

## BOARD NOTICE 392 OF 2023



The South African Council for the Project and Construction Management Professions

— CONSTRUCTING NEW PERSPECTIVES —

## SACPCMP POLICY ON GUIDELINE PROFESSIONAL FEES

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## 1 Acronyms and Abbreviations

<b>CBE</b>	The Council for the Built Environment
<b>CHE</b>	Council on Higher Education
<b>CPD</b>	Continuing Professional Development
<b>IPDM</b>	Initial Professional Development Modules
<b>NLRD</b>	National Learners' Records Database
<b>NQF</b>	National Qualifications Framework
<b>PPPI</b>	Public Policy Priority Issues
<b>QCTO</b>	Quality Council for Trades and Occupations
<b>SACPCMP</b>	The South African Council for the Project and Construction Management Professions
<b>SAQA</b>	South African Qualifications Authority
<b>SETA</b>	Sector Education and Training Authority

## 2 Definitions

<b>Registered Person</b>	Is defined in the Act as a person registered under the categories referred to in section 18 of the Act.
<b>Act</b>	Means the Construction & Project Management Professions Act, 2000 (Act 48 of 2000) or any superseding legislation including the Regulations thereto.
<b>Agreement</b>	Means a written agreement between client and Registered Person, setting out the scope of work to be undertaken by the Registered Person on behalf of the client and confirming the remuneration that the client will pay to the Registered Person for such work and the manner in which such payments shall be effected.
<b>Client</b>	Means the person/body responsible for instructing a Registered Person to do work on his/her/its behalf and being responsible to remunerate the Registered Person for such services.
<b>Professional fees</b>	Means the quantum of remuneration charged fees earned by a registered person for the provision of professional services in the course of his/her practice.
<b>Professional services</b>	Means services of a built environment profession nature provided by a Registered Person and includes any part of such services.

<b>Rules</b>	Means the rules adopted by the SACPCMP in terms of Section 36 of the Act.
<b>SACPCMP</b>	Means the South African Council for Project & Construction Management Professions in terms of the Construction & Project Management Professions Act, 2000 (Act 48 of 2000). For the purposes hereof “the Council” shall have the same meaning.

## 1. Introduction

The purpose of the policy is to provide guidance on the development of Guidelines on Professional Fees as espoused by Section 34 of the Project & Construction Management Act No 48 of 2000 (hereafter referred to as “the Act”). The fundamental principles underlying the policy on the Guidelines on Professional Fees draw from the Act which gives the SACPCMP the legislative mandate to provide guidelines on remuneration for the professions under the SACPCMP’s ambit. This statutory basis underlines the following principles:

- a) The skills and knowledge required for the type of professional service involved;
- b) The level of training and experience of the person necessarily engaged in performing the professional service;
- c) The time necessarily occupied by each person engaged in performing professional services; and
- d) The degree of responsibility that performing those services entails.

This policy is therefore set within the rational assumption that consumers of the Guideline Professional Fees determined annually by the SACPCMP will apply the policy and determined fees within the following reasonable parameters:

- a) That when charging fees, they should ensure that their independence, objectivity and judgment are not impaired by the hope of financial gain.
- b) They should ensure that such fees are commensurate with the responsibilities assumed.
- c) Caution is taken to ensure there is no danger that standards of performance will be adversely affected because the fee charged is insufficient to allow the necessary amount of time and skill to be spent for this purpose.

In exercise of the powers conferred by Section 34 of the Act, read in conjunction with Section 4 (k) (v) of the Council for the Built Environment Act No 43 of 2000, this policy sets the guidance espoused below.

## 2. Legislative and Policy Framework

This policy is underpinned by the following legislative and policy framework:

- a) Section 34 of the Act empowers the SACPCMP as follows:
  - (i) The council must, in consultation with the voluntary associations, formulate recommendations with regard to the principles referred to in section 4 (k) (v) of the Council for the Built Environment Act, 2000.

- (ii) The Council must annually, after consultation with the voluntary associations, determine guideline professional fees and publish those fees in the Gazette.
- (iii) Section 4 (k) (v) of the Council for the Built Environment Act No 43 of 2000 states the principles upon which the councils for the professions must base the determination of fees which registered persons are entitled to charge in terms of any of the professions' Acts, and in accordance with any legislation relating to the promotion of competition. This is encapsulated in the Policy Framework on Determination and Review of Guideline Professional Fees for Built Environment Professions of 2008 of the CBE.
- (iv) The 2008 CBE Policy Framework on Guidelines for Professional Fees.

The 2008 CBE Policy Framework on Guideline Professional Fees promotes the following principles for development of professional fees which this policy will subscribe to:

- a) Simplicity of guideline professional fees
  - i. Percentage of related cost of construction
  - ii. Time based fees for each category of registration
- b) Alignment of fees with the project development cycle.
- c) Ensuring that guideline professional fees reflect market-related cost. This will be produced by the determination of a baseline scientific fee determination framework and thereafter on an annual basis producing fee curves and consultation with voluntary association which must include private client associations to agree on a fair remuneration basis for services provided.

### 3. Policy Prescripts

#### 3.1 Determination of fees charged

- a) The SACPCMP will produce a scientific fee determination framework which will guide the determination of fees.
- b) This fee determination framework will form the basis of determining the acceptable cost of producing the services of project and construction management services and its related specified categories.
- c) This base cost of services framework will form the basis of producing the annual cost curves of services which will form a rational basis for determining the guideline percentage cost of services and time-based guideline fees to be considered for services rendered by Project Construction Managers, Construction Managers and Specified Categories.
- d) This principle of a rational and scientific basis of guideline fee to be considered is paramount and will be the overriding principle in determining the type of fee to be considered on project type and stage of project which will be gazetted on an annual basis.

### 3.2 Consultation process on determination of fees

- a) The SACPCMP after producing the draft scientific fee determination framework will, on an annual basis, consult with voluntary associations and include clients to solicit their views and inputs in producing the guideline annual fee scales to be considered.
- b) In this regard, the SACPCMP will develop an annual consultation calendar to be published on the SACPCMP website for the public in order to entrench the annual consultation process for the determination of guideline fee scales.

### 3.3 Type and stage of infrastructure

The following types and stage of infrastructure and the fee to be considered will be mutually agreed upon by the professional and client based on the following fee types:

- a) Percentage fee based on the cost of works.
- b) Time-based fees.
- c) Fees for services that are additional to those provided for in the normal percentage fee-based calculation
- d) Reimbursable expenses.

The above fees will be predicated on the mutually agreed fees determined from the scientific fee determination framework that would have been mutually agreed to through the consultation process.

The following types and stages of infrastructure are applicable:

#### 3.3.1. Residential housing

- Single family house, multi-family dwellings and high-rise apartment.

#### 3.3.2. Institutional and commercial buildings

- Schools and universities, medical clinics and hospitals, recreational facilities and sports stadiums, retail chain stores and large shopping centers, warehouses and light manufacturing plants and skyscrapers for offices and hotels.

#### 3.3.3. Specialised industrial construction

- Very large-scale projects with a high degree of technological complexity such as oil refineries, chemical processing plants and coal-fired or nuclear power plants.

#### 3.3.4. Infrastructure and Heavy Construction

- This refers mostly to publicly owned and includes highways, mass transit systems, tunnels, bridges, pipelines, drainage systems and sewage treatment plants.

### 3.3.5. Additional/Supplementary Services

- Development Management Services
- Supplementary Services Pertaining to all Stages of the Project

### 3.3.6. Commission Termination

- A commission shall be deemed to be terminated where the services are deferred or suspended for a period of more than 90 calendar days in the aggregate, unless otherwise agreed in writing by the parties.

### 3.3.7. Services Provided Partially or in Stages

Project Stage	Description
1	Initiation
2	Concept and Viability
3	Design Development
4	Documentation and Procurement
5	Construction
6	Close Out

## 4. PAJA Imperatives

To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa.

### 4.1. **Procedurally fair Administrative Action**

(1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

(2) A fair administrative procedure depends on the circumstances of each case.

In order to give effect to the right to procedurally fair administrative action, an administrator (SACPCMP), must:

- give a person adequate notice of the nature and purpose of the proposed administrative action.
- Provide a reasonable opportunity to make representations.
- Provide a clear statement of the administrative action.



- iv. Provide adequate notice of any right of review or internal appeal, where applicable; and
- v. Provide adequate notice of the right to request reasons for the administrative action to give effect to the right to procedurally fair administrative action.

In order to give effect to the right to procedurally fair administrative action, an administrator (SACPCMP) may, in his or her or its discretion, also give a person

- i. The opportunity to obtain assistance and, in serious or complex cases, legal representation.
- ii. The opportunity to present and dispute information and arguments; and
- iii. The opportunity to appear in person.

If it is reasonable and justifiable in the circumstances, an administrator (SACPCMP) may depart from any of the requirements referred to above. In determining whether a departure is reasonable and justifiable, an administrator (SACPCMP) must consider all relevant factors, including:

- i. the objects of the empowering provision.
- ii. the nature and purpose of, and the need to take, administrative action.
- iii. the likely effect of the administrative action.
- iv. the urgency of taking administrative action or the urgency of the matter; and
- v. the need to promote efficient administration and good governance.

Where an administrator (SACPCMP) is empowered by any empowering provision to follow a procedure which is fair, the administrator may act in accordance with that different procedure.

An administrator (SACPCMP) must convene an internal tribunal to hear a case convened by a person aggrieved and seeking relief for just administrative action. The tribunal shall follow the same procedure as that of a case of against a professional for misconduct.

#### **4.2. Remedies of Administrative Action**

The tribunal, in proceedings for review, may grant any order that is just and equitable, including orders directing the administrator (SACPCMP):

- i. to give reasons; or
- ii. to act in the manner the tribunal requires.
- iii. prohibiting the administrator from acting in a particular manner.
- iv. setting aside the administrative action and
- v. remitting the matter for reconsideration by the administrator, with or without directions; or

- vi. in exceptional cases, substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
- vii. directing the administrator or any other party to the proceedings to pay compensation.
- viii. declaring the rights of the parties in respect of any matter to which the administrative action relates.
- ix. granting a temporary interdictor or temporary relief or
- x. as to costs.

## **5. Version Control**

### **5.1. Maintenance of the process**

The current process will be reviewed every five (5) years and will be scheduled. Unscheduled reviews will be triggered by the following:

- i. Legislation changes
- ii. Benchmarking (changes in benchmarks or new benchmarks)
- iii. Changes in technology

### **5.2. Dissemination**

The policy will be made available to SACPCMP stakeholders and the general public on the SACPCMP website after publishing in the Government Gazette. It will be disseminated externally on request.