

The Society of Chartered Surveyors

Department of Finance clarifies 8% fee reduction for Construction Consultant Professional Services

The Minister for Finance, Brian Lenihan, has recently written to the Construction Industry Council (CIC) to clarify the position in relation to the 8% fee reduction for professional services rendered by construction consultants after 1 March 2009.

Following the introduction of the Financial Emergency Measures in the Public Interest Act 2009 and the intention of some Government agencies to apply an 8% reduction to all fees payable after 1 March 2009, the Society in conjunction with the RIAI and the ACEI met with the Department of Finance in early June 2009 to discuss the impact of the proposed fee reduction on a sector which continues to experience salary cuts, shortened working weeks as well as an overwhelming increase in unemployment.

The representative bodies had put forward scenarios arising from two main areas of concern:

(1) New fee bids - post 1 March 2009

In relation to new fee bids, the professional bodies informed the Department that there was widespread confusion amongst consultants as to whether or not the 8% fee reduction should be included in a tender. This was leading to an unlevel playing field for all concerned.

The Department of Finance in its recent communication to the CIC has confirmed that prices in contracts for construction-related services awarded after 1 March 2009 following a tender competition should reflect the extremely competitive market conditions prevailing at present and therefore it would not be appropriate to seek an 8% reduction in price on these contracts. Tenders submitted by consultants after 1 March should state that the consultant's pricing proposals take account of the 8% reduction.

(2) Pre-existing contracts - pre 1 March 2009

The representative bodies highlighted the fact that fee bids tendered over the past 18 months already reflect market conditions which are extremely competitive and in many cases have resulted in savings in excess of the 8% being sought by Government and are demonstrative of the overall value for money now available in the construction sector.

In considering the 8% reduction on fees for construction-related services provided after 1 March 2009 under existing contracts, the Department of Finance has confirmed that the contracting authority should carry out a risk assessment to determine what impact a reduction of this nature might have on these contracts.

The risk assessment should establish if:

- a) it is legal to terminate the contract** (This might be done where there is a '*no fault termination*' or '*termination at will*' clause or other such provision in the contract, and attempts to achieve the required reduction have failed, and market conditions for such services remain competitive).
- b) savings of at least equal to the 8% reduction have been obtained as a result of the extremely competitive prevailing market conditions at time tenders were sought**
- c) savings have been achieved in the case of percentage fees agreed at a time of high construction costs which have since fallen back dramatically due to adverse market conditions resulting in significant fee reductions equal to at least 8%**

If a service contract is going to be terminated as at (a) above, the savings achieved through the procurement of new consultants should be documented and approved by the relevant Accounting Officer.

If it is decided not to proceed with the 8% reduction because of saving at (b) and (c) above, this should be documented clearly and approved by the relevant Accounting Officer.

A copy of the Department of Finance clarification to the CIC has been published in the news section of the Capital Works Management Framework on the Department of Finance's construction procurement website – www.constructionprocurement.gov.ie

The Society also issued a Practice Memorandum (PM 09/04/F56) on 29th October 2009 advising members of the above.