

# **HUB PROGRAMME DELIVERY OFFICE GUIDANCE NOTE**

**Revisions to Payment Provisions  
for Consultants**

**October 2017**

## 1.0 Introduction

This note sets out guidance for procuring authorities, when using hub, on the method of payment to consultants on their projects. This is relevant where a procuring authority agrees with their HubCo to increase the frequency of payments in order to improve cash flow for consultants. This is in relation to the provision of consultancy services during Stages 1 and 2 of the project development process.

This guidance note applies to all participant organisations and can be used on both D&B and DBFM forms of contract.

The guidance sets out an approach to how payments to hub consultants can be managed. This can if required be adapted on a project by project basis to comply with the needs of the Participant, HubCo and/or the status of the project.

For the purposes of this guidance, the term “consultant” includes designers, contractors, project managers, cost consultants, and all other relevant professional services.

It should be noted that where consultancy services are being provided earlier in the project development process, and under a Strategic Support Services arrangement, the procuring authority can agree with HubCo an appropriate payment methodology.

## 2.0 Revised Payment Provisions

This guidance note sets out suggested revisions to the payment provisions within the hub process.

They include:

- a. Payments to HubCo's, and their commitment to pay their supply chain upon Stage 1 approval

The Territory Partnering Agreement (TPA) requires payment of the Stage 1 Project Development Fee to HubCo upon the approval of a Stage 1 submission. This guidance seeks to adhere to the base requirements of the TPA and reinstate a Stage 1 Development fee even where a HubCo's method statement does not require one. The conditions attached to any such payment are set out within section 4.1 of this guidance.

- b. An interim Stage 2 payment based on completion of Stage E design (RIBA 2007)

This is the introduction of an interim Stage 2 payment to HubCo and their supply chain during Stage 2. This payment will be payable upon the completion of design to RIBA Stage E. The conditions attached to any such payment are set out within section 4.2 of this guidance.

- c. Payment at Financial Close, to align completed design work to fees paid

The introduction, where appropriate, of an additional payment of consultancy fees at Financial Close. In addition to the final Stage 2 payment, this additional fee is to align the design work completed against the fees paid to date. This is to cater for scenarios where the consultants progress the design beyond RIBA 2007 Stage E by Financial Close to best support the project.

A summary of these payments are set out below: -

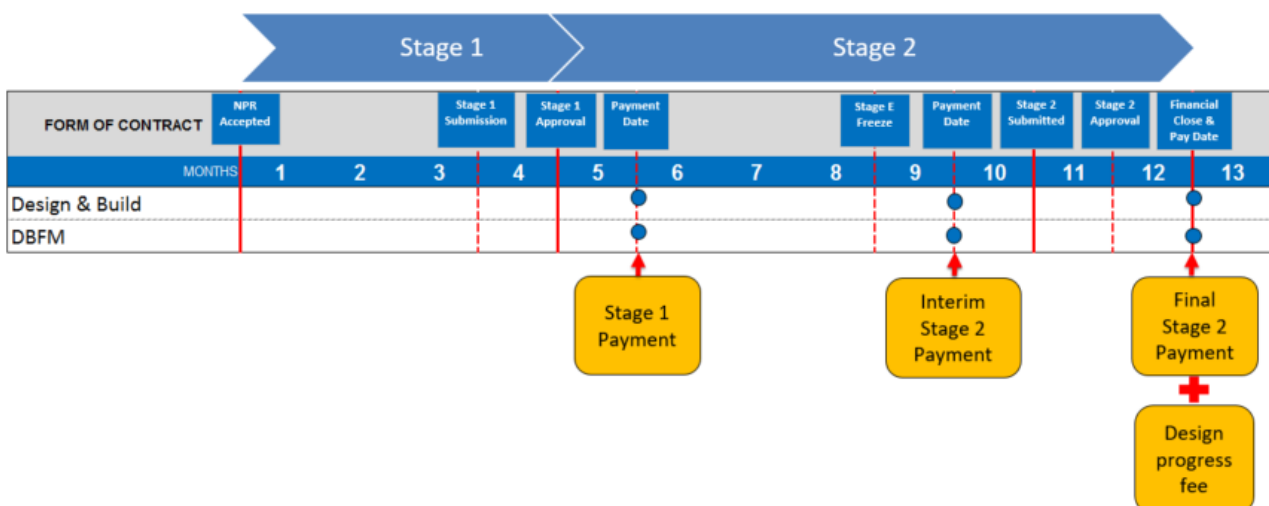


Diagram 1: Key Changes to the Payment Process (Refer to Appendix A for detailed process diagram)

## 3.0 Implementing the Revisions

### 3.1 Instructing HubCo's

The revised payment arrangements can be instructed in two ways:

- either within the NPR, or
- if the NPR has already been issued, then through the notification of a change of the specific requirements by the Participant

The following section provides an approach on how this would be applied.

#### 3.1.1 Instructing Within The NPR

The revisions to the payment provisions should be included within the NPR under the "Specific Requirements" section as described within the Territory Partnering Agreement (TPA) Schedule Part 5 paragraph 3.4. The following wording should be included within the NPR:

*"In accordance with the TPA Schedule Part 5, paragraph 3.4 "Specific Requirements", the Participant requires HubCo to comply with the SFT guidance note "Revisions to Payment Provisions for Consultants". Once approved by the Participant at Stage 1, HubCo should implement the revised payment terms."*

In addition, the Participant should refer to and append the "Revised Development Fee Payment Process" (see Appendix A) to the NPR. This schedule outlines the key steps, timings and derogations that need to be agreed to implement this new guidance note. This document should be populated by the Participant and HubCo to list out any derogations that are needed to the Project Development Partnering Services ("PDPS") method statement. This is to be agreed between the Participant and each HubCo on a project by project basis and can be illustrated within Appendix A.

#### 3.1.2 Instructing During Stage 1 & 2

This approach allows this guidance to be instructed after the issue of the NPR and at any point up to the completion of the design to RIBA Stage E. The Participant can instruct this as a change to the Participant's specific requirements under the TPA Schedule Part 5 paras 5.2.2 and 6.1 and follow the process outlined in para 6.1. This outlines that the Participant and HubCo work together in good faith to implement the agreed changes.

The instruction (in the form of a letter) can exclude the mandatory Stage 1 payment if this milestone has already passed. The letter also provides a commitment by the Participant that they will commit to the payment conditions within this guidance.

### 3.2 Payment at Financial Close to Align Fees to Design Progress

This is for the payment of fees after financial close to reflect design work beyond RIBA Stage E design. This will not require instruction by the Participant and will be dealt with through HubCo assessing and applying for any consultants fees through the valuation process for the project.

## 4.0 Conditions for Payment

The Participant should ensure that the payment of the Stage 1 Project Development Fee and an Interim Stage 2 Project Development Fee satisfy the following conditions :-

### 4.1 Conditions for Stage 1 Payments

In line with the TPA, HubCo qualify for the payment of a Stage 1 Development fee upon meeting the conditions as set out in the TPA Schedule Part 4 and 5.

Through the approval process for Stage 1 the Participant will confirm their acceptance of the Stage 1 submission and adoption of this guidance. All approvals will align to the requirements of the TPA.

### 4.2 Conditions for an Interim Stage 2 Payment

The interim Stage 2 payment would be a new arrangement under the TPA. For HubCo to qualify for the payment they must meet the following conditions:

1. Confirmation by HubCo and the Tier 1 Contractor that the design development at the date of application is equivalent to RIBA Stage E.
3. Confirmation by HubCo that the Stage E design aligns with the Predicted Maximum Cost set out within the Approved Stage 1 Report.
4. HubCo provide a register listing all Stage E Design information (Partnering Services Data) available at that date.
5. The Interim Stage 2 fee can include the cost headings defined within section 11.1 and 11.2<sup>(1)</sup> of proforma 2 and submitted within the Stage 1 submission. (Refer to section 5.2 for a detailed scope)
6. The submitted invoice for the interim Stage 2 consultant fee should represent the actual costs incurred at the date of invoice and should be submitted in line with Schedule Part 4 paragraph 1.3. The Interim Stage 2 fee cannot exceed 80% of the total value of the Stage 2 consultants fee (Section 11.1 & 11.2 of proforma 2<sup>(1)</sup>) included within the Stage 1 submission.
7. HubCo confirm that as a minimum, they will make available to the Participant free of charge an irrevocable, non-exclusive and transferrable licence to use (i) all Intellectual Property Rights (IPR) created by HubCo and any HubCo party in respect of the project development process up to and including Stage 2 of the process and (ii) to the extent that it is not covered by the provisions relating to IPR all Partnering Services Data up to and including Stage 2 of the process provided.

The invoice submitted by HubCo will provide written confirmation that they have met the conditions listed above. Upon receipt of this application, the Participant then confirms acceptance or reasons for rejection.

As the development partner and through confirmation of the conditions by HubCo, this should offer the Participant enough surety to confirm acceptance to pay. HubCo still maintain the risk of delivering the Stage 2 submission against the approval criteria within the TPA. In line with the TPA, the Participant obtains a royalty free licence in perpetuity for the listed Stage E design.

This guidance note provides a methodology for a single interim payment during Stage 2. The frequency of payments through Stage 2 may be increased subject to agreement between HubCo and the Participant. However if multiple payments are considered, these should not exceed the 80% limit of the total Stage 2 fee submitted within the Stage 1 submission.

(1) – For Hub South East, section 11.1 of proforma 2 only applies. Section 11.2 does not apply.

#### **4.3 Conditions for Final Stage 2 Payment**

Upon a Stage 2 approval by the Participant, HubCo will be entitled to the total Stage 2 development fee. The final Stage 2 development fee will be paid less the value of the interim Stage 2 payment. HubCo should ensure no double counting or double recovery within the finalised Stage 2 application. The terms and conditions of payments remain aligned to the TPA and supply chain agreements.

#### **4.4 Conditions for Payment at Financial Close to Align Fees to Design Progress**

The conditions for the payment of consultant fees after financial close will align to the HubCo supply chain agreements and the associated valuation payment processes. No further conditions will be required for the payment of these fees.

### **5.0 Scope of the Payments**

#### **5.1 Scope of Stage 1 Payment**

The scope of the Stage 1 fee should reflect the Stage 1 Project Development Fee in accordance with the TPA and the hub Territory's pricing data for both D&B and DBFM contracts.

#### **5.2 Scope of Interim Stage 2 Payment**

The interim Stage 2 fee for D&B and DBFM contracts should reflect actual costs incurred at the date of application. The fee should not exceed 80% of the pricing caps listed within section 11.1 and 11.2<sup>(1)</sup> of proforma 2 which was submitted within the agreed Stage 1 submission. Where costs for additional consultant services are incurred but sit outwith sections 11.1 or 11.2<sup>(1)</sup> of proforma 2, then HubCo and the Participant can agree on the inclusion of these services within any interim payment. (e.g. planning fees, surveys, HubCo development manager fees, design manager fees only) The interim Stage 2 fee should not include any fee adjustments that may have occurred since Stage 1. These can be accounted for within the final Stage 2 fee outlined in section 5.3.

For the avoidance of doubt, this guidance does not apply to the HubCo portion fee or any DBFM related advisor costs for the Funder or Sub Hubco.

#### **5.3 Final Stage 2 Payment**

The scope of the final Stage 2 fee should reflect the total agreed Stage 2 Project Development Fee less the value of any interim payment that has been made. The final Stage 2 fee is payable upon a Stage 2 approval in accordance with the TPA and any agreed adjustments to the Stage 2 fee.

#### **5.4 Payment at Financial Close to Align Fees to Design Progress**

Where appropriate, HubCo should review and consider the realignment of total fees paid versus the status of the design at Financial Close. If consultants have developed the design beyond Stage E by Financial Close, for the benefit of the project, then a realignment of their fees paid should be considered by HubCo at Financial Close.

(2) – For Hub South East, section 11.1 of proforma 2 only applies. Section 11.2 does not apply.

To facilitate this and subject to agreement a proportion of their post contract fee (note this is not the Project Development Fee) could be paid at Financial Close to realign the fees invoiced against works completed to date. For DBFM contracts, this would be funded by HubCo upon the drawdown of the senior debt at financial close. For D&B contracts, this could be funded through the raising of a interim valuation Nr 1 and HubCo applying for payment to the Participant.

## 6.0 Funding to Implement This Guidance

### 6.1 Identifying Funding to Implement This Guidance

Prior to the implementation of this guidance Participants should ensure adequate funds are available to meet the obligations and payment terms detailed within. The approach to funding the Stage 1 and Stage 2 consultant fees will differ across Public Sector organisations and where projects are being developed jointly between Local Authorities and Health Boards.

## 7.0 Other Considerations to Support Consultants Fee Payments

In addition to the above, payments to consultants within the Hub programme can be further improved through the following areas:-

### 7.1 Better briefing improving programme certainty

Once in development, any delay to the project leads to a delay in payments. To support this, the Participant should ensure that a project is ready to enter the hub development process through a clearly defined brief. Schedule Part 5 section 3 of the TPA provides a clear list of requirements which a New Project Request must address. Participants are encouraged to consider the following guidance to support the development of the NPR:-

- Creation of a clear project brief - [Link](#)
- Appropriate use of strategic support services - [Link](#)
- Develop a robust affordability cap at NPR stage - [Link](#)

### 7.2 Efficient project delivery

Once the brief has been developed and the NPR accepted, the project will rely on all parties to deliver the project within the defined programme and mitigate delays wherever possible. To support Participants, a suite of Hub project manager manuals has been developed specific to each hub territory and can be requested by contacting the [Hub Programme Office](#).

Once the brief has been agreed as part of the NPR, the development process will seek to prepare the Authority's Construction Requirements (ACR's). To support early development of the ACR's, a guidance note and framework for this document can be found at the following [link](#).

### 7.3 Changes to the Participant(s) Requirements

Where the specific requirements, affordability cap or approval criteria are altered by the Participant, the Territory Partnering Agreement (TPA) provides provisions for these changes to be acknowledged through a variation to the Affordability cap and in turn to the project development fee that has been agreed. These can be found within schedule part 5 of the TPA. These provisions can allow for a revision of fees and payments if the programme duration was to alter significantly. This would be subject to agreement between the HubCo and the Participant.

**APPENDIX A – PAYMENT PROCESS**



