (excluding fees, land acquisition and prolongation factors) in accordance with the approved cost plan C, (limit of cost estimate). The Department of Health or PCG may review the project, specifically engineering service design and documentation, prior to tendering by engagement of an independent consultant.

**Contract documentation**

The fee for the contract documentation stage is generally 40 per cent of the total percentage fee.

Fees are maintained on a percentage of the construction cost in accordance with the approved cost plan C (limit of cost estimate). This will be the net project cost, excluding fees, land acquisition and prolongation factors.

**Contract administration**

The fee for the contract administration stage is generally 35 per cent of the total percentage fee.

Fees are maintained on a percentage of the construction cost in accordance with the approved cost plan C (limit of cost estimate).

This will be the net project cost, excluding contingencies, fees, land acquisitions and escalation factors.

Although fees for design, contract documentation and contract administration are usually on a percentage basis, upon completion of schematic design in which the scope of works and budget will be determined the fees can be converted to a fixed fee basis.

Fees for each stage may then be converted into a fixed fee if an overall discount is provided. Fees for additional works such as client initiated changes should be negotiated at project commencement stage. When presenting fee proposals consultants are to nominate the hourly rates of key personnel.

**Disbursements**

In the course of providing services, consultants will incur expenses, which are reimbursable. When presenting fee proposals consultants are to identify disbursements. Generally travel, printing, photocopying, communication, provision of contracts and photographic records costs are to be included in the consultant percentage fees. Expenses, which may be additional to normal fees, include:
- fees paid to statutory authorities / government levies
- advertisements and published notices
- provision of more than the agreed number of copies of documents and / or drawings
- special services such as development of general prototypes, major models or manuals
- use of specialised equipment where required and agreed by client
- costs associated with a clerk of works
- travel associated with inspections / study of facilities not directly associated with the project.

**Novation**

Consultants can be novated from the department to health services / agencies. This action transfers the responsibility to act as the principal in the contract, from the department to health services / agencies for those consultants who are novated. Health services / agencies need to be aware of their responsibilities and obligations under these circumstances.

**Professional indemnity and public liability insurance**

Any consultant signing a contract with the department or health service / agency (known as the principal) shall provide and maintain professional indemnity and public liability insurance to the minimum value set out in attachment to the consultant’s brief unless otherwise agreed.

The purpose of the insurance is to indemnify the principal and / or the state of Victoria from and against any claim, demand, action, suit or proceeding by any person in respect of personal injury to or the death of any person or loss of or damage to any property arising out of or as a consequence of an act of negligence by the consultant, employees, agents or sub-consultants and also from any costs and expenses that may be incurred with any such claim, demand, action, suit or proceeding.

**Terminating agreements**

Standard departmental consultant agreements detail the procedures and reasons leading to termination of services. These may include breach of agreement if the project does not proceed, expiration of service or by reasonable notice in writing. Agencies need to be aware of their responsibilities and obligations under these circumstances.

Where a consultant’s agreement is terminated, health services / agencies need to ensure that express contractual provision is made with respect to the ownership of copyright and the use of consultant’s plans, documents and other records provided during the period engaged.

The department recommends that the agency protect its right to the use of any material prepared and documents in the event of dispute with consultants.

**Deferred projects**

It is the nature of capital works in the public sector that the development of a project may extend over a number of financial years. As a result of changing priorities or funding availability projects may need to be deferred or suspended at the end of any stage.

The department’s standard contract provides for consultancy(s) to be extended on a progressive basis and fee proposals are to be based on the stages outlined in this document. Additional costs are not reimbursable in the event that the project is deferred or suspended unless previously negotiated.

**Intellectual property**

Copyright and all other intellectual property rights in all material prepared or developed by the consultant from engagement and during the course of the project (including but not limited to copyright in all documents, reports, charts, drawings, databases, software, source codes, models systems, slides, tapes and specifications) vest in the state of Victoria.

On or before the completion date, the consultant shall deliver to the Infrastructure Planning and Delivery (IPD) branch all matters in which property or copyright has vested in the state of Victoria.

**Contingent liabilities**

The quantity surveyor is to identify and sign off contingent liabilities at the completion of tender documentation. The project manager and / or principal consultants to the PCG prior to tendering a project will also acknowledge such liabilities.

**Typical fee schedule**

Fees for projects in the $3-5 million range will likely amount to:

- **project management** - 1.25 % - 2.25 % of the total construction cost
- **architect and sub-consultant team** - 7.5 % - 9.5 % of the total construction cost
- **quantity surveyor** - 1.5 % - 2.25 % of the total construction cost.

Fees may vary in accordance with specific project requirements such as the; location, timing, size and amount of refurbishment or redevelopment works.