

RECORD OF CONSENSUS OF SIA MEMBERS ON SERVICE PROCUREMENT TOPICS

PREFACE

This document is a record of consensus of the main positions of SIA Members taken in regard to topics related to the procurement of architectural services, as determined through surveys of the Members.

This document shall not be construed as a set of mandatory provisions with which SIA Members must comply, but SIA Members may use this document as a reference to common opinion amongst architects, and for explanation on the reasons behind the position taken in the default standard terms set out in the SIA 'Conditions of Appointment and Architects' Services and Mode of Payment' and various SIA guidelines (eg for Design Competitions).

SUMMARY OF CONSENSUS:

(A) EOI and Tender / Fee Submissions:

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| (a). Bid Submissions constituting Design Competitions | Design Competitions should be carried out in compliance with SIA's guidelines, and only for socially-significant developments. |
| (b). Bid Submissions requiring Concept Designs | Concept Designs, involving any mode of representing a design solution in any mode and at any level of detail (and including corresponding design analysis and cost estimates), should be subject to (i) SIA's guidelines on Design Competitions and (ii) appropriate compensation (based on market rates for professional architectural services). |
| (c). Tender Deposits | Tender Deposits are not applicable for Architectural Consultancy Services, including because (unlike what is possible for Contractors) there is negligible risk of non-bona fide tender submissions that must be secured against. |
| (d). Tender Document Fees | To pay a document fee to obtain tender documents is not appropriate, as the Architect is already expending resources in participating and supporting the tender exercise. |
| (e). Fee Bidding | Architects should be selected principally based on their capability and quality of service, not based on fees. |
| (f). 'Quality' criteria for QFM-style procurement modes | 'Quality' criteria should be principally based on (i) qualitative attributes of track record in projects of a similar nature and complexity (but not requiring exact sameness), (ii) task / project appreciation, (iii) proposed methodology to execute services, (iv) design approach statement, and (v) potential for value-adding (such as specialisation) that may benefit the particular development project. Quality criteria should not involve a Concept Design unless (i) the Concept Design is evaluated in accordance with principles consistent with the SIA's guidelines on Design Competitions and (ii) the bidder is appropriately compensated for the design work (based on market rates for professional architectural services). |

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(B) Contractual Terms and Conditions of Engagement

- (a). Liquidated Damages** LD is not applicable for Architectural Consultancy Services, including because the progress of work by an Architect is directly subject to inputs and timeframes of the Client and 3rd parties, and there is no independent assessor to determine liability for the delays (and thus determination of cause of delay can be subjective and inaccurate).
- (b). Performance Bond / Security Deposit** PB and/or Security Deposit are not applicable for Architectural Consultancy Services, including because the Architect is typically paid on a retrospective basis commensurate with the architectural services actually carried out, hence there is negligible risk of losses to be secured against.
- (c). Public Liability / 3rd Party Insurance** Public Liability / 3rd Party Insurance is not applicable (as the Architect engages in Architectural Consultancy Services, not construction work – so there is negligible risk of physical damage or harm arising from an Architect’s activities).
- (d). Joint & Several Liability of Consultancy Team** Joint and several liability for members of a team of consultants is not appropriate, including because the members of a consultancy team are typically of differing disciplines – so (i) the respective team members cannot cover the role and services of another consultant (especially pursuant to the Architect’s Act and Professional Engineers Act), and (ii) each team member’s Professional Indemnity Insurance would not cover negligent acts or omissions of the other consultants.
- (e). Indemnities and Hold Harmless clauses vs PI Insurance** Indemnities and hold harmless clauses are not necessary as the Client has rights under general law to claim for damages arising from the Architect’s negligence, and the Client can require the Architect to have Professional Indemnity Insurance to cover against any such perceived risks of damages claims.
- (f). Limitation of Liability** Any liabilities of the Architect should not be unlimited (due to the commercial risk) as required by several insurers and publicly-listed Architectural companies. Liability should at least be limited to the coverage of the Architect’s Professional Liability Insurance policy or other appropriate level (eg a proportion of the total fee for that particular project).
- (g). Warranty of Fitness for Purpose** Warranty of fitness for purpose is not appropriate for Architectural Consultancy Services as (i) an Architect is professionally obliged to exercise due skill and care, and (ii) such warranty is not commercially able to be covered by insurance.
- (h). Copyright and Intellectual Property (not to be transferred)** Architects should retain copyright and intellectual property rights in the developments they design as (i) the design is appropriately intended only for the particular project, and the Client is fully licensed to use the design for that purpose, and (ii) architectural drawings and documents may contain intellectual property that has been developed by the Architect over time (for which

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- copyright and intellectual property rights must definitely be retained by the Architect). This is in line with the spirit of the Copyright Act.
- (i). Up-front Payment / Reimbursables including Site Staff, Land Surveyors, Authority Plan Processing Fees,**
- Architect's should not be subjected to making up-front payments as (i) the purpose of the Architect does not include financing the project, and (ii) the Architect is typically only paid commensurate to the services carried out / completed, thus up-front payments would effectively leave Architect's out-of pocket.
- (j). Limits on Services**
- Architects should not engage parties who are supposed to act in an independent manner (eg Registered Inspectors).
- (k). Acceptance of Vicarious Liability for Site Supervision Staff)**
- In considering (i) that an Architect acting as a Qualified Person is strictly responsible for supervision of the works pursuant to statutory requirements – thus Site Supervision Staff cannot relieve or reduce the Architect's statutory obligations, and (ii) that an Architect administering a building contract is expected by general law to carry out inspection of the works at appropriate times to verify apparent compliance with the contract – thus Site Supervision Staff are an extra provision of constant / standing supervision to promote compliance with the contract as a benefit to the Employer: The Site Supervision Staff should therefore report to the Employer and be engaged directly by the Employer, and only interface with the Architect (as an agent of the Employer) on technical matters – hence the Employer should retain vicarious responsibility for the Site Supervision Staff
- (l). Contracts (Rights of 3rd Parties) Act**
- Where the Architect is engaged as a 3rd party, the Contracts (Rights of 3rd Parties) Act should not be excluded from the service contract provisions.
- (m). Mediation and Arbitration Agreements**
- Reference should be made to the respective Mediation Rules and Arbitration Rules of the SIA.
- (n). Variations / Extra Work**
- Extra work by the Architect, including any repeated work due to changes in instruction from the Client, increase in the project scope, and any prolongation or disruption in the continuity of the project, should be compensated by additional payment. Such payment should be based on rates that realistically reflect the salary costs of the personnel required to execute the extra work plus a factor to cover profits and overheads.
- (o) Prolongation**
- Architects (and all consultants) should be entitled to additional fees for additional service incurred due to the project being prolonged for reasons not caused by the Architect.
- (p) Scope of Service**
- Things (services) that Architects usually do (and are taken part of an architect's usual scope of services) should take reference to SIA's 'Scope of Service Matrix' and generally excludes (without limitation) the following unless expressly included in the services agreement/contract:
- Calculations of Development Charge or Differential Premium
 - Flythrough presentations

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- Full rendered 3D/Perspective views
- Collateral for marketing or publication purposes
- Calculation of existing GFA

(q) Progress / Interim Payment of Fees

In line with the spirit and principles of the Building and Construction Industry Security of Payment Act, to promote healthy cashflow, Architects should be entitled to regular fee-installment payments of amounts commensurate to the value of service rendered. Whether by periodic or milestone or time-charge basis, the progressive/interim payments (including any arrangement for a one-off payment) of fees should be designed for (i) payment entitlements to accrue on a monthly basis and (ii) for actual payment to be made no more than two months after the corresponding service commenced.