

public **ART**  
guidelines  
FOR SUCCESSFUL COMMISSIONING

# Introduction

These Guidelines have been compiled by the City Marketing and Cultural Development Branch of the City of Melbourne and Arts Victoria following an initial approach to government from the Association of Sculptors seeking better information and clarification on current methodologies for commissioning. This document is therefore intended as a user-friendly guide to the commissioning of works of art in the public domain, particularly through local government.

While the Guidelines are primarily intended for the commissioning of visual arts projects, many of the underlying premises and ideas would also hold true for the commissioning of performing arts or literary works.

It should be noted that the Guidelines, however, are specifically intended to cover a commissioning process (not creative development or more open-ended projects) and that, for the purposes of the Guidelines, a commission is defined as follows:

*The creation of an original work of art by a suitably qualified artist (or group of artists) in response to a defined brief which has been proposed by an organisation or individual who is willing and able to pay the costs incurred in creating the work, and who will be responsible for the care and presentation of the work after completion.*

The Guidelines are also intended to provide guidance and assistance for organisers or committees who are working within the code for Compulsory Competitive Tendering processes.

The Guidelines have been compiled by staff with extensive experience in the development and management of public art commissions and with the assistance and advice of individual artists and others, also with extensive relevant expertise.



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# Compulsory Competitive Tendering and the **Tender Code**

# 1

## **COMPULSORY COMPETITIVE TENDERING AND LOCAL GOVERNMENT**

From 1 October 1994 local government in Victoria has been obliged to comply with State Government legislation regarding Compulsory Competitive Tendering (CCT). The details of this legislation are outlined in Section 186 of the *Local Government Act 1989* and provisions as set out in Section 208 A-I.

The introduction of CCT means that, more than ever before, a Council's tendering process will be subject to greater accountability and scrutiny. CCT aims to establish a fair system for all parties. It establishes a process that provides an audit trail. This legislation also requires that in any financial year a Council must ensure that 50% or more of its total expenditure has been arrived at as a result of a competitive process.

The legislation outlines the following as part of the competitive process for all expenditure:

- For works or services under \$5,000 three verbal quotes are required.
- For works or services between \$5,000 and \$50,000 three written quotes are required.
- For works or services over \$50,000 Councils must invite Tenders or Expressions of Interest.

## **THE TENDER PROCESS**

The Tender process includes the following steps:

- As soon as a project is approved a contract or Tender number is assigned against the project and a brief description of the project is lodged with the Contract section of Council.
- A project brief that includes criteria for assessment must be formulated.
- A public notice is placed calling for Expressions of Interest or Tenders.
- A pre-Tender briefing may be held.
- Tenderers are usually given a minimum of 21 days in which to submit a Tender.

- A Tender assessment panel must be established to assess all submissions.
- All written Tender submissions received must be evaluated against specified criteria.
- A contract is awarded to one Tenderer who has submitted a written Tender regardless of whether or not the Tender is the lowest Tender.
- All unsuccessful Tenderers are notified in writing.

The Tender process is best applied when a Council can clearly specify what goods or services it wishes to purchase and can provide details as to the quality, amount and nature of these in a specification.

## **THE EXPRESSION OF INTEREST PROCESS**

With the Expression of Interest process:

- Council will advertise publicly the purpose and nature of the contract and the date by which it will invite Tenders.
- The Expression of Interest is to assess the capability of respondents to undertake the work and to refine the specification.
- Council may invite Tenders from some, all or none of those who have registered an Expression of Interest.
- Those who registered an Expression of Interest but who are not invited to tender will be advised in writing.
- Only those who have registered an Expression of Interest can be invited to tender.

The purpose of the Expression of Interest process is to shortlist the potential providers of services and to discover their experience and capability.

The Expression of Interest process can be used when you don't want to put providers to the cost of tendering. It is suited to searching out ideas and innovation. The Expression of Interest process is recommended for public art commissioning. A commissioner may want a sculpture for a particular location but have no firm ideas beyond this. In such a case the brief can outline the constraints and opportunities offered by the project for an artist to interpret. The brief should be open-ended and not prescriptive.

## **EVALUATION**

Any Quote, Tender or Expression of Interest must be evaluated.

Evaluation criteria are established as part of the project brief and listed in the Expression of Interest or Tender documents so that respondents know how and by what means their proposal is to be judged.

These criteria must be listed in order of importance but the weightings of the criteria do not have to be given and may not be determined until the assessment panel meets. To ensure that probity and ethics are maintained, the weightings are allocated before panel members view any of the submissions.

# Artistic Practice

## 2

There are many similarities between the commissioning of works of art and the tendering for delivery of other services.

It is important that the commissioner clearly states the intention, budget, performance criteria and any constraints applicable to the project well in advance to ensure that proposals for the project meet requirements. These Guidelines place considerable emphasis on the Commission Brief for these reasons.

It is important that the selection process is fair and reasonable and allows full investigation of all issues that will affect a successful outcome.

It is important that the commissioner receives value for money. Value for money does not always mean the cheapest project, nor automatically the most expensive. Value is usually invested in quality – quality in concept, in consultation, in planning, in execution and in presentation. It is also important that the artist receives fair treatment and adequate financial recompense for work undertaken.

Artists are increasingly aware of the commercial and competitive environment in which they may work. They have overheads that must be covered (studios, equipment, instruments, rehearsal spaces, etc.); most work from project to project with very small cash assets; and while you should expect a professional response to a project brief, the artist will also be strongly motivated by a desire to create innovative and original work. This may not be the top priority for the commissioner but it is likely to be the top priority for the artist.

The motivation of the artist to create innovative and original work is one of the main reasons for ensuring a clear contractual relationship for a commission. The contract should be the means of clarifying, for the benefit and by agreement of all relevant parties, what the agreed outcome will be. A clear brief and a clear contract will address the artist's freedom to develop the concept (when, how much, what approvals are required and what cost implications) and what parts of the agreement are fundamental, cannot be changed and must be delivered.

Artists are unlike small business or trade organisations in that they usually have little capacity to fund a project in advance. Most commissions require a staged payment. The stages and the amount of the payment may vary by agreement, but the standard arrangement is a part payment on commencement (usually on the signing of the contract), a part payment during the execution of the work, and a

part payment on completion (which should be clearly defined in the contract – for the performing arts it may be a presentation, and for the visual arts it may be the completion of installation not just the completion of the work of art). Requirements for the second or any interim payment should be specified in advance, indicating the mechanism for making the claim.

Artists value privacy and the capacity to work undisturbed but most welcome and appreciate the interest and involvement of the commissioner (or commissioner's representative) during the process. Simple courtesies such as arranging a visit well beforehand and indicating the purpose of the visit (a payment stage check, bringing an interested Councillor to see the work in progress, checking whether a particular issue has been addressed) overcome potential uncertainties and create a communicative and pleasant working relationship.

A successful outcome (in terms of artistic excellence, community approval, financial control and meeting the requirements of the brief) is as important for the artist as it is for the commissioner. An artist's reputation rests on high quality results; local government needs to meet community expectations. Successful partnerships create a good climate for further projects. Each party has a lot to gain and a lot to lose. These Guidelines are intended to provide practical and useable information to ensure successful and enjoyable projects.

Moral rights are an important issue for artists and include publicly acknowledging the artist as the creator of a work, consulting with the artist if there is a need to relocate an art work, and not 'improving' or making any alterations to the material form of an art work such as changing the colour or removing parts.

# Public Art Projects

## RATIONALE AND PROCESS

It is important to have a clear idea about what you (your group, your community, your project) wants out of a public art project before beginning.

It is also important that every one involved has the *same* idea. It is often quite possible to meet a number of objectives – a landmark, an object of civic pride, a respected work of contemporary art. All these desirable outcomes can be accommodated within one project brief but some different views may prove harder to reconcile. The notion that a really good work of art can somehow compensate or ‘solve’ an urban design problem that other professionals have not solved, or camouflage a planning and building mess, is both common and fictitious.

The chart below describes some of the reasons for undertaking a public art project and some of the issues to be particularly careful about.

BENEFITS	RISKS
<p><b>Reputation</b>            Cultural precinct, town, city            Responds to quality of life            Recognises artists as part of community            Sees heritage as a continuing issue (creation as well as maintenance)            Sees opportunity for profile of community groups (interests, ethnicity etc.)</p>	<p>Involving an artist to solve an urban design/transport/landscape problem – transferring the problem not solving it at the appropriate source            Maintenance and permanence            Overall acceptance by all sectors of the community</p>
<p><b>Improvement</b>            Adds value to site/activity            Acts as focal point/signage            Adds aesthetic value to infrastructure/capital works programs</p>	<p>Maintenance and permanence            Overall acceptance by all sectors of the community</p>
<p><b>Relevance to site</b>            Adds value to site/activity            Sees heritage as continuing issue (creation as well as maintenance)</p>	<p>Maintenance and permanence            Risk of exclusion of interested parties (may be very diverse)</p>
<p><b>Landmark</b>            Adds value to site/activity            Acts as focal point/signage            Icon or brand image for community/Council/corporate body</p>	<p>Maintenance and permanence            Getting it right!</p>



## PLANNING

**It's an old truism that a project is only as good as the brief.**

Having decided why you want to undertake the project, it is now time to decide who will do it, with whom, where and when. Some of these decisions, such as when, may be set by the nature of the project, particularly if it is tied to a major building or development work. However, you may be able to make a wide range of choices about who will make the decisions, how you will engage artists and on what terms, how much involvement you expect with local communities and the nature of that involvement.

A 'Working Group' is a good option as a sub-committee or targeted task group to manage a public art project within a larger structure – major building, Council, urban development etc. Working Groups should be kept small; three to five people is usually a good size. Working Groups can of course use other forums and groups as sounding boards, or for advice on specific issues – local arts groups, the local art gallery/performing arts centre staff, community groups, special interest groups. However, it is the Working Group which either undertakes the day to day management of the project or which supervises and assists a consultant or staff member who manages the project.

The Working Group needs to be created as soon as the project has been proposed. The Working Group will have the expertise and knowledge to ensure that all aspects of the project – the brief, the assessment and selection process, the contract and the implementation – are carried out with a successful outcome. Time spent in planning is rarely wasted and may result in savings at a later stage.

The Working Group needs to provide the following:

- a voice for the community;
- a voice for the commissioner;
- a voice for the manager of the whole project – major development, building, urban development (where applicable);
- a voice for a major sponsor (where applicable);
- enough arts and cultural expertise to add value, ensure fair consideration of proposals and build credibility (co-opt if necessary for specific projects).

The Working Group may incur some small costs, particularly a small fee or honorarium for those not paid by the public or government purse. This cost is usually minor and will be well worthwhile if the project runs smoothly and is well managed. The Working Group may undertake community consultation and provide a public face for the project. This is usually very useful for the commissioner and maintains a good public profile.

The Working Group should establish the parameters and processes for the project. The variations are immense. The following chart only touches on some basic ground rules that are likely to apply at the costing stage. The costing stage does not just mean estimating how many dollars will be required for the project. It means factoring in time, financial, emotional and professional investment, expectations and long-term satisfaction for all involved.

At this stage a good rule of thumb is never assume that everyone automatically has the same understanding of terms used. Test terminology and assumptions through open discussions and committing agreements to paper. Contracts may be required at a later stage but simple checklists about how the budget will be used and who determines the budget help achieve a successful project.

A contingency allocation within the total budget is essential. Even the best project management may face unforeseen problems. Budget overruns are the bane of any organisation. Planning for changes and alteration is good practice.

COSTS	RISKS
Investment in the <i>early</i> planning stages is critical Project is only as good as the brief Sitting fees for special panel/Working Group will keep other specialist fees on schedule Clear project management = effective decision-making	Lack of planning in early stages reduces quality results/acceptance later Poor briefs are costly to fix
<b>Money</b> Budget must cover all costs Establish a budget line for each component if necessary <i>Always</i> have a contingency fund	Unplanned expenses Costs debited to wrong cost centres
<b>Materials</b> Appropriateness Cost-effectiveness Durability	Industry regulations may apply Short-term thinking = long-term problems
<b>Planning costs</b> Consultation Workshops Displays	Lack of community liaison may cause concerns about imposition, relevance, maintenance, integrity

### AUTHORITY

As with planning, it is also important to work out who has authority to do what, when and with what approvals. This does not only apply to the artist. If the commissioner (say, local government) has the final approval in budget allocation, does the commissioner (client), in this case a Council with several Councillors, assume all decisions about selection, project management, liaison and publicity? If the commissioner appoints a small group with the task of concentrating on the public art project alone, does this group have any capacity to shortlist, commit any funds, define briefs and so on? A clear understanding of financial and control delegations is essential.

The following chart does not assume any set procedure – there are many ways to handle these issues. It does, however, suggest that there are some basic issues to be resolved and which everyone involved needs to be aware of and understand.

TO DO WHAT	ISSUES	OPTIONS
Final approval	Set threshold for who has authority to approve what and when	Commissioner/Council/ Trust/ Board/ Corporate Managers/Working Group etc.
Shortlist	Concept fees – establish amount(s) to be paid and who will shortlist applicants	Working Group/Consultant etc.
Assessment	Sitting fees – establish amounts and when incurred	Commissioner/Consultant plus any other relevant advice
Brief	Authority to approve the brief	Commissioner/Working Group/Consultant

### SELECTION

There are two popular ways to select artists – open advertisement and invitation. You can of course simply ask one artist whom you believe is suitable. This may work, if everyone agrees! Under CCT this option may not be an option. Chances are that a direct commissioning procedure may be questioned – by the commissioner, the community, almost certainly by other artists! A selection process that allows a range of artists to propose ways of doing the work and meeting the project's needs is not only fair, it may raise ideas or problems not previously considered. The following chart summarises the pluses and minuses of the two main selection methods.

TYPE	PLUSES	MINUSES
Open competition	Democratic Open to all interested parties Very public, can add to publicity campaign Allows for new artists, new combinations Required under the Local Government Act in Victoria (CCT) if the budget exceeds \$50,000	Large amount of applications to be assessed Very variable responses Increased administration time and costs Some artists will ignore – not sufficiently targeted to their interests, professional standing
Invitation	Focused Emphasises track record Higher response rate from selected artists	May be considered elitist Requires an informed knowledge in determining invitation list May be predictable
Mix	Best of both worlds	May be seen as discriminatory – too much difference in capacity, experience

## **Requirements for an Expression of Interest**

Irrespective of whether you use an open or invitation method of selecting an artist, it is helpful to ask for an Expression of Interest to gauge who is interested and get a preliminary idea of what the interested artists are likely to do. It is useful to tell artists precisely what you want in an Expression of Interest. Otherwise an artist may simply write a letter saying, 'I am interested in your project'. Full stop.

A sample 'Requirements for an Expression of Interest' page is provided in Appendix 1. This page could be included with the project brief, site plans, brochures on the project, information on the commissioner and any other relevant material constituting a project kit, which any artist wishing to be considered for the project should have prior to expressing interest.

### ***Please note***

Many artists are wary of undertaking considerable work for an Expression of Interest without any payment. This is a reasonable position.

However, budgets rarely allow for payment to a very large number of artists for an idea, and commissioners will always favour getting some sense of the proposed work at the initial stages. If some artists submit a written proposal, as requested, and others submit a fully developed concept, a scale model or a sophisticated computer-generated simulation, selection cannot be made on an equitable basis.

Provision of extra material may seem beneficial to the commissioner. But organisations are already noting that artists are increasingly unwilling to engage in a commission unless they believe that there is a fair process. There is no advantage to the commissioner if the quantity, quality and diversity of Expressions of Interest are significantly reduced.

The information provided in 'Requirements for an Expression of Interest' can indicate that artists who submit much more than is requested may be penalised for not complying with the tender process. This will indicate that a fair process is valued by the commissioner. In some cases, a curriculum vitae and slides/documentation/cassettes etc. will be sufficient, particularly if the emphasis is on the creation of work by an artist with a particular style or expertise. If the work requires interpretation, then the written proposal should provide a link between previous work and the proposed approach to the commission.

*An Expression of Interest is not a design concept.* It indicates that the artist is seriously interested in being considered for the project, understands the brief, is available for the time required, has given some time and creative energy to the task and provided written information on what is proposed, and would like to progress to the next stage. This information should be sufficient for a well informed and capable Working Group to select a small group to prepare a design concept, with an appropriate fee.

## **PERMANENCE**

You should consider how long the work of art will remain realistically in the public domain. This may be straightforward for a performance or an ephemeral work (for a festival, for example). However, in these cases, you should consider what rights (if any) the commissioner will have in regard to the work after the performance date. The contract must outline these rights, but the brief should indicate what is proposed from the start.

In regard to the visual arts, artists may expect that if a tangible work is commissioned for a civic site, it will remain in perpetuity. This is hard to guarantee. Someone else may make different decisions at a much later date. If there is any possibility of change, this should be flagged as early as possible – you might, for example, state that the work will remain *in situ* (in the proposed location) for a certain agreed period and its location will be reviewed, in conjunction with the artist, after that time. Any decision to relocate the work should respectfully maintain the integrity of the work.

# The Commission **Brief**

# 4

As discussed in the previous section, the Commission Brief is the way in which you communicate your intentions, expectations and constraints to interested artists. The artists will look to the brief in the first instance for information that will enable them to determine whether they are interested in the project and, if so, what is the best and most relevant concept they can devise and propose.

The Commission Brief should contain information on the following:

- an outline of the proposed project, including why the work is being commissioned and any philosophical/social/environmental/commercial basis for the work;
- background information – the community, historical information, sponsors etc.;
- details of the site/location and any relevant background information about the site and its history;
- information on what type of work is proposed, scale, any material constraints and any stylistic preferences;
- the available budget for the project and what the budget is expected to cover (costs such as installation, insurance, pavers around a sculpture and lighting may be met within the construction budget rather than the art budget – they should, however, be clearly accepted in one or the other);
- what the artist is to provide and deliver;
- what the commissioner is to provide and deliver;
- what components are negotiable;
- time frame – commencement date, date for completion/installation of the work, critical deadlines for planning, approvals etc.;
- selection process, who is involved and the criteria for selection;
- development process and who is involved;
- any particular reporting or collaborative relationships (Working Group/architect or landscape architect, local arts group, community groups etc.);

- any industrial requirements (unions, site requirements etc.);
- an indication of how the work will be contracted (who is responsible to whom);
- how long will the work exist (licence to perform, permanence);
- copyright and moral rights;
- dispute resolution mechanism and who will mediate;
- any penalties, how incurred and how much;
- residuals (T-shirts, postcards etc.);
- a sample contract.

### COMMISSION BRIEF CHECKLIST

No .	Issue
1	Commissioner identified
2	Budget identified for design concept and fabrication
3	The person/group in charge
4	All relevant background provided
5	What is required of the artist
6	What the commissioner will provide
7	What the commissioner will not provide
8	The desired outcomes of the project (material, social, artistic)
9	The criteria for selection and who will select
10	Materials and content
11	Moral rights, copyright (including rights of attribution and title)
12	Sub-contracting options and responsibilities
13	Deadlines and required completion date
14	What will happen to the maquette/plans/drafts etc. of the original proposals (including the successful proposal)
15	Confidentiality

# Budget

# 5

There are a few basic guidelines for budgets:

1. **Have one.**

Expressions of Interest are sometimes called for public art projects where the small print states, 'This commission will be dependent on a successful grant submission' or something of the sort. This means that the budget is speculative. Occasionally artists are kept on tenterhooks for long periods waiting for funding. This causes irritation all round. Project briefs get changed, deadlines pass, everyone gets frayed. Far better to wait until you have a secured and known budget, then alter the brief to suit, if necessary.

2. If you intend to do more than one work within the total project, divide the budget at the outset into notional cost centres. Treat them as separate budgets from a day to day management perspective.

3. Budget for success not failure. Get realistic advice on what the budget can do. Commissioning a performance work without sufficient time and money for adequate rehearsal is poor budgeting. If your budget isn't large enough, develop another project that you *can* do within the available project. Keep the first idea for another time. If your realistic project is successful, there is more chance of there being another time!

4. Sample budgets for performing arts projects vary immensely so that samples below refer only to visual arts projects. They should be seen as rough estimates only. Fees are suggested on the basis of 1998 common and accepted practice. These may increase over time and are not prescriptive. Particular projects may require greater research and planning; design concept fees should encompass these as legitimate and sensible expenditure.

Type of work	Budget min.	Budget max.	Design concept fee	Installation	Preparation	Other
Major sculpture	\$50,000	\$300,000+	No less than \$2,000 – up to \$5,000 depending on requirements	\$15,000+ (may include footings and lighting)	Concept design fees Plans and info. kit	Travel costs Insurance Indemnity
Mural	\$20,000 (small)	\$100,000+	No less than \$2,000	Lighting Treatment to repel graffiti	Wall preparation (may be costly)	Scaffold
Pavement inlay	\$20,000	\$100,000+	No less than \$2,000	Variable depending on project	May be covered in construction budget	Maintenance may be an issue



5. Remember that commissioning a work does not *automatically* mean that the commissioner holds copyright. Artists are increasingly aware of moral rights and legislation is pending. Artists hold and will expect to retain copyright, but if copyright is required for a specific reason by the commissioner it should be noted that this may be an additional cost. If copyright is required by the commissioner, this should be stated at the outset and the reason given. In most cases, there is no advantage in holding copyright and it is recommended that copyright should be retained by the artist.
6. The commissioner has a responsibility to ensure that the selected artist presents a realistic and viable budget. Budgets that are too low – the Working Group should be able to advise – are a recipe for problems later. Ask the artist to review the budget if there are doubts before making a final selection. Check that all required elements are costed.
7. A sample budget is provided in Appendix 3.

### **COSTING CHECKLIST**

<b>No.</b>	<b>Issue</b>
1	Artist's fee
2	Administrative costs
3	Studio/workshop related costs
4	Assistants
5	Sub-contractors/fabricators
6	Materials
7	Specialised tools/equipment
8	Hire costs (cranes, audio visual etc.)
9	Insurances
10	Consultants/specialists (computations, engineering etc.)
11	Allowances (travel, research etc.)
12	Transport
13	Installation/presentation costs
14	Lighting

Note: If any component is required from overseas beware of fluctuations in the exchange rate. Make sure that adequate allowance has been made to compensate for this.

# Contracts

# 6

A contract is the means by which the relevant parties form an agreement about actions, payments and responsibilities. While many organisations will have standard or preferred contracts for the delivery of services, it is recommended that these not be used for the commissioning of works of art. The variation from the delivery of standard or trade services are considerable – the preferred artist has convinced an assessment process not just on value for money and capacity to deliver, but on a vision and a capacity to present something special and unique. It is important that the contract captures these special qualities.

The Arts Law Centre has a range of standard contracts including a standard commission contract, and is developing a contract specifically for public art. Arts/law contracts are practical and straightforward and recommended as a model. Arts/law contracts can be obtained at a modest cost from the Arts Law Centre of Australia (Sydney) or from the Arts Law Referral Service (Melbourne). See Appendix 4.

## CONTRACT CHECKLIST

This checklist covers points including and in addition to those outlined in the Commission Brief checklist which are critical in the delivery of the agreed project. The contract should outline the obligations and responsibilities of *both* parties, not just the artist.

No.	Issue
1	Clear identification of the parties involved and their obligations
2	Detailed description of commissioned work
3	Payment schedule
4	Employment status – will the artist be deemed an employee? (this has consequences relating to tax, copyright and insurance*)
5	Term, timing and termination – what is expected and what is not acceptable
6	Approval of stages by commissioner
7	Restraint of trade – can the artist do similar work for other parties? (reasonable for commissioner to want the work to be unique)

No.	Issue
8	If the artist is incapacitated or unable to complete the project, is there a provision, agreeable to by all parties, for a substitute artist to deliver the commission?
9	What is the life expectancy of the work?
10	Moral rights, copyright (including rights of attribution and title)
11	Dispute resolution mechanism and who will mediate
12	Who will own and maintain the work?
13	What will happen to the work after an agreed period?
14	Who provides and owns the documentation?
15	Who will maintain and conserve/manage the work?
16	Is a maintenance manual required and will this incur an additional payment?
17	How will the work be launched/premiered and how will the artist be involved?
18	Agreements for changes – all parties
19	Insurance, warranties, indemnification and quality control (including guarantee of sufficient funds to undertake the commission)
20	Relocation of the work or changes to original presentation concept
21	Late payment
22	Delivery – responsibility and payment
23	Requirements for acceptance of completed work
24	Residuals (commercial benefits from the work)

\* Unless there are pressing and immovable reasons for regarding a contracted artist as an employee, it is preferable that the commission be undertaken as a contracted delivery of service. Artists may lose copyright and other rights if they are considered an employee. These rights may provide no benefit to the commissioner. The commissioner's obligation to the artist as an employee also changes.

# Implementation

# 7

## REPORTING AND DELEGATION

The Working Group may wish to formalise its delegation and reporting requirements from the commissioner (client) in writing. This will ensure that there is a record of the agreement.

### Sample Authorisation to Spend and Approve

1. All expenditure must be approved by the Convenor/Chair of the Working Group (name).
2. All expenditure will be sought with the unanimous approval of the Working Group.
3. Expenditure will be authorised by the (Department/Unit) on behalf of the client (name).
4. Approval of the client (name) must be received prior to any expenditure in excess of (\$ amount).
5. The Convenor/Chair of the Working Group may approve expenditure on individual works/projects to a maximum of (\$ amount) to a total within the overall project of (\$ amount). The client (name) has the right to review such expenditure and must ratify the Working Group's authority to continue with this delegation every time the limit is expended.

### Sample Reporting and Payment Requirements

1. The Working Group will provide regular financial reports (monthly/quarterly) for the client which will include:
  - details of project expenditure against budget (total and by month);
  - details of administrative expenditure (total and by month).
2. The client will be responsible for staged payments on commissioned works, according to contract, payment schedules and requirements for payment (invoices, satisfactory evidence of work undertaken to date etc.).
3. The Working Group may authorise payments as defined within the approved authorisation to spend.

4. The Working Group will be responsible for drafting letters of agreement and contracts for the approval of the client. All letters of agreement and contracts will be signed by (designated person) on behalf of the client.
5. All agreements and contracts will be between the client and the commissioned artists.

### **MONITORING THE WORK**

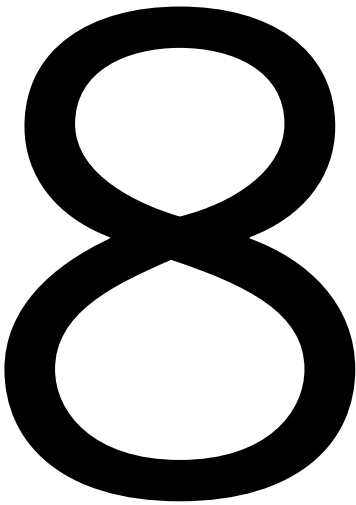
Someone must have the responsibility of monitoring progress on the commissioned work. This will usually be a member of staff or a consultant, but may be a suitably qualified and appropriate member of the Working Group.

While the contract will define what the artist is required to do, occasional visits and payment checks will be necessary, to ensure that everything is going according to plan and that any issues arising receive prompt attention.

The most common issues that need monitoring are:

- The artist has 'developed' the concept. Artists are always interested in better ways of doing things. This is usually very useful and resourceful, but may occasionally result in changes to the work that do not meet the commissioner's expectations, even if there is no impact on budget. Early indications of 'improvements' can be discussed and, if beneficial, the contract can be amended or the agreement on the finished work can be altered. If the alterations are not supported by the commissioner, it is important to address this matter before work has been carried out that could affect the budget or the completion time.
- The artist has some uncertainties (about direction, budget etc.) but has not felt that they were pressing enough to raise in writing. An informal chat may resolve these quickly.
- The commissioner may have some lingering hesitations although the contract has been signed. Seeing the work taking shape may allay these.
- Slow payments – large organisations may make payments at set times and this may cause some difficulty or embarrassment for the artist. Early awareness can enable the payment to be made more promptly.

# Insurance



There are a number of types of insurance that an artist will need and/or be required to have if undertaking a public art commission. Local government is very concerned to minimise its own risk and any risk to others arising from activity or work in the public realm. Insurance can be a costly item for an artist who often works alone or on a project by project basis so confirmation of what is actually required for a particular project is important.

The following types of insurance may be a requirement as part of any contract for the commission of a public art work:

- *Public Liability Insurance* provides protection for the artist from any claim that may result from an accident to another person during construction, fabrication or installation. Once an art work has been installed and ownership assigned to another party, responsibility for public liability throughout the life of the work will become the responsibility of the owner. If the work is a temporary one clarification of who is responsible for public liability for the duration of the life of the work should be agreed. If this is a short period of time (several weeks during a festival period) the artist or festival organiser may be required to provide this coverage. If the temporary period is for twelve months it is more likely that the commissioner may accept responsibility for this.
- *Professional Indemnity Insurance* responds to claims regarding poor advice and any loss or damaged suffered as a result of this advice. This is the most expensive type of insurance. Artists not only have difficulty obtaining professional indemnity insurance, but it can consume a considerable part of a modest project budget, making the project not worth the time or effort. If professional indemnity is required, then the commissioning body should take responsibility for this. The commissioner can inspect the art work prior to completion to ensure that it conforms to required standards.
- *Insurance for the Art Work* itself may be required during construction or fabrication. This is to protect against accidental damage, fire, theft etc. for which the artist may have been advanced payment to purchase materials for the commission and which he/she would be required to replace.

Certificates of currency may be required as proof of insurance before a contract will be entered into or within a certain date of a contract being signed and taking effect.

# Maintenance

# 9

Maintenance is an important issue to consider from the beginning when commissioning public art works. Everyone who has taken part in the realisation of a public art project will want to see the art work well maintained and therefore consideration should be given to a number of issues before the work is commissioned. Such issues will include:

- being clear about the intended life of the work (temporary/specified number of years/permanent);
- consideration of what materials will be used and their durability;
- assessing the environment in which the work is to be located (dampness, extreme wear and tear, etc.) and establishing whether it will affect the work's durability/longevity;
- clarification of who is responsible for repairing the work if it is damaged and at what cost;
- determining beforehand when the work will be considered to be damaged beyond repair and who decides this;
- having a clear understanding of what the process is if the site is redeveloped in the future.

It may be worthwhile talking to a conservator who can help flag any potential problems to do with structural or materials issues before they arise.

The artist may be asked to provide a warranty for workmanship and materials for a certain period after installation of the work. The commissioner may also ask for a maintenance schedule or maintenance manual to be provided to enable others to carry out maintenance of the work. Any contract will contain details of what level of information is to be provided and if there is an additional cost for this or if this is considered part of the overall commission. Artists, if required to provide detailed information themselves on ongoing maintenance for the art work, will need to allow for this in their project budget.

The commissioner should, at the end of a project, have copies or details of:

- concept drawings;
- engineering drawings and specifications;

- information on materials used including grades or standards and dimensions of the work;
- fixtures and fittings;
- finishes including paint brands and code numbers or formulas for patination;
- electrical, mechanical or hydraulic pump systems installed.

These items together with the project brief, information on the artist and his/her background, any media coverage and photographic documentation are an important record of the work from both a practical and historical viewpoint and can help inform future decisions regarding the work.

Photographic documentation of the work in progress and *in situ* can be used to promote the work or the area in which it is located.

Maintenance can include regular checking of the work for signs of deterioration or damage and includes things such as a wash down to eliminate dust and grime, dusting or soft polishing of a work. Some of this maintenance can be carried out by cleaners or others who have responsibility for the area in which the art work is located. This, however, will need to be negotiated and some training provided so that there is an understanding of what the limitations of such maintenance are, when maintenance beyond this should be reported to someone else and who that person is. Normal cleaning procedures or products may do more harm than good so having in place a protocol which is understood by all involved is essential.

Some thought will also need to be given to urgent maintenance issues such as vandalism and the removal of graffiti. Some treatments can be applied to outdoor works to reduce the impact of graffiti damage. However, these can affect the appearance of the surface treated. The pros and cons of such measures should be discussed and agreed with the artist before the work is completed.



# appendix 1

## Requirements for an Expression of Interest

(sample only)

The (commissioning body) has requested that artists supply the following material to register an Expression of Interest:

- a curriculum vitae of no more than two pages;
- no more than ten slides of current or relevant work (slides are preferred but photographs are acceptable) (for film/performing arts/literary projects, this might be reviews of work completed, samples of current work or video tape compilations of past projects);
- A *succinct* written outline of the artist's intended approach to the commission.

The information will assist the Working Group to determine an appropriate shortlist of artists for the commission. The Working Group wishes to ensure that artists are considered not only on the basis of existing work but also on the ideas that they may have for this specific project. *All Expressions of Interest will be returned to the artist.*

Artists are not required to provide detailed (drawings/drafts) at this stage and are specifically requested not to forward (models/proposed texts/scripts). Failure to meet these requirements may be judged as a lack of compliance with the commission requirements and prejudice further consideration. Additional work will not be viewed in the selection process. *Please note: no fees are being offered for an Expression of Interest.* After reviewing the Expressions of Interest, a limited number of artists will be requested to produce detailed (drawings/maquettes/drafts/scripts) and a detailed budget, for which a concept design fee (amount) will be paid. A face to face briefing will occur for all shortlisted artists prior to work commencing on concept designs.

*All Expressions of Interest must reach (address and contact person) on or before (date).*

(If a Tender box is being used, information should be provided on meeting requirements for Tender lodgement.)

## Commission Brief:

### SCULPTURE FOR CIVIC SQUARE (sample only)

#### **The Commission**

A major sculpture will be commissioned to complement the proposed renovation and refurbishment of the Civic Square, Downtown.

The sculpture should reflect, in any appropriate way, the history and development of Downtown, with a particular emphasis on the town's colonial past and its development as a major agricultural centre. The work, however, will be assessed on its merit as a contemporary work of art and therefore these themes can be interpreted broadly. Preference will be given to works that address the work as a symbolic and innovative interpretation rather than a figurative and literal treatment of some aspect of the town's history.

The work may be in any suitable and durable medium for an outdoor site. The inclusion of components that would enhance public interaction – seating, lighting, water components or a kinetic component – are desirable but not mandatory. Consideration should be given, however, to limiting costs of long-term maintenance and the work should not present any public safety concerns.

The Civic Square is an important part of the central business area of Downtown, is highly visible from Main Street, and is used by visitors, shoppers and workers during the day as a recreation area. (Include any relevant plans, site plans or other attachments that help to clarify the proposal.)

Artists will be required to work with the appointed architects, Smith Jones and Brown, to ensure that the redevelopment of the Civic Square and the siting of the sculpture are planned collaboratively. The successful proposal will be exhibited in the Town Hall and the successful artist(s) will be expected to participate in public meetings to discuss the project.

#### **The Commissioner**

The Commissioner is the Downtown Municipal Council. The Commissioner has established a Working Group to develop the project and artists will be required to liaise with the Working Group. Details of the membership of the Working Group are attached.

## **Project Requirements**

Artists are requested to lodge an Expression of Interest for consideration, in the first instance, by the Working Group. See Attachment (X) for requirements for an Expression of Interest.

Expressions of Interest should be received by (client's name and address for receipt of Eols) no later than (time and date).

The Working Group will determine a shortlist from the Expressions of Interest. Shortlisted artists will be asked to develop a concept design, including a maquette and a detailed budget, for an appropriate fee. The Working Group may interview shortlisted applicants.

The Working Group will assess the concept designs and make a recommendation to the commissioner. A contract will be drawn up between the approved artist(s) and the commissioner.

## **Budget**

A budget of \$120,000 is expected for this commission. Some aspects of installation (pavers, basic lighting, crane) may be included in the construction budget, and this will be confirmed prior to development of the artist's contract. However, the initial budget estimate should include *all* material costs, artists' fees, commission for artists' dealers or representatives (where applicable), engineering and/or computation services, lighting or any other integral component, insurance to the completion of installation and transport. Artists and any assistants working on the project will be expected to meet industrial requirements.

## **Completion Date**

The work is to be completed in accordance with the construction program for the redevelopment of the Civic Square, which is expected to be finished by (date).

## **Further Information**

For further information please contact (name, phone, fax, e-mail).

## **Date**

## **CIVIC SQUARE REDEVELOPMENT WORKING GROUP**

### **Mary Brown**

Smith Jones and Brown, Architects

### **Tom Godfrey**

Executive Manager, Civic Square Redevelopment  
Downtown Municipal Council

### **Michael Shaw**

Gallery Director  
Downtown Municipal Council Gallery

### **Alice James\***

Artist

\* It is often useful to have an artist, working in an art form appropriate for the commission, as part of an assessment and management team. The artist will have particular insights and knowledge that will complement other skills in the group. However, it must be established at the outset that any artist who is part of the Working Group cannot be considered for a commission within the project. This would constitute a conflict of interest. It is possible to locate artists who are willing to exempt themselves from an Expression of Interest.

# appendix

# 3

# Public Art Budget

## DOWNTOWN CIVIC SQUARE REDEVELOPMENT (sample only)

<b>Sculpture</b>		<b>Budget</b>	<b>Actual</b>	<b>Exp. to 2/2/98</b>	<b>Balance</b>
Advertising	1,500	1,500	1,320	1,320	180
Information kits	700	700	720	720	-20
Design concept fees	12,000	12,000	10,000	10,000	2,000
Commission fee	120,000	120,000	118,000	60,000	60,000
Signage	1,000	1,000			1,000
Contingency	10,000	(Construction budget allocation 2,500) 12,500			12,500
<b>Total</b>	<b>145,200</b>	<b>147,700</b>			<b>75,660</b>
<b>Mural</b>					
Advertising	1,500	1,500	1,400	1,400	100
Information kits	350	350	360	360	-10
Design concept fees	6,000	6,000	6,000		0
Commission fee	40,000	40,000	10,000		30,000
Signage	1,000	1,000			1,000
Contingency	5,000	(Construction budget allocation 5,000) 10,000			10,000
<b>Total</b>	<b>53,850</b>	<b>58,850</b>			<b>41,090</b>
<b>Public fanfare</b>					
Advertising	1,500	1,500	2,000	2,000	-500
Information kits	700	700	640	640	60
Shortlist fees	5,000	5,000		0	5,000
Commission fee	10,000	10,000		0	10,000
Parts copying	1,000	1,000		0	1,000
Rehearsal costs	4,000	4,000		0	4,000
Production costs	8,000	8,000		0	8,000
Contingency	1,500	1,500		0	1,500
		(Publicity allocation 3,500) 3,500		0	3,500
<b>Total</b>	<b>31,700</b>	<b>35,200</b>		<b>0</b>	<b>46,060</b>
<b>GRAND TOTAL</b>	<b>230,750</b>	<b>241,750</b>			<b>162,810</b>

# Useful Contacts for Advice and Assistance

## **LEGAL ADVICE/SERVICES**

### **Arts Law Centre of Australia (ALCA)**

The Gunnery  
43–51 Cowper Wharf Road  
Woolloomooloo NSW 2011  
Phone: (02) 9356 2566  
Freecall: 088 221 457

The ALCA is a community legal centre which provides legal and financial services to artists and arts organisations throughout Australia.

### **Arts Law Referral Service**

1st Floor  
117 Sturt Street  
South Melbourne Victoria 3205  
Phone: (03) 9696 5085

The service provides free verbal legal advice, within time and cost limitations, to artists and arts organisations in Victoria.

### **Australian Copyright Council Limited**

Suite 3  
245 Chalmers Street  
Redfern NSW 2016  
Phone: (02) 318 1788

The Australian Copyright Council provides the arts and copyright industries with a range of legal services including information and legal advice about copyright.

## **ADVOCACY/INFORMATION SERVICES**

### **General**

#### **Arts Management Advisory Group (AMAG)**

1st Floor  
117 Sturt Street  
South Melbourne Victoria 3205  
Phone: (03) 9696 5085

The AMAG is a network of arts administrators, arts-based board members and business professionals who meet monthly to discuss issues of common interest such as financial management, business planning, the legal responsibilities of boards and sponsorship.

#### **Multicultural Arts Victoria**

1st Floor  
144 George Street  
Fitzroy Victoria 3065  
Phone: (03) 9417 6777

Multicultural Arts Victoria is a resource and advocacy organisation promoting cultural diversity in the arts.

### **Music**

#### **Australian Music Centre Ltd – Sounds Australian (AMC)**

PO Box N690  
Grosvenor Place NSW 2000  
Phone: (02) 247 4677  
Freecall: 1800 651 834

The AMC is the national advocacy organisation for music created by Australians. It informs, produces, publishes, promotes and sells. It manages the funding of performance parts copying and the annual National Orchestral Composers School.

#### **Community Music Victoria Inc.**

156 George Street  
Fitzroy Victoria 3065  
Phone: (03) 9419 1354

Community Music Victoria represents music makers throughout Victoria, and offers advice on project development, provides contact information, publishes newsletters, and produces an annual festival of community music.

### **Writing**

#### **Victorian Writers' Centre (VWC)**

156 George Street  
Fitzroy Victoria 3065  
Phone: (03) 9415 1077

The VWC is a non-profit organisation, bringing together over 1,000 members to promote writing and support the rights and interests of all Victorian writers.

**Australian Writers Guild**

310 Rathdowne Street  
North Carlton Victoria 3054  
Phone: (03) 9347 9294

The Guild is a professional association for writers in the areas of television, radio, screen and stage. It aims to promote and protect the professional interests in Australia of originators and adaptors of written material for the above media.

**Australian Society of Authors Ltd (ASA)**

PO Box 1566  
Strawberry Hills NSW 2012  
Phone: (02) 9318 0877

The ASA is a professional organisation for writers of prose, poetry, fiction, non-fiction, dialogue and lyrics.

**Visual Arts/Craft****National Association of Visual Arts (NAVA)**

PO Box 60  
Potts Point NSW 2011  
Phone: (02) 9368 1900

NAVA promotes policies, undertakes research, and develops strategic plans relating to issues identified by the industry. These include the status of the artist, the economic benefits of the visual arts industry, art education and training, copyright and taxation.

**Craft Victoria**

114 Gertrude Street  
Fitzroy Victoria 3065  
Phone: (03) 9417 3111

Craft Victoria represents, develops and promotes the professional craft industry.

**The Contemporary Sculptor's Association**

Yarra Sculpture Space  
123 Vere Street  
Abbotsford Victoria 3067

Phone: (03) 9419 6177  
Mobile: 0417 324 795

Mailing Address: PO Box 57  
Abbotsford Victoria 3067

**Association of Sculptors of Victoria Inc.**

Contact: Michael Meszaros  
15 Laver Street  
Kew Victoria 3101  
Phone: 9853 9610



## Unions

### **Media, Entertainment and Arts Alliance (MEAA)**

360 King Street  
West Melbourne Victoria 3003  
Phone: (03) 9279 0555

The MEAA is the national union for actors, performers, entertainers and members of the media industries.

### **Entertainment Industry Employers Association**

Suite 17  
8th Floor  
608 St Kilda Road  
Melbourne Victoria 3004  
Phone: (03) 9521 1900

The Association is the largest national representative organisation for employers in the live and corporate theatre, live concert, cinema and general entertainment industry.

## Conservation

### **Victorian Centre for the Conservation of Cultural Material Inc. (VCCCM)**

57 Cherry Lane  
Laverton North Victoria 3026  
Phone: (03) 9369 4677

The VCCCM assists in the preservation of cultural material held by public collections including galleries, museums, schools, libraries, historical societies and local councils.

### **The University of Melbourne Conservation Service**

(located at the Ian Potter Art Conservation Centre)  
The University of Melbourne  
Parkville Victoria 3052  
Phone: (03) 9344 7989

The primary function of the Service is to provide care and conservation for the cultural collections of the university. The Service also undertakes fee-for-service conservation work for the wider community, teaches and carries out research.

### **Australian Institute for Conservation of Cultural Material – Victoria (AICCM)**

Carrie Thomas, Secretary  
GPO Box 5269BB  
Melbourne Victoria 3001  
Phone: (03) 9344 7989  
Fax: (03) 9347 7448

The AICCM is a professional association of conservators.

### **Sculpture, Monuments and Outdoor Cultural Material (SMOCM)**

GPO Box 3762  
Sydney NSW 2001  
Phone: (02) 9225 1782

SMOCM supports the maintenance and recording of significant cultural material in outdoor locations nationally.

## **ADVICE/FUNDING SERVICES**

### **Arts Victoria**

Private Bag No 1  
City Road Post Office  
Victoria 3205

#### *Telephone enquiries*

Arts Victoria staff can often help you with matters relating to funding programs and applications over the phone. Calls should be directed to the Arts Officer concerned. If you are not sure who you should speak to, contact Arts Victoria reception on (03) 9684 8888.

#### *Freecall*

Arts Victoria also has a Freecall number for country residents. Calls to this number are free unless made from a mobile phone. Dial 1800 134 894.

#### *Facsimile*

Arts Victoria can be faxed on (03) 9686 6186 or (03) 9682 5359. Please note that Arts Victoria will not accept faxed applications.

#### *E-mail*

Arts Victoria can be e-mailed on [artsvic@vicnet.net.au](mailto:artsvic@vicnet.net.au)

### **City of Melbourne**

City Marketing and Cultural Development Branch  
GPO Box 1603M  
Melbourne Victoria 3001  
Phone: (03) 9658 9957  
Fax: (03) 9658 8436

General Enquiries: City of Melbourne Hotline: (03) 9658 9658,  
[enquiries@melbourne.vic.gov.au](mailto:enquiries@melbourne.vic.gov.au)

The City of Melbourne has a public art program that includes opportunities for temporary installations and permanent commissions. It also has an annual Financial Support for the Arts Program that operates across all art forms. Guidelines detail the sponsorship criteria.

### **Australia Council**

PO Box 788  
Strawberry Hills NSW 2012  
Phone: (02) 9950 9000  
Freecall: 008 226 912

As the Commonwealth Government's arts funding and advisory body, the Australia Council is responsible for the national development of the arts. Its programs of assistance cover literature, performing arts, visual arts and crafts, community cultural development and Aboriginal and Torres Strait Islander arts.

### **Australia Foundation for Culture and the Humanities**

33–39 Little Lonsdale Street  
Melbourne Victoria 3000  
Phone: (03) 9207 7020  
Fax: (03) 9639 4505

The Australia Foundation for Culture and the Humanities aims to foster a culture of individual and corporate support for the arts, cultural activities and the humanities and develops linkages and brokers partnerships to underpin Australia's cultural life.

**Department of Communication and the Arts**

PO Box 1920  
Canberra ACT 2601  
Phone: (06) 275 3000  
Freecall: 008 819 461

This Commonwealth department develops policy and delivers programs relevant to the telecommunications, media and arts industries in Australia.

**Victorian Health Promotion Foundation (VicHealth)**

Suite 2  
1st Floor  
333 Drummond Street  
Carlton South Victoria 3053  
PO Box 154  
Phone: (03) 9347 3777

VicHealth fosters development of the arts, sport and health by providing sponsorship to properly constituted incorporated organisations that can promote the Foundation's health objectives.

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**CREDITS**

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