

# The Abolishment of the Professional Fee Scales in South Africa

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## Abstract

In South Africa, there is currently a debate about the Professional Fee Scales and whether or not the scales are bad for competition between construction industry firms and professionals. The main focus of the research was to determine whether or not the Professional Fee Scales should be abolished and what alternative methods are available to the construction industry if the scales were to be abolished. Surveys were completed by professionals active in the built environment in Gauteng, South Africa. Interviews were also conducted with Professionals experienced with using Professional Fee Scales as well as experienced on projects outside of South Africa. Industry professionals prefer to have the Professional Fee Scales in place, but they feel it should be better regulated by governing bodies. This paper will help industry professionals realize that professional fee scales can be better regulated to help them get fees equal to the value of work done instead of being exploited by clients.

**Keywords:** professional fees, fee abolishment, professional compensation, project management, engineering management

## Introduction

In South Africa, Professional Fee Scales are still being used to calculate tariffs for professional team members on construction projects. This practice, however, is under review at this time.

With regard to Professional Fee Scales, the Competition Commission again re-affirmed their earlier stance that professional fee scales have an effect of promoting horizontal price collusion which is deemed anticompetitive in terms of section 4 of the Competition Act as stated in a letter to the Registrars' of Professional Councils by Mr. L. Zepe on 1 December 2012.

The Council for the Built Environment (2008, 6) follows three principles in determining and reviewing the guideline professional fees. The first principle is that the guideline professional fee structure should be as simple as possible and well designed to ensure that effective market competition can take place.

The second principle is related to the division of work for each project. The different professions can only determine their worth on a project if they know what work they will be responsible for on the project. The guideline for professional fees should also reflect market related costs; this is the third and final principle in determining the guideline professional fees. The following criteria are listed by the Council for the Built Environment (2008, 6) with the third principle to be taken into consideration when determining the guidelines on professional fees:

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- a clear description of the Scope of Services to be provided;
- the unique characteristics of the profession and current economic environment within which the profession operates;
- discourage market powers which may reduce professional fees;
- encourage registered persons to produce goods and services efficiently and price them competitively;
- fees reflect an efficient cost base and a reasonable rate of return;
- provide a reliable base for updating fees and reviewing of qualitative and quantitative changes such as those arising from new technology, new services, techniques, etc.;
- structural and productivity changes affecting the way registered persons practice or perform services;
- commercial risk

In a letter to The President of the Engineering Council of South Africa (ECSA) by Mr. E.M. de Villiers on 20 November 2012, he stated that typically a minimum score for quality needs to be satisfied, before being considered for further adjudication where the Black Economic Empowerment (BEE) score card and Financial Offers are considered. The latter now involves a discount on ECSA Guideline Tariff of Fees, and to some extent being forced to contravene the Code of Conduct for registered persons.

Parties to the contract are free to agree on a professional fee and must procure professional services in accordance with legislation that promotes competition principles. Parties must charge professional fees which shall ensure a sustainable and competitive built environment according to The Council for the Built Environment (2008, 3).

The outcome of this study will seek to assist members of the built environment to understand the effect of the professional fee scales on the competitiveness of tenders and to give them alternatives to the professional fee scales that can be used if and when the professional fee scales are abolished.

## **Professional Fee Scales**

Section 4 of the CBE Act requires the CBE to “review fees published by the Professional Councils to ensure consistent application of the Principles regarding such fees.” Section 4 also states that the CBE must ensure “consistent application of policy by the Councils for professions with regard to the principles which the Councils must base the determination of fees which registered persons are entitled to charge in terms of any of the Professions Act and in accordance with any legislation relating to the promotion of competition.”

According to the Professional Councils Act, the CBE must annually, after consulting the various associations and their representatives, determine and publish the guideline professional fees.

The CBE has the authority to review these guideline fees published by councils, and refer them back to the councils for reconsideration. The Acts also state that if any person feels aggrieved by these guideline fees, they may bring the matter to the attention of the CBE.

The CBE has developed a guideline framework for determining these fees by the professional councils. They describe two methods to do so namely:

- Value based method: In this method, the bulk of the fees are calculated as a percentage of the related costs (direct construction costs etc.).
- Time based method: Fee is calculated according to the amount of time needed for work to be executed. It is an hourly rate that is based on circumstances. This method must take into consideration different factors such as Category of registered person, level of experience and responsibility etc.

When fees come under review by the CBE, they must understand and take into consideration the following:

- The type/method of fee structure that a Professional Council uses
- The rationale for using that fee structure
- The extent to which key requirements of that fee structure have been met
- The extent to which the three overarching principles, as they apply and/or is relevant to the method of determining the fees, have been considered and applied.
- Lastly the Council must demonstrate evidence of how the comments that were received from the public, the voluntary associations, clients, etc. have been taken into account when drafting the published guideline professional fees.

When fees are reviewed, the CBE makes use of a scorecard system to understand the extent to which the published guideline fees comply with the requirements for setting professional fees.

It is the view of the CBE that Guideline Professional fees should be used as guidelines and should be seen to promote efficient market competition within the built environment professions industry.

## **Problems with Professional Fee Scales**

Waite (2009) stated that architect Kevin Drayton, after the abolishment of the professional fees by the RIBA, said, “Few clients genuinely understand what architects do, and fewer still appreciate the time involved.”

‘The reality of achieving good architecture and being a well-paid architect is far from the fantasy world of “magic formulas” such as fee scales. Rather than seeking to be Harry Potter with a magic wand, let’s be business-savvy professionals who don’t undersell our real value’. (Brindley 2012)

De Villiers (2012) believes that the engineering fraternity is being exploited by State, Provincial and Local authorities, in soliciting the services of especially the Civil engineering consulting fraternity, using the tendering process. De Villiers (2012) further stated that the financial offer in tendering involves a discount on the ECSA Guideline Tariff of Fees, and to some extent being forced to contravene the Code of Conduct for registered persons.

With regard to Professional Fees, the Competition commission again re-affirmed their earlier stance that professional fees have an effect of promoting horizontal price collusion which is deemed anticompetitive in terms of section 4 of the Competition Act as stated in a letter to the Registrars’ of Professional Councils by Mr. L. Zepe on 1 December 2012.

De Villiers (2012) also suggests that in order for the registered persons to meet the Code of Conduct requirements, there must be a cut-off point to such discount, below which quality of work will most definitely be compromised.

The competition commission advised the councils on what to do to comply with the Competition Act as stated in a letter to the Registrars’ of Professional Councils by Mr. L. Zepe on 1 December 2012. In this letter it is also stated that if the Councils disregard the advice from the Commission and continue contravening the Competition Act, the Competition Commission will consider prosecuting as per the requirements of the Competition Act. This will however only be used as a last resort action. It is the recommendation of Mr. L. Zepe (2012) that the Professional Councils consider the advice from the Competition Commission on guideline professional fees and decide on whether or not they will apply for exemption in terms of section 10 of the Competition Act.

## Competition

“Competition is the best guarantee of quality and value for money. Competition is seen as fostering greater choice for clients when deciding about suppliers and ways of obtaining services.” In the 1980’s, the UK government introduced a policy to increase the competition, which assisted in the growth of the British economy. “The then Government’s assertion that competition would be the best guarantee of quality and value for money was, and indeed still is, questioned by many practicing professionals who have seen their fee levels decline dramatically in recent years. Yet most professionals accept that they are unlikely to see a return to mandatory fee scales.” (Treasury, cited in Hoxley 2000)

Competition is not always restricted by recommended prices, but historical price information, gathered through surveys, supplied by independent parties can provide consumers with a trustworthy guide to the expected costs of services that are rendered to them to enable better competition between professionals. (European Commission, 2004)

A study by Ball et al. (2000) suggests that smaller construction firms may cease to exist as the excessive competition in the construction industry, which goes against any common economic sense, results in a disadvantaged low profitability of these firms.

## Competitive Fee Tendering

Phua (2005) stated that “it was found that the competitive fee tendering process in the UK has led to professional organizations becoming more efficient as the process provides clients with the added leverage to positively influence the likely level of service received from consultants by weighting their ability.”

Yakura (2001) found that a certain manager of a firm “inadvertently began a bidding war by inviting each consulting firm to cut its costs for the opportunity to be the first to implement this system. During the course of 6 months, each company slashed its costs to such an extent that the bids became less than 20% of the original price quoted.”

As cited earlier, the current climate of economic activity has become highly competitive. Competitive fee tendering has been used in the UK by the majority of the commissions in the construction industry, this came after the abolishment of the mandatory fee scales. Competitive fee tendering is where a number of contractors, who will be able to complete the work, are supplied with a detailed specification of the works to be able to prepare a bid for the works by providing tender documents. The tender documents will include the price for completing the work, schedule for completion and an explanation of how the works will be carried out. The “winner” will then be selected by the client.

Competitive fee tendering was not by all means welcomed by all the professions. “I do not like compulsory competitive fee bidding as a route for selecting consultants. I agree with a very large and experienced private sector retail client, with an annual spend of umpteen million pounds, who told me that he would never dream of selecting a consultant on such a basis, and always used negotiation” (Sir Michael Latham, cited in Hoxley 2000). “He did not pay what the contractor asked for, still less contemplate a scale fee, but he did not believe in a sacrificial fee either. He wanted the best service, and expected to pay for it. If he did not get it, he looked elsewhere next time”.

“In the UK, compulsory competitive tendering (CCT) for public services is now being abandoned in favour of a duty of ‘best value’ (DOE, 1997)”. A Large number of professionals in the UK market still believe that competitive tendering is here to stay.

It is of interest to consider what the effect of abolition of mandatory fee scales would be on service quality in South Africa. In a report commissioned by the Monopolies and Mergers Commission on professional services, which contributed to the abolishment of professional

fee scales in the UK, it was remarked that: “Price competition might create serious dangers in relation to quality of services of a particularly personal nature or of whose quality the public are generally incapable of judging. Some clients might accept incompetent service at a lower price without appreciating the risk involved”. (MMC, 1970, as cited in Hoxley, 2000) Most clients do not possess the necessary skills and knowledge to know what the risk involved is, and the amount of work is needed to fulfil the responsibility placed on them.

The Institute of Quantity Surveyors published a report in 1977 on surveyor’s services, wherein they remarked that the decline of standards were a direct result of the price cutting that followed the abolition of the professional fee scales. (MMC 1977, as cited in Hoxley, 2000)

Latham was presented with the results of questionnaires posed to some members on the Association of Consulting Engineers. Several statistics were presented about services tendered for on fees, including: (Latham 1994, cited in Hoxley 2000)

- Design alternatives were given less consideration by 73% of respondents;
- Checking and reviewing of designs were given less attention by 31% of respondents;
- Risks of design errors occurring are said to be higher by 40% of respondents;
- Simpler designs are being produced to minimize the resources a task uses, were admitted by 74% of respondents;
- The number of claims for additional fees is said to be higher by 84% of respondents;
- The relationship between the client and consulting engineer contains less trust than before according to 69% of respondents
- The following percentage of respondents bid low for the following reasons
  - To maintain cash flow or to test the market, 94%;
  - With the intention less than required, 35%;
  - With the intention of making up fees with claims for variations, 61%.

Competitive fee tendering is of critical importance to the construction and property professions, and is already the principal route for appointment and this situation is unlikely to change in the foreseeable future. The professions have predicted a decline in standards as they are forced to cut the level of service they provide.

## **Methodology**

The research made use of qualitative research techniques in order to collect the data needed to answer the research questions. Questionnaires and interviews were mainly used to collect information from experts and knowledgeable persons in the different professions.

Interviews were set up with professionals that are active in the different professions that were studied. The interviews were guided by the questions in the questionnaires to allow for a good structure as well as ensuring that all the information that was required was obtained. The emphasis of the questionnaires was on the professionals’ opinions on the tendering conditions and professional fees that the different professionals receive on projects.

Questionnaires were used to collect data and information from professionals in the different professions. The questionnaires were sent out to various professionals through emails. Responses were then received back from the professionals and the answered questionnaires were analysed to help answer the research questions.

## Discussion

### Professional Fee Scales in South Africa

The original purpose of the Professional Fee Scales was not to serve as a basis on which discounts are calculated, but to serve as a recommendation as to what a professional consultant may charge in terms of compensation for work executed on a project. In recent years, this has all changed and the fee scales have now become somewhat irrelevant in the sense that it does not provide for its original intended purpose. Consultants have even gone so far as to say that the profession cannot be called a profession anymore because the professionalism has been lost to some extent, with discounts on fee scales given at high percentages to secure work. The problem is that clients are generally unaware of the amount of work time and resources that is needed to complete a project.

In executing the research it was found that consultants did not have a problem with the fee scales and the way that it is calculated as such, but more with the manner in which the fee scales are implemented and regulated within the industry. In evaluating the results of a questionnaire sent to professional consultants currently practicing in the built environment, it was found that 92.24% of respondents felt the fee scales should not be abolished. Main reasons given were that the fee scales provide a very good basis as to what can or needs to be charged for a specific project and gives the client an idea of what a consultant's services are worth in the market. It also levels the playing field, as everybody uses the same basis. Respondents also feel that they would rather work on the Professional Fee Scales as intended without offering a discount to the client, with their quality of work being the main reason for them getting the job.

Some respondents stated that the fee scales do however ignore the complexity of projects, and would like the fee scales to be more detailed i.e. the complexity of a project should be taken into consideration.

Respondents also mentioned that the fees should have more stringent regulations. From the data acquired from the questionnaire respondents, it is clear that discount is mostly offered at about 10% to 30%. Since the inception of negotiating discounts on fees, discounts have grown substantially and have gotten to a point where some firms offer up to 50% discount on recommended fees. This then makes it impossible for some companies to compete as they cannot afford such discounts.

Two interviewed respondents also explained that bigger firms employing more people than others need to acquire more projects as they have much more overhead costs to cover. They then give big discounts, sometimes big enough to just cover their overhead costs and to be able to keep the firm running.

When evaluating the fairness of the fee scales, data showed that 73.26% of respondents felt that the fee scales are fair when measured against the amount of work that is done and the amount of time that is spent to successfully execute the project. One interview respondent commended the fairness and also said that the fee scales provide for a reasonable base payment which particularly comes in handy in the inception or planning stage of a project. This base payment gives a payment security to the consulting firm for some of the work done on a project if a client decides not to continue with it.

Where fairness becomes a problem is when the profession and the payment of fees is compared with other professions.

A respondent explained in an interview that if a comparison is made with other professions, you would find that they have fixed rates at which they do work. For example when a patient needs brain surgery, he does not ask for quotes from different surgeons to see which one could give him the cheapest rate. Clients started doing this with the built environment professionals and ask how much discount will be given on a project.

Also if the experience, knowledge, expertise and risks of a professionally registered consultant, like an architect or engineer, are measured with that of a real estate agent, you will find that the registered built environment consultants do not get enough recognition for their work. A real estate agent generally receives a commission of around 7% on the final selling price of a building, according to one of the interviewees, where the consultant is negotiated downwards to get the cheapest price. Real estate agents did not have to study at least 5 years at a registered and recognized institution. They do not put in the same amount of effort and apply the same amount of knowledge to provide a product of good quality. The general consensus is that no client will ever negotiate with a real estate agent or other professions with regards to the fees they charge for their work, so why do built environment consultants give way for these negotiations to take place?

### Alternatives to Professional Fee Scales

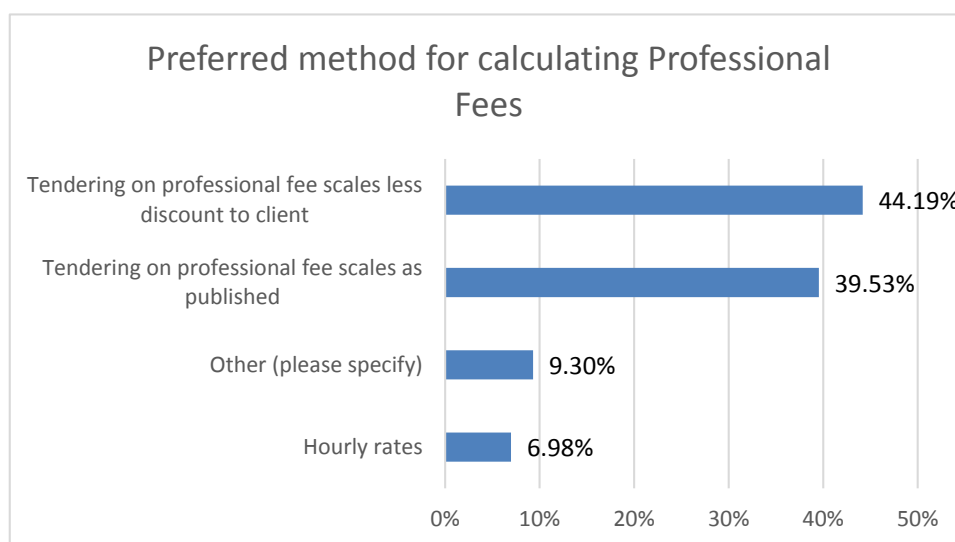


Figure 1- Preferred method for calculating Professional Fees

By analysing the responses gathered through questionnaires and interviews, it was found that the professional fee scales that are currently in use is still widely the preferred method with regards to fee tendering for projects in South Africa, as an overall of 83.72% indicated a preference to the use of fee scales. 39.53% of all respondents indicated that they prefer the fee scales as published by the different councils, as it is easy to understand and handle and it is fair. The biggest problem the respondents have with the fee scales is that ridiculous discounts harm the professions. 44.19% regarded the professional fee scales less a discount to client as their method of choice. Reasons for the preference of fee scales less discount to client included among others, is that it provides an equal starting point for all firms to base their fees on without having to do time consuming calculations matters such as cost to company. It is also seen as a practical and competitive method and it has become almost general practice to include a discount to the client.

In the responses, hourly rates (6.98%) and other methods including cost to company and the budget method (9.30%) were mentioned as preferred alternatives.

During the data collection process, a few ideas were given with regards to alternative methods that can be used for calculating the professional fees for consultants if the proposed abolishment of the fee scales would be approved, with calculation of hourly rates and a budget type method most mentioned.

In evaluating the data, we found that 28% of respondents would prefer hourly rates as an alternative to the fee scales, while 33% indicated a budget method would be best suited.

With hourly rates, a firm will typically calculate the amount of man hours needed and how much resources will be used during the contract period. These amounts are then calculated on an hourly basis.

The budget method involves calculating the estimated cost of staff time, logistical support and physical inputs such as equipment and vehicles that will be needed to complete the specific project. The costs are divided into two broad categories: a) fee or remuneration and b) disbursements. The cost of staff should be estimated on a realistic basis. Some respondents felt that this method cannot be regulated well enough, as skilled staff can do the same amount of work that would be done by lesser skilled staff, in half the time. They also felt that bigger companies and firms have a larger amount of overheads that needs to be covered when it is compared to a smaller company.

One respondent proposed in an interview that a method of fee tendering should be implemented that is similar to the way in which a medical fund would collect payments from clients and then provide the payments that is due, to the doctor. In this manner, the consultant would not be invoicing the client, but instead will invoice the appointed body that is responsible for the collection of fees from clients.

Another method proposed by an interviewed Architect was that an agreement between banks and consultants should be reached, where the consultant does not send his fee to the client, but instead sends his fee to the bank. The bank then adds this amount to the amount of the bond that the client is applying for. This amount is then never physically made available to the client, but is instead used for payments to the consultants in question. In the same manner as when a real estate agent's commission is added to the selling price of a property, the correct price for professional fees will be added to the final value of the bond applied for with regards to the proposed project by the client.

### **Effect of Professional Fee Scales on quality**

In general the interview respondents were of the opinion that the quality of work delivered to the client will be directly linked with the Professional Fees paid to the professional team. The professionals on multiple occasions mentioned that the amount of work required to complete the project will cost a certain amount to deliver, when this amount is not available the work will need to be done in less time to still make it feasible to the professional providing the services. Work done in less time will inevitably be of lower quality as it takes a certain amount of time to deliver certain quality of work.

An interviewee said, "You and I both know that when a proper professional team works on a certain project, the project will more likely be successful and the client will get a much better end product."

One of the interview respondents said, "most Professional Indemnity (PI) insurance brokers do not want to insure the professionals on work where large discounts were given, as they feel that if work is done for half the fees, the quality of the work cannot be the same as it would be when charging the full fees according to the Professional Fee Scales. The PI insurance brokers then have a bigger risk involved in insuring the professional for the works and then they are not willing to cover the professional."

Latham suggests that: "Few professional consultants are likely to admit openly that they have personally reduced their services because of competitive fees. However, there is at least some anecdotal evidence of a decline in professional standards in the construction professions which possibly could be attributed to the lower level of fees resulting from intense competition." (Latham 1994, cited in Hoxley 2000)



Another interviewee stated, “If the market is prepared to pay less for professional services, then they will receive lower quality work and if they are prepared to pay more, they will receive better quality work. With the Professional Fee Scales, when the professionals know they can only get an “X” amount of money, because that is what the client is prepared to offer, they then offer the discount required, but you cannot do the same work for less money so you will have to cut something out to get the work done but the work will not be as complete as it should be.”

It is clear that this cost of quality should be a predominant factor when considering a building or other type of project and by lowering the fees charged on projects, the client compromises his consultant’s ability to deliver quality work. Quality of a building also relates to the life cycle costs after the project is finished.

### **Effect of Professional Fee Scales on competition**

An interview respondent voiced his interpretation of fee scales being uncompetitive in saying that they do restrict competition to some extent if everybody charges the same for their services.

On the other hand, our survey revealed that 81.40% of participants felt the fee scales do not contribute to uncompetitive tendering practices in South Africa. The respondents suggested that in recent years the fee scales as proposed only provides a general basis for discounts to be given upon, so that everybody uses the same basis to work from. When discounts are added to the fee scales, competitiveness is increased as everyone will not give the same amount of discount on specific projects.

Another obstacle registered consultants need to overcome is that draughtsmen and other smaller companies sell themselves as architects or professionals and lead clients to believe that consultants are too expensive. This makes it difficult for the registered companies to compete with such smaller non-registered firms as they do not need to charge that highly because of the small amount of overheads they have to cover. They also do not have annual registration fees to pay.

The scales do provide a good benchmark, and provided they are linked to quality of output and production level, they promote good standards as well. Tendering and competition should not be fixed to the scales or fees that are charged, but tenderers should motivate their lower or higher charges relative to the scales by reference to past experience, in-house expertise, levels of production technology for rapid output, etc. that provides them with a competitive advantage over others. The Client is then free to compare tenders on a rational basis, knowing there is a relatively firm foundation that all tenderers must adhere to.

If a good and adequate, experienced team is used on projects, the final product will be better and of higher quality. Everybody can execute their work accurately and correctly and the benefits are far bigger.

### **Conclusion**

The general feeling from professionals within the built environment in South Africa is that the Professional Fee Scales should not be abolished. Various ideas were shared as to how the current situation in the industry can be rectified to ensure the professionals involved on projects are no longer exploited by clients.

The best solution at this stage seems to be creating an external body to regulate fees that are paid to professional team members. This will enable professional team members to receive fees in line with what the work they have done is worth.

Better regulation of the fees received by professional team members will also have the effect of ensuring proper quality of work done in the construction industry. These factors

will contribute to a better overall industry as well a more sustainable environment for all professionally registered persons in the industry.

There is still a long way to go before the questions of the Professional Fee Scales are completely resolved. The research done in this study serves to indicate how the professionals working with the Professional Fee Scales feel about what is going on in the construction industry today. The research done also shows that there are methods as to how the Professional Fee Scales can be saved and also alternatives as to how fees can be calculated.

In conclusion, there are various methods in which the current Professional Fee Scales can be improved and overall opinion in the construction industry is that the Professional Fee Scales should be kept as the clients understand the scales. The Professional Fee Scales should be enforced more stringently so as to protect the built environment professionals from clients requesting large amounts of discount that make projects unfeasible for professional firms.

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