

# Introduction

Welcome to the *Art Built-in Toolkit*. Inside are the tools that you will need to commission art and design that are integrated into the public domain, in line with the Cabinet-endorsed, whole-of-government policy *Art Built-in*.

This Toolkit should be read in conjunction with the *Art Built-in Policy Statement* and the *Art Built-in Guidelines*, which were launched by the Premier and the Attorney-General, Minister for Justice and Minister for the Arts on 9 March 1999.

The *Art Built-in Policy Statement* outlines the vision for the Queensland Government's public art policy and the principles upon which Art Built-in rests. The *Art Built-in Guidelines* give an overview of the way in which Art Built-in integrates best-practice public art planning and delivery across the Department of Public Works' Capital Works Management Framework.

This Toolkit should also be read in the context of the Queensland Government State Purchasing Policy which applies to the purchase of all goods, equipment and related services, construction contracts and service contracts by departments and statutory bodies as defined in the *Financial Administration and Audit Act 1997*. This includes the commissioning of services to produce artworks to a brief and the purchasing/ commissioning of artworks themselves.

Government Departments have been required to comply with State Purchasing Policy since its introduction 1991.

As stated in the introduction to the State Purchasing Policy, the policy establishes "The Rules" (processes and procedures) for government procurement, covering activities from specification writing, invitation to suppliers, offer evaluation and purchase or contract through to eventual disposal. It is essentially a compendium of the documentation regarding the considerations that should govern decision-making processes when agencies are undertaking the purchase of goods and services. Departments are required to comply with the values

that underpin the State Purchasing Policy - open and effective competition, value for money, enhancing the capabilities of local business and industry, environmental protection, and ethical behaviour and fair dealing.

## **The New State Purchasing Policy**

The implementation of *Art Built-in* spans the implementation of the new, revised State Purchasing Policy that was announced on 5 June 2000.

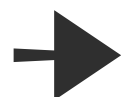
The format of the *Art Built-in Toolkit* is predicated upon the old State Purchasing Policy and provides tools for the implementation of *Art Built-in*. It includes everything you will need to plan for, commission and care for public art assets, including:

- sample legal agreements
- guides to calling for expressions of interest
- invitations for fee proposals
- guides on issues such as purchasing and direct commissioning of public artworks

The Art Built-in Toolkit is being released in a format comparable to the old State Purchasing policy for the reason that there are many similarities between the commissioning of works of art and the tendering for delivery of other services. However, there are some major differences that have to do with artistic merit, intellectual property, staged payments and moral rights. The last is an important issue for artists: moral rights include public acknowledgment of the artist as the creator of the work, consulting if there is a need to relocate an artwork, and not improving or making alterations to the material form of a work (for example, by changing colour or removing parts).

It is important that all government departments effected by *Art Built-in* feel confident that the purchase of public art products and services, as a special kind of purchasing, are undertaken in an appropriate manner. Hence the focus of the current *Art Built-in Toolkit* on process and procedures.

As Government building procurers become more familiar with public art procurement, the *Art Built-in Toolkit* will be continuously updated and improved.



The Toolkit will also be modified in accordance with the new State Purchasing Policy and in line with its staggered implementation. As advised by Queensland Purchasing, the implementation of the new State Purchasing Policy is as follows:

1 July 2000	<ul style="list-style-type: none"> <li>• Department of Public Works</li> <li>• Department of Corrective Services</li> <li>• Department of State Development</li> <li>• Queensland Treasury</li> <li>• Department of Housing</li> <li>• Queensland Police</li> <li>• Department of Premier and Cabinet</li> </ul>
1 December 2000	<ul style="list-style-type: none"> <li>• Main Roads</li> </ul>
1 July 2001	<ul style="list-style-type: none"> <li>• Remaining departments and Statutory bodies</li> <li>• Government-Owned Companies may be required to comply from 1 July 2001, but do so only after a direction from the shareholding Minister.</li> </ul>

The Art Built-in Toolkit will be used by quantity surveyors, architects, building contractors, purchasing officers, project managers, public art project managers, artists, designers and anyone else involved in the design, planning, procurement and maintenance of buildings and integrated public art.

The *Art Built-in Toolkit* is being developed in two stages. Stage 1 has four parts:

1. Planning
2. Consultation and Research
3. Public Art Project Management
4. Public Art Procurement.

Stage 2 will deal with Handover of public artworks, asset management and maintenance issues.

Auditing of the State Government Collection of Public Art will take place throughout 2000-2001. Stage 2 will also see the Public Art Agency develop additional guides focussing on Public Art and Heritage Buildings, De-accessioning Guidelines and Indigenous Cultural Protocols. The Public Art Agency is working with the Department of Aboriginal and Torres Strait Islander Policy and Development on Indigenous Cultural Protocols, and with the Environmental Protection Agency and the Heritage Unit of the Department of Public Works to advance the Public Art and Heritage Buildings Guide.

Feedback and evaluation forms are included at the back of the *Art Built-in Toolkit*. Please feel free to contact the Public Art Agency on (07) 3250 1200 or e-mail [public.art@arts.qld.gov.au](mailto:public.art@arts.qld.gov.au)

## Overview of the Art Built-in Process

The Public Art Agency will analyse the Capital Works Budget Statement each year and will provide each department with a list of projects identified as being those to which Art Built-in may apply. Negotiation between the Public Art Agency and departments may be required about the application of Art Built-in to particular projects. The Directors-General of departments will sign-off on the Art Built-in project list for the coming financial year.

### Art Built-in Process

- Analysis of Capital Works Budget Statement
- Register potential projects by department on Public Art Agency database
- Letter to Directors-General seeking endorsement of Art Built-in project list
- Negotiation of final Art Built-in project list
- Confirmation letter to Directors-General
- Register approved list on Public Art Agency database
- Letter to Project Services confirming projects
- Updating of project information (ongoing)
- Public Art Agency sends Art Built-in Survey 1
- Public Art Agency sends Art Built-in Survey 2
- Public Art Agency sends Art Built-in Survey 3
- Public Art Agency analyses Art Built-in project data (ongoing)

### Responsible Agency

Public Art Agency  
 Public Art Agency  
 Public Art Agency  
 Public Art Agency and departments  
 Public Art Agency  
 Public Art Agency  
 Public Art Agency  
 Public Art Agency  
 Public Art Agency  
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 Public Art Agency  
 Public Art Agency

### Once an Art Built-in project becomes active, the following process occurs:

- |  |  |
|--|--|
| • Finalise building budget for each project and Art Built-in allocation  | Building Project Manager/<br>Quantity Surveyor                                 |
| • Director-General approval sought for final budget  | Building Project Manager/<br>Director-General                                  |
| • Lodgment form (Tool 1D) submitted to Public Art Agency   | Building Project Manager   |
| • Public Art Advisory Group formed   | Building Project Manager/<br>Public Art Project Manager                        |
| • Integrated Cultural Opportunities Assessment Checklist/Full ICOA done (Tools 2B, 2C)   | Public Art Agency/Cultural<br>Consultant with the Public<br>Art Advisory Group |
| • Director-General approval sought for engagement of Public Art Project Manager (Tool 3A)  | Building Project Manager/<br>Director-General                                  |
| • Public Art Project Manager appointed (Tools 3B, 3C)  | Building Project Manager   |
| • Artworks Commissioning Brief done  | Public Art Project Manager   |
| • Director-General approval sought to engage artists for (i) concept design, (ii) design development and (iii) final artwork commission (Tools 4B, 4D, 4F) | Building Project Manager/<br>Director-General                                  |
| • Artists selected for concept design and design development (Tools 4A–4E)   | Public Art Project Manager   |
| • Artworks commissioned (Tool 4G)  | Principal  |
| • Installation   | Principal  |
| • Handover of building and artworks to principal/principal's representative  | Building Contractor  |
| • Asset management and maintenance   | Building Owner   |

The *Art Built-in Toolkit* provides you with all the tools you need to undertake each stage of the process. Approval will need to be sought at various stages from either the Director-General or a delegated officer to proceed in the commissioning of artworks under Art Built-in.

**Tools 1D, 3A, 4B, 4D and 4F are proformas for seeking approval to proceed. These will be used by the Building Project Manager. Advice is always available from the Public Art Agency at any stage of an Art Built-in project.**



# Part 1 : Planning

## Tool 1A *Art Built-Project Definitions*

The following definitions of terms will help you determine the status of your building project. If you are unsure of the status of your project, you should contact the Public Art Agency for advice.

### 1. **New (Full 2%)**

The full 2% will apply to all new projects as of 1 July 1999. These projects will be the ones where no money has been expended at 1 July 1999. Projects in this category have been approved to begin briefing, design and construction in the 1999/2000 financial year.

### 2. **Best Endeavours**

- *Budget Sign-off or tender let before 30 June 1999*

For projects where tenders have been let or construction already begun departments are required to undertake best endeavours to implement the Art Built-in policy as advised by Cabinet. Opportunities should be investigated for the integration of public art and/or design where budgets can be identified and timeframes negotiated.

However, for projects where less than 10% of the budget has been expended and where design or design/construction tender bids have yet to be let or approved, 2% should apply to the remaining budget. These projects will not allocate a mandatory 2% but are the subject of negotiations with the client and the Public Art Agency.

- *Government-Owned Corporations, Commercialised Business Units*

Best endeavours also apply to Government-Owned Corporations and Commercialised Business Units. In these cases the department can determine, in line with the policy, where Art Built-in could be implemented.

- *Exempt Agencies*

Best endeavours also apply to departments that are exempt from the policy. In these cases the department can determine in line with Art Built-in policy where public art could be implemented.

### 3. **Exempt projects**

- building projects valued at less than \$250,000
- prisons and watch-houses
- building for private and domestic purposes
- engineering construction and engineering refurbishment projects

[End Tool 1A]

1A

# Part 1 : Planning

## Tool 1B *Discount Items for Art Built-in Budget Calculation*

The *Art Built-in Guidelines* state that certain elements of capital works building budgets are not included in the gross project cost for the purpose of calculating the 2% allocation. These discounted items will need to be identified when project managers/quantity surveyors are finalising project budgets.

The following are definitions of items that can be discounted to arrive at the “assessable project cost”. It is on the basis of the assessable project cost that the 2% allocation is determined.

1. **Government Fees and Charges**, which may include but not be limited to:
  - *Building Act* compliance
  - water and sewerage compliance
  - fire services levy
  - Queensland Building Services Authority financial review
  - portable long-service leave
  - Workplace Health and Safety fees
2. **Capital Equipment**
  - capital equipment does not include items of furniture, furnishings or fit-out such as desks, chairs and carpet
3. **Specialist Operational or Utilitarian Areas** (see below)

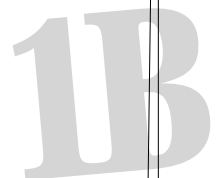
### ***Identifying Areas that have Specialist Operational or Utilitarian Purposes***

Discounts are allowed under the Art Built-in policy for areas that are “specialist operational” or “utilitarian” in nature.

Specialist operational or utilitarian areas would contain highly specialised equipment for the provision of services that are specific to the area in question and are of high capital cost. Further, it is likely that access would be restricted to a limited number or type of specialist staff – as in the case of hospital operating theatres, highly specialised laboratories, and parking bays for ambulances and fire trucks. However, workshops in a school or TAFE college would not be considered to be “specialist” in nature.

Specialist operational and utilitarian areas should be unable to be accessed by the general public; that is, clients and customers must be excluded from the specialist operational area under normal circumstances.

Plant rooms for general building services such as air-conditioning, diesel generators and switch rooms are not discountable areas.



Taking a health facility as an example, it is acknowledged that foyers and reception areas are more appropriate areas for artworks than operating theatres would be. It is important to keep in mind the spirit of the policy that is outlined in the *Art Built-in Guidelines* – that is, priority should be given to the distribution of public art in areas of general public access.

Where a capital works building project is considered to be entirely “specialist” in nature, such as a seismic research station or a Main Roads machinery shed, such projects should apply the “best endeavours” principle and investigate transferring or pooling funds to a capital works project of greater public access. (See **Tool 1C: Guide to Transferring and Pooling**)

### ***Discount Calculation for Specialist Operational and Utilitarian Areas***

Discounts will be established on a project basis. It is intended that the discount calculation be kept as simple as possible. It is **not** intended that a detailed audit be undertaken of the cost of a specialised area. Instead, an established cost rate (\$/m<sup>2</sup>) shall be used and applied to known floor areas.

Once a discount rate has been established for a particular type of facility, the discount rate for future facilities of a similar type may be established by rule of precedent and applied to subsequent projects.

Once an amount for discounting has been determined for a project it shall be applied to the gross project cost (less exemptions for government fees/charges and for capital equipment) to arrive at the assessable project cost. (See the “Budget” section of **Tool 1D**)

In all instances, the Public Art Agency must agree on the discount rate for a project with the client/department and approve it before it can be used. Advice must be sought from the Public Art Agency when discounting is being considered for a project.

Advisory notes have been drafted by Project Services to assist in the calculation of the Art Built-in component for capital works building projects. Contact the Public Art Agency if you would like a copy.

[End of Tool 1B]

# Part 1 : Planning

## Tool 1C *Guide to Transferring and Pooling*

### *Transferring the Art Built-in Allocation*

In some circumstances, the *Art Built-in Guidelines* allow the 2% allocation to be transferred from one applicable capital works building project to another within an agency's capital works program.

Transferring Art Built-in allocations provides maximum flexibility for agencies implementing the policy. It allows agencies to transfer funds from buildings of low public access or usage to buildings of higher public access, usage and visibility.

Transferring funds is recommended only where agencies can demonstrate that they have taken social equity and regional equity into account. There may be potential inequity in cases where the 2% applied on smaller projects could be transferred to projects elsewhere. In other words, transferring should not be undertaken if it means that smaller, remote and regional communities would be denied the benefits of Art Built-in. An agency that wishes to transfer Art Built-in allocations from one project to another will need to consult the Public Art Agency. Ideally, this would be at the Business Case stage (see Section 2.2 of the *Art Built-in Guidelines*).

### *Pooling or Aggregating Art Built-in Allocations*

Agencies may also aggregate or pool applicable capital works building projects that are each valued at less than \$250,000 to meet or exceed the \$250,000 threshold and apply Art Built-in to these building projects in accordance with the provisions of the *Art Built-in Guidelines*.

For instance, a Queensland designer may be commissioned by the Department of Transport to design a seating and shade solution for a series of bus station projects. Each bus shelter is valued below \$250,000, but aggregated they meet the threshold. This approach could showcase Queensland materials in the fabrication of such design solutions and ensure quality design across the state.

Aggregating or pooling projects could result in a series of linked Art Built-in projects — for example, a Queensland-designed carpet/furniture solution could be applied to five refurbishment projects within your building program. Alternatively, pooling projects each under \$250,000 to meet the \$250,000 threshold could result in a single Art Built-in project, with a major commissioned work or works of public art, in a position of high public access and usage.

**Note that agencies are not permitted to aggregate projects of \$250,000 or more which are individually eligible for Art Built-in.**

Agencies interested in pooling or transferring allocations should contact the Public Art Agency for further advice and assistance about the suitability of their proposal.

Once it has been determined that your pooling or transferring proposal meets the aims of Art Built-in, you will need to send **Tool 1D: Lodgment of Allocation/Approval** to the Public Art Agency.

1C

The following checklist will help you to decide whether or not you can exercise the option to transfer allocations.

### **Checklist for Suitability of Transferring Allocations**

This checklist will help you assess whether or not you can transfer the Art Built-in allocation from your current capital works project to another project. Issues of social and regional equity, usage of the building and public access, or the kind of impact the building may have on the public, need to be considered if you are transferring allocations

**Tick the boxes to answer these questions about your current project:**

**1. Will the building have a large number of tenants?**

Yes  No

*Please give details:*

None  Under 10  10–100  Over 100

**2. Will the building have a high public usage?**

Yes  No

*Please give details:*

Under 10 visitors/day  10–100 visitors/day  
 Over 100 visitors/day  Under 10 visitors/week  
 10–100 visitors/week  Over 100 visitors/week  
 Other

**3. Will the building have a high public profile?**

(For example, will it be located in the main street of the town or tourist district?)

Yes  No

**4. Will the building project be located in a place of high public activity?**

Yes  No

*Please give details of location:*

Shopping district  High-density residential area  
 Business precinct  Government building precinct  
 Other

If you have answered "yes" to the majority of the above questions, it may not be appropriate to transfer the 2% allocation. The Public Art Agency can provide further advice and assistance. Ph: (07) 3250 1200 or e-mail [public.art@arts.qld.gov.au](mailto:public.art@arts.qld.gov.au)

[End of Tool 1C]

# Part 1 : Planning

## Tool 1D *Lodgment of Allocation/Approval*

The Public Art Agency will analyse the Capital Works Budget Statement each year and will provide each department with a list of projects identified as being those to which Art Built-in may apply. Negotiation between the Public Art Agency and departments may be required about the application of Art Built-in to particular projects. The Directors-General of departments will sign-off on the Art Built-in project list for the coming financial year.

**After this form has been completed, and approved by the Director-General, it is to be submitted to the Public Art Agency by fax on (07) 3250 1201 or by e-mail: [public.art@arts.qld.gov.au](mailto:public.art@arts.qld.gov.au)**

If you are managing a project that fits any of the descriptions below, you are required to lodge this form for each eligible project in your capital works program for the year:

- valued at \$250,000 or above
- less than \$250,000, but which you have decided to be pooled to reach the \$250,000 minimum limit and apply the 2% allocation for public art, or
- whose allocation is to be transferred to another project in your portfolio.

### 1. Project/Department Information

Place:	
Building:	
Project Name:	
Project Number:	
Department:	
Authorised Officer:	
Date:	

### 2. Project Details

**Art Built-in Project Classification:** (For example, full 2%, "best endeavours" see **Tool 1A**)

**Pooling or Transferring Project:** (Please indicate here if you are pooling or transferring and refer to **Tool 1C: Guide to Transferring and Pooling**)

- Pooling (indicate which projects are being pooled)  
 Transferring (indicate from where and to where project funds are being transferred)

<b>From:</b>	<b>To:</b>
--------------	------------

#### Region:

- |  |   |
|--|---|
| <input type="checkbox"/> South East Queensland | <input type="checkbox"/> Wide Bay                   |
| <input type="checkbox"/> Central Queensland    | <input type="checkbox"/> North Queensland           |
| <input type="checkbox"/> Far North Queensland  | <input type="checkbox"/> Central Western Queensland |
| <input type="checkbox"/> North West Queensland | <input type="checkbox"/> South West Queensland      |

<b>Start Date:</b>	<b>End Date:</b>
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### 3. Budget

<b>Gross project cost</b>	
<i>Less exemptions for government fees + charges</i> <i>Less exemptions for capital equipment</i> <i>Less discount for specialist operational areas</i>	
Sub-total: <b>Assessable project cost</b> (for details of assessable project cost, refer to <b>Tool 1B</b> )	
<b>Multiplied by 2% = Art Built-in Budget</b>	

#### Elements of the Art Built-in budget:

<b>Art Built-in budget</b>	
<i>Less Public Art Agency coordination fee (7% of Art Built-In budget) See note.</i> <i>Less Public Art Project Management fee</i> <i>Less ICOA Consultant fee</i>	
<b>Artwork implementation budget</b>	

Note: As agreed Directors-General Forum 23 March 1999.

### 4. Delivery Program

[For example]

Schematic Design: ..... Completed  
Developed Design: ..... Completed  
Construction: ..... July–December 2000  
Public Art Program: ..... November 2000–February 2001  
Handover: ..... 20 February 2001

### 5. Approval

Approval of the gross amount of the public art budget, the elemental budget breakdown and the delivery program.

Approved by: ..... Director-General/Authorised Officer

Date: .....

[End of Tool 1D]



# Part 2 : Consultation and Research

## Tool 2A *How to Form a Public Art Advisory Group*

It is recommended that agencies undertaking an Art Built-in project convene a Public Art Advisory Group (PAAG) to assist in steering the public art process to a successful outcome. The PAAG is a consultative committee of stakeholder representatives who take part in identifying appropriate public art opportunities and in selecting artists.

The Public Art Advisory Group's role is to provide expert advice and oversee public art project management from drafting the Integrated Cultural Opportunities Assessment, through the commissioning stage, to handover of completed artworks. (See *Art Built-in Guidelines* Section 4.1: Public Art Project Definition.) The PAAG has the following tasks:

- to undertake the Integrated Cultural Opportunities Assessment (ICOA) or ICOA checklist (see **Tools 2B and 2C**)
- to provide expert cultural, artistic and design advice
- to help develop the detailed ICOA (where required)
- to appraise and make recommendations for the selection of appropriate Public Art Project Managers (where required)
- to appraise and make recommendations for the selection of appropriate artists
- to oversee the commissioning and procurement processes for artworks
- to report to the principal's representative when making recommendations and seeking approval.

The Public Art Advisory Group should include the following representatives:

- representative of principal or procuring agency
- project manager
- managing contractor
- principal architect or associate
- public art project manager
- curator, as required.

In addition it is recommended that you consider the inclusion of:

- building users
- community representatives (including young people, older people, people with a disability, Indigenous Australians and people from diverse cultural backgrounds)
- other cultural experts, where relevant, such as environment and cultural heritage consultants.

### ***Role of the Public Art Agency***

A consultant or nominee from the Public Art Agency may be a member of the Public Art Advisory Group to ensure that the activity supported under Art Built-in meets the requirements of existing government policies and priority areas for the arts. Relevant factors include:

- artistic merit
- access and equity
- cultural diversity
- Indigenous arts and culture
- people experiencing disabilities
- regional arts development
- young people and emerging artists
- training and education.

[End Tool 2A]

2A

# Part 2 : Consultation and Research

## Tool 2B *How to Perform an Integrated Cultural Opportunities Assessment (ICOA)*

### *What is an Integrated Cultural Opportunities Assessment?*

An Integrated Cultural Opportunities Assessment (ICOA) is an important document produced for each Art Built-in project. It gives the commissioning agency (and all those providing services to the agency) the information that is needed to guide the public art project.

Through the ICOA process, an agency can commission public art projects that meet its service delivery objectives and match the current and projected needs of the building and its users, its community and its environment. The purpose of the ICOA is to identify new public art opportunities in the context of the building development and the agency's existing collection of public art, and to give guidance on which procurement process or processes should be used on the project.

Just as in procuring a building, procuring public art requires that pre-planning and consultation are undertaken. Managing risk in this way will help to ensure that the public art project is completed on time and within budget, in a form that enhances the agency's corporate objectives and values.

### *What does the ICOA cover?*

The ICOA covers

- project parameters (including budget and timeline)
- location of the building (local or regional context, and public profile)
- significance of the building or site (environmental, social, cultural, historical)
- impact of the development on the community, tourism, the economy and planning
- issues of usage and access by tenants and the public
- relevance of public art to the local area or region
- relevance of public art to the values of the commissioning agency

The ICOA provides crucial information about the most appropriate procurement method and the type of art to be commissioned. Information collected in the ICOA forms part of the Artworks Commissioning Brief when concept design proposals are sought from artists (see Schedule 1 of the agreement in **Tool 4C**).

### *Why do an ICOA?*

The ICOA is *the* essential planning tool to ensure success of an Art Built-in project for commissioning agencies, building users and the general public. An ICOA should be undertaken for all building projects to which Art Built-in applies. The scope and complexity of each ICOA will depend upon the range of issues involved in a given project. For some, an ICOA Checklist (**Tool 2C: ICOA Checklist**) will be required; for others a more detailed ICOA process will ensure the best result. If you are unsure how to proceed with an ICOA on your building project, or how detailed a process you need to undertake, please contact the Public Art Agency for advice.

### ***When is the ICOA done?***

The ICOA is undertaken as soon as possible after funding approval of the project's business case (the budget of which will have a 2% allocation for public art as required by the Art Built-in policy).

### ***Who does the ICOA?***

If you don't have the expertise within your department to undertake an ICOA you will need to contract a Public Art Project Manager or a Cultural Consultant to deal with this important pre-planning phase of your public art project. The Public Art Agency manages a register of peers and consultants and can help you find an appropriate professional to undertake the ICOA.

Contracting a Public Art Project Manager is the same as contracting any other consultant. See the Public Art Project Manager's Agreement, which is included in **Tool 3C: Request for Fee Proposal — Public Art Project Manager**. The Public Art Agency can provide advice on contracting Public Art Project Managers and can assist with drafting Schedule 1: Scope of Services.

The ICOA is best undertaken by the Public Art Project Manager or Cultural Consultant in consultation with a Public Art Advisory Group. This ensures that artistic expertise informs decision making and that all of the stakeholders (including the principal, the building design team, building users and the general public) are able to participate in defining the public art project. (See Section 4.1 of the *Art Built-in Guidelines*.) For more information about the Public Art Advisory Group, see **Tool 2A: How to Form a Public Art Advisory Group**.

[End of Tool 2B]

# Part 2 : Consultation and Research

## Tool 2C *Integrated Cultural Opportunities Assessment Checklist and Form*

### *Integrated Cultural Opportunities Assessment Checklist*

1. Project Description

Department/Agency:	
Building Project:	
Authorised Officer:	
ICOA Author:	
Public Art Advisory Group Members:	

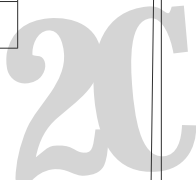
2. What are your agency's corporate objectives and mission?


3. Summarise your agency's existing public art assets.


4. Project parameters

*Budget breakdown:*

Gross Project Cost	\$
Less Exempt Items (Fees, Charges, Work Cover, Capital Equipment)	\$
Net Project Cost	\$
<b>Art Built-in Allocation</b>	<b>\$</b>



***Time scale for the project:***

Schematic Design	
Developed Design	
Construction	
Handover	

**5. Location of the building**

Name the city/town where the project is located. What is the Local Government council? What are the major characteristics of the region? (For example, Aboriginal community with a population of 500.)

What is the public profile of the project? (This is defined by how many people will be using the building, and the significance of the project within the community.)


**6. What is the significance of the site or the existing building?**

Describe any significant **environmental** features of the site.

What is the **social** significance of the site — for example, is it an important meeting place, is it a popular community space, is it considered to be of importance to the local community?

What is the **historical** or **cultural** significance of the building or site and its surrounds? What was on the site previously? What was the existing building used for? Are there any cultural heritage studies in existence?


**7. What is the impact of the development?**

How does the **community** feel about the impending development? Has there been any consultation? Are there any **tourism** benefits expected as a result of the development, or is the development close to high-profile tourist locations?

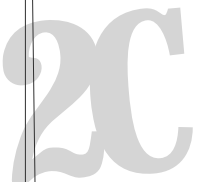
Will the building project result in **economic** changes or benefits in the local community?

How does the building project relate to existing **planning** at the Local Government level?

Does the development meet all requirements under the *Integrated Planning Act 1997*?


**8. Describe how people will use the building**

How many tenants will there be? How many members of the public will access the building in a given period of time? What will they be using the building for?

# Part 2 : Consultation and Research

## 9. Describe the current state of local/regional cultural planning

Is there a local cultural plan in the region? If so, does this plan include a public art policy? Briefly detail how any existing public art policy objectives (including equity considerations) may affect the public artworks that are to be commissioned for this site.

If there is not a local cultural plan, are there already any public artworks within the precinct of the building or site? (Please list.)


## 10. Identify potential cultural/public art opportunities

Does the building project lend itself to one or a combination of the following?

- integrated art and/or design
- permanent works
- temporary works
- site-specific works
- inclusion of cultural facilities
- animation of public spaces (e.g. by performances or temporary public art projects)
- workshops and residencies

Potential sites for commissioned artworks are:

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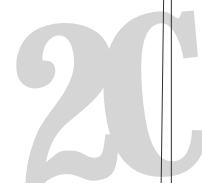
## 11. Value Statement

The following values, themes and concepts will need to be used by the Public Art Project Manager when commissioning artists and artworks. These values will inform the artworks commissioning brief, any curatorial brief (if a curator is employed on a project) and the artists' statement of artistic intent when it comes time for concept designs to be pitched to the Principal and Public Art Advisory Group.

Public art commissioned for this project can help inform the public of the positive contribution the building and the work of the agency makes to society as a whole. The Value Statement for the project is as follows:


## 12. What are the recommendations for project delivery?

Identify an appropriate Public Art Advisory Group. Refer to **Tool 2A: How to Form a Public Art Advisory Group.**



Identify an appropriate procurement method. Refer to **Tool 4H: Guide to Purchasing and Direct Commissioning of Artworks.**


**13. Authorised Officer**

**Signature of Authorising Officer:** .....

Name: ..... Date: .....

***Integrated Cultural Opportunities Assessment Form***

**1. Project Description**

<b>Department/Agency:</b>	
<b>Building Project:</b>	
<b>Authorised Officer:</b>	
<b>ICOA Author:</b>	
<b>Public Art Advisory Group Members:</b>	

**2. What are your agency's corporate objectives and mission?**


**3. Summarise your agency's existing public art assets.**


**4. Project parameters**

***4.1 Budget breakdown:***

Gross Project Cost	\$
Less Exempt Items (Fees, Charges, Work Cover, Capital Equipment)	\$
Net Project Cost	\$
<b><i>Art Built-in Allocation</i></b>	<b>\$</b>

***4.2 Time scale for the project:***

Schematic Design	
Developed Design	
Construction	
Handover	



# Part 2 : Consultation and Research

## Tool 2C 5. Location of the building

**5.1 Geographic location:**

---

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**5.2 Public profile:**

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---

**5.3 Indigenous demographic:**

Local Indigenous group/s

Local Indigenous language/s

Community government council/s

Key community personnel

Other relevant information

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---

**5.4 Cultural demographic:**

Local and regional cultural facilities/events	Where/when

---

---

Key community personnel

Other relevant information

Key organisations

Personnel

---

---

## 6. Significance of the site or the existing building

**6.1 Environmental:**

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**6.2 Social:**

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---

**6.3 Cultural:**

---

---

**6.4 Historical:**

---

---

## 7. Impact of the development

**7.1 Community:**

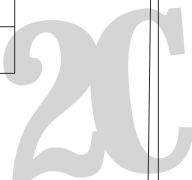
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**7.2 Tourism:**

---

---



**7.3 Economic:**

**7.4 Integrated Planning Act 1997:**

**8. Access to and usage of the building**

**8.1 Tenants:**

**8.2 The public:**

**9. Local/regional cultural planning**

**9.1 Effect of any existing public art/equity policies on project to be commissioned:**

**9.2 Existing local/regional public art:** Location

**10. Identification of potential cultural/public art opportunities**

Potential sites for commissioned artworks are:

**11. Value Statement**

The following values, themes and concepts will need to be used by the Public Art Project Manager when commissioning artists and artworks. These values will inform the artworks commissioning brief, any curatorial brief (if a curator is employed on a project) and the artists' statement of artistic intent when it comes time for concept designs to be pitched to the Principal and Public Art Advisory Group.

Public art commissioned for this project can help inform the public of the positive contribution the building and the work of the agency makes to society as a whole. The Value Statement for the project is as follows:

**12. Recommendations for project delivery**

**11.1 Recommendations for additional expertise/consultancy work:**

**11.2 Procurement methods:**

**13. Authorised Officer**

**Signature of Authorising Officer:** .....

Name: ..... Date: .....

[End Tool 2C]



# Part 3 : Public Art Project Management

## Tool 3A *Approval to Engage a Public Art Project Manager*

Place:	
Building:	
Project Name:	
Project Number:	
Department:	
Authorised Officer:	
Date:	

**1. Expressions of Interest (EOI) invitation date** *[Insert date]*

--

Consultant Register (Public Art Agency)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
Public Advertisement	<input type="checkbox"/> YES	<input type="checkbox"/> NO

**2. Expressions of Interest (EOI) received**


**3. Public Art Advisory Group meeting to review EOI** *[Insert date]*

--

**4. Public Art Project Manager shortlist**




**5. Invitation to submit a fee proposal** *[Insert date]*

**6. Public Art Advisory Group meeting to review fee proposals** *[Insert date]*

**7. Fee proposals received and reviewed**

Name:	Fixed lump-sum fee:	Score:
-------	---------------------	--------

Refer to attached documentation for details of score calculation.

**8. Recommendation for the engagement of a Public Art Project Manager**

Name:	Fixed lump-sum fee:
-------	---------------------

**9. Reason: highest attribute score**

**10. Approval**

To engage the stated Public Art Project Manager for the stated fee in accordance with the Conditions of Contract.

Approved by: ..... Director-General/Authorised Officer

Date: .....

This approval form is to be faxed back to the Public Art Agency (07) 3250 1201 upon gaining approval for appointment of the Public Art Project Manager.

[End Tool 3A]

3A

# Part 3 : Public Art Project Management

## Tool 3B *Call for Expression of Interest — Public Art Project Manager*

First Name, Last Name

Title

Company

Postal Address

Dear First Name

### **Re: Call for Expressions of Interest for Public Art Project Management**

*[Insert name of commissioning agency/department]* is seeking to engage a consultant to perform the Public Art Project Management function for *[insert project name; provide additional information about the project, timeline and budget]*.

The *[insert agency/department]* is calling for Expressions of Interest from suitable/qualified Public Art Project Managers. If you are interested in expressing an interest, please write to *[insert project officer responsible for administering legal agreements for the project]*. At this stage, please do NOT provide a detailed quote or fee proposal for this job. All Expressions of Interest must be received by close of business on *[EOI receipt date]*. Your Expression of Interest will be assessed against the following criteria:

**Relevant Experience** 40%  
(previous work of this type)

**Track Record** 40%  
(general reputation for work, competence, capacity)

**Management** 20%  
(organisation, acceptable insurance, economic stability, quality systems)

Please note that although you may express an interest you will not necessarily be contacted to provide a detailed fee proposal for this job. A representative from the *[insert agency/department]* will shortlist all Expressions of Interest and request formal Fee Proposals in accordance with the Queensland Government's State Purchasing Policy ([www.qgm.qld.gov.au/purchasingpolicy](http://www.qgm.qld.gov.au/purchasingpolicy)).

Yours sincerely

[End Tool 3B]

3B

# Part 3 : Public Art Project Management

## Tool 3C ***Request for Fee Proposal — Public Art Project Manager***

First Name, Last Name

Title

Company

Postal Address

Dear First Name

**Re: Art Built-in Public Art Project Management/Consultancy Services for [insert project name]**

You are invited to submit a fee proposal to provide Public Art Project Management services in accordance with the attached Integrated Cultural Opportunities Assessment (ICOA) and the attached Public Art Project Manager's Agreement, including Schedule 1 (Public Art Project Management Brief) and Schedule 2 (Consultancy Services). See the attached Instructions for Preparation of Consultants' Fee Proposals, which give details of assessment criteria for Public Art Project Managers.

For the Public Art Advisory Group (PAAG) to evaluate fee proposals for this project, we require your formal acceptance of the attached Public Art Project Manager's Agreement and Schedules 1 and 2. You must also indicate your proposed lump-sum fixed fee for the delivery of consultancy services (including all disbursements).

Your fee proposal should include:

- a response to the assessment criteria for Public Art Project Managers in accordance with the Instructions for Preparation of Consultants' Fee Proposals
- acceptance of the attached Public Art Project Manager's Agreement and Schedules 1 and 2
- confirmation that your fee is a lump-sum fixed fee for the delivery of consultancy services.

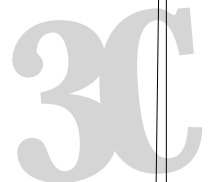
If your fee proposal is successful, these documents and your letter of confirmation will form the basis of a contractual arrangement between your organisation and this [insert agency/department].

You should note that the delivery program for this public art project is [insert time scale from ICOA] and the target completion date is [insert date].

You should note that other fee proposals have been sought and that no contractual relationship will exist between your organisation and this [insert agency/department] unless and until the [insert agency/department] accepts your fee proposal in writing.

Your letter of confirmation and fee proposal should be forwarded to [insert project officer's name] by close of business on [insert date]. If you require any further information, please contact [insert project officer's name and phone number and/or e-mail].

Yours sincerely



## ***Instructions for Preparation of Consultants' Fee Proposals — Public Art Project Managers***

When submitting your fee proposal, you are requested to provide **only** the information listed below. Please do not submit elaborate glossy dossiers or illustrations of projects.

### **Relevant Experience**

Please include one page listing your experience that applies to management of this public art project, ensuring that all projects listed are **recent and relevant to this project**.

### **Track Record**

Please include one page outlining your level of **competence, capacity** and **general reputation** in relation to this type of work.

### **Management**

Detail your organisational structure and the types and levels of acceptable insurance that you hold (specifically, amounts and expiry dates of **professional indemnity** and **public liability insurance** policies). List the name of the project team leader and any contingency plan for the project team. List other current commitments of the project team and the percentage of their time which is available for each stage of this project (a two-dimensional matrix is sufficient).

Acceptance is required of the work outlined for each stage of the project in the Integrated Cultural Opportunities Assessment and also the Public Art Project Manager's Agreement.

Please also provide names and telephone numbers of referees for the project team, ensuring that referee contact details are correct and that the people are contactable.

### **Methodology**

A project plan is required that shows the proposed start and finish dates for each stage, review dates, approvals, consultative meetings and resourcing, based on the indicative program included in the Integrated Cultural Opportunities Assessment. You will need to indicate that you have a thorough understanding of budgeting for public art projects as you will be required to advise the Principal on how they will need to spend the public art allocation. You will also be required to oversee artists budgets to ensure all elements are covered under available funds.

Any additional information provided in this section regarding the methodology proposed by the project team should be limited to **two** pages.

### **Technical Skills**

Nominate the information technology, technical skills and specific abilities to be used on this project, including the number of workstations/workers that can be devoted to the project.

### **Time Performance**

Briefly detail how the proposed methodology (including proposed start and finish dates for each stage, review dates, approvals, consultative meetings) will be implemented. Also indicate your ability to meet the target dates detailed in the project program that is included in the Integrated Cultural Opportunities Assessment.



# Part 3 : Public Art Project Management

## Tool 3C

### Price/Budget

You will need to complete a one-page schedule showing lump-sum fees for all applicable stages, with a percentage breakdown for stages. Please note that your estimated disbursements must be included in the fee for each stage of the project. Please provide a separate schedule showing the disbursements allowed for each stage.

Your fee proposal should include hourly rates and a fee cash-flow on a monthly basis for the project. Please note that these items are for administrative purposes only.

### Assessment Criteria

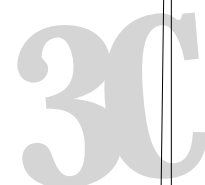
In accordance with the Value Selection Process detailed in the State Purchasing Policy (Part C, Section 7), submissions by consultants applying to undertake the Public Art Project Management in a project should be assessed using the criteria and weightings in the table below.

Each consultant will be assessed and scored (0–5) against these criteria as follows:

- 5 Excellent
- 4 Very good
- 3 Good, better than average
- 2 Acceptable
- 1 Marginally adequate
- 0 Will fail to satisfy required standards

Weightings will then be applied to the scores before totalling. The highest weighted score indicates the successful consultant.

Assessment Criteria – Public Art Project Manager	Weighting
<b>Relevant Experience</b> (previous work of this type)	20%
<b>Track Record</b> (general reputation of work, competence and capacity)	20%
<b>Management</b> (organisation, acceptable insurance, economic stability, quality systems)	10%
<b>Methodology</b> (how project is to be tackled)	15%
<b>Technical Skills</b> (people, systems, specific abilities)	10%
<b>Time Performance</b> (as proposed for project–likelihood of meeting it)	10%
<b>Price/Budget</b>	15%
<b>Total</b>	<b>100%</b>



### **Variations from Specification**

Any proposal that does not comply with the specified requirements may be rejected unless deviations and the reasons for them are identified in the submission. Alternative proposals may be considered **providing a conforming submission is lodged for them.**

### **Sub-consultants' Proposals (If Required)**

If your proposal includes proposals from sub-consultants, include a two-page statement from each firm listing their team for the project, the relevant experience of team members and their price in the form of a lump sum and a percentage for each stage of the project. Sub-consultants' proposals do not have to be included in your proposal — only with the hard copy.

### **Format**

Submit your proposal as only one hard copy, delivered in accordance with the letter of invitation by the closing time and date. Please note that this is the official copy, which will be included in the project file, and it must be delivered as stipulated by the closing time and date.

The hard copy is to be bound by an easily removable binder in the top left-hand corner — any other binding makes the proposal hard to file and will only be ripped off and thus wasted.

Please ensure that the envelope containing the hard copy of your proposal includes the following **completed Fee Proposal Cover Sheet** as a title page. It should be stapled to the front of your submission.



# Part 3 : Public Art Project Management

## Tool 3C *Public Art Project Management*

### *Fee Proposal Cover Sheet*

Name of Project:	
Name of Agency/Department:	
Name of Organisation/ Consultant Submitting Proposal:	

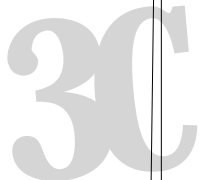
Please tick to indicate the following information has been provided in this fee proposal:

- Relevant Experience
  - Track Record
  - Management
  - Methodology
  - Technical Skills
  - Time Performance
  - Price/Budget
- |                                       |    |
|---------------------------------------|----|
| <input type="checkbox"/> Proposed Fee | \$ |
|---------------------------------------|----|

I/We accept and agree to the Conditions of Contract and the terms of reference outlined in the Integrated Cultural Opportunities Assessment.

Signature: ..... Date: .....

[End of Tool 3C]



# *Public Art Project Manager's Agreement*

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*Between*

*\*\*\**

*and*

*\*\*\**

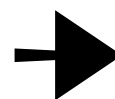
*Crown Solicitor  
State Law Building  
50 Ann Street  
Brisbane*

*Facsimile: 3239 6386  
Telephone: 3239 6107*

*3C*

# *Contents*

- 1 Interpretation
- 2 Term
- 3 Consultancy Services
- 4 Key Personnel
- 5 Fees and Reimbursable Expenses
- 6 Payment
- 7 No Agency
- 8 Conflict of Interest
- 9 Contract Material
- 10 Project Management
- 11 Disclosure of Information
- 12 Security and Access
- 13 Suspension of Services
- 14 Variation
- 15 Payment for Reduced Consultancy Services
- 16 Default of the Consultant and Termination
- 17 Compliance with Laws
- 18 Indemnities
- 19 Insurance
- 20 Unavoidable Delay
- 21 Waiver
- 22 Governing Law
- 23 Entire Agreement
- 24 No Subcontracting
- 25 Further Assistance
- 26 Resolution of Disputes
- 27 Year 2000 Compliance
- 28 Clauses to Survive Termination
- 29 Notices



This agreement is made this ..... day of ..... 2000.

Between: **The State of Queensland** through the Department of .....  
("the Principal")

And: .....  
("the Consultant")

**Recitals:**

- A. The Consultant has agreed to perform certain consultancy services for the Principal.
- B. The parties wish to record the terms and conditions of their agreement.

## Now the Parties Agree as Follows -

### 1. Interpretation

In this agreement -

(a) the following definitions apply -

**"Agreement"** means this document and all schedules to it;

**"Commencement Date"** means the date on which this agreement is executed by the parties, or if not executed by the parties on the same date, means the later of the dates of execution;

**"Consultancy Services"** means the services described in Schedule 1;

**"Contract Material"** means -

- (i) any material forming part of or constituting a deliverable that is created, written or otherwise brought into existence by or on behalf of the Consultant in the course of performing the consultancy services (called "new contract material");
- (ii) any material that exists at the commencement date and is incorporated into a deliverable (called "existing contract material");

**"Deliverable"** means any document, piece of equipment, data listing or other creation required to be delivered to the Principal in order to complete the performance of the consultancy services;

**"Force Majeure"** means any event beyond the reasonable control of the party affected and includes an event due to natural causes that happens independently of human intervention;

**"Intellectual Property Rights"** means all copyright, patents and all rights in relation to inventions, trade marks and designs;

**"Key Personnel"** means the representatives of the Consultant specified in Schedule 2;

**"Principal's Consent"** means prior written consent [which will not be unreasonably withheld] of the Principal which may be given subject to such terms and conditions as the Principal may see fit to impose;

**"Project Officer"** means the person specified in Schedule 2 or any other person substituted by the Principal by notice to the Consultant;

**"Records"** means all material including but not limited to books, documents, information, computer software, equipment, and data stored by any means disclosed, or made available, by the Principal to the Consultant in connection with the performance of this agreement;

**"Schedule"** means a Schedule to the Agreement;



**“Year 2000 Compliant”** means information technology with processing capability which:

- (a) correctly identifies all dates and the centuries in which they occur;
  - (b) correctly processes all dates and date related data including, without limitation:
    - comparing;
    - sequencing;
    - calculating (such as adding and subtracting); and
    - executing functions commencing or ending on a particular date or dealing with particular periods;
  - (c) does so irrespective of the century in which the dates occur and whether or not the relevant processing spans centuries;
  - (d) correctly distinguishes between leap years and non-leap years;
  - (e) correctly deals with the transition from 31 December 1999 to 1 January 2000, in each case, without reduction of functionality (compared with processing only 20th century dates), interruption or other material adverse effect.
- (b) clause headings are not to be used as an interpretation aid;
  - (c) words in the singular include the plural and words in the plural include the singular according to the requirements of the context;
  - (d) a reference to a clause or a schedule is a reference to a clause or a schedule of this agreement.

## 2. Term

This agreement will start on the commencement date and unless earlier terminated in accordance with its terms, continue until the consultancy services have been performed in accordance with this agreement.

## 3. Consultancy Services

- 3.1 The Consultant will provide and complete the consultancy services through its key personnel, to the standards and in the manner, frequency, quantity and times specified in Schedule 1.
- 3.2 The Consultant will -
  - (a) inform itself of the Principal's stated requirements in respect of the consultancy services;
  - (b) consult regularly with the Principal throughout the performance of the consultancy services;
  - (c) act professionally at all times and exercise skill, care and diligence in performing the consultancy services.
- 3.3 The Consultant warrants that it has the qualifications, admissions and memberships (if any) specified in Schedule 2.
- 3.4 The Consultant will ensure that the deliverable (if any) specified in Schedule 2 complies with the standards and specifications (if any) set out in Schedule 2.
- 3.5 Where specified in Schedule 2, the Principal will provide the specified assistance to the Consultant.

## 4. Key Personnel

- 4.1 The consultancy services will be performed by the key personnel except with the Principal's consent. A person replacing one of the key personnel with the Principal's consent will be one of the key personnel during the period of the person's engagement on the consultancy services.
- 4.2 The Consultant will ensure that key personnel are competent and have the necessary skills to perform the consultancy services on which they will be engaged.
- 4.3 The Consultant will not without the Principal's consent -
  - (a) allow key personnel to delegate any part of the consultancy services;
  - (b) allocate tasks not connected with the consultancy services to any of the key personnel engaged on the consultancy services on a full time basis until completion of the consultancy services allocated to that person.

- 4.4 If any of the key personnel are not available to perform any of the consultancy services allocated to them the Consultant will immediately -
  - (a) give notice to the Principal of the circumstances; and
  - (b) if so requested by the Principal, arrange for replacement of that person with a person satisfactory to the Principal at no cost to the Principal.
- 4.5 The Principal may, on reasonable grounds, give notice requiring the Consultant to remove key personnel from working on the consultancy services. Upon receipt of a notice pursuant to this clause 4.5, the Consultant will, at no cost to the Principal, promptly remove and replace the key personnel referred to in the notice with a person satisfactory to the Principal.

## **5. Fees and Reimbursable Expenses**

- 5.1 The Consultant will provide the consultancy services for the fee specified in Schedule 2.
- 5.2 The fee to be paid by the Principal to the Consultant pursuant to clause 5.1 is a GST inclusive payment and the Consultant shall not be entitled to recover any additional sums from the Principal to cover any liability for GST.
- 5.3 The Consultant shall, if requested by the Principal, provide a valid tax invoice for GST purposes.
- 5.4 The Consultant will not be entitled to be paid for any part of the consultancy services which the Project Officer has certified as not having been performed in accordance with this agreement.
- 5.5 The Consultant will promptly perform or perform again any part of the consultancy services certified as not being performed in accordance with this agreement and the Principal may, without limiting any other right it may have, defer payment for that part of the consultancy services until the Project Officer has certified that the services have been performed or performed again in accordance with this agreement.
- 5.6 The Consultant may include in an invoice under clause 6 a claim, and be paid, for expenses described in Schedule 2 after those expenses have been incurred by the Consultant. The Principal will only reimburse the Consultant for other expenses that have been incurred by the Consultant with the Principal's consent.

## **6. Payment**

- 6.1 The Principal will not have any obligation to pay the Consultant for any part of the consultancy services until the Principal has been given a correctly rendered invoice.
- 6.2 The Consultant will be paid in accordance with Schedule 2. Invoices must be in sufficient detail to allow the Principal to assess progress against targets. For work carried out on a time basis, invoices must be supported by records of times spent by individuals on the consultancy services, certified by the Consultant and the Project Officer.
- 6.3 Upon receipt of an invoice the Principal may require the Consultant to provide additional information to assist the Principal to determine whether or not an amount is payable.
- 6.4 The Principal will make payment of a correctly rendered invoice within thirty days after receipt of the invoice or, if additional information is required by the Principal pursuant to clause 6.3, thirty days after receipt of the additional information.
- 6.5 For the purposes of this clause 6, a correctly rendered invoice is an invoice that has been submitted to the Principal in accordance with clause 6.2 and -
  - (a) the amount claimed in the invoice is due for payment pursuant to this agreement;
  - (b) the amount claimed in the invoice is correctly calculated in accordance with this agreement;
  - (c) the invoice correctly identifies the consultancy services performed;
  - (d) the invoice is a valid tax invoice for GST purposes.

- 6.6 The Principal will notify the Consultant within fourteen days after receipt of an invoice found not to be correctly rendered.
- 6.7 If an invoice is found, after the Principal has paid the invoiced amount to the Consultant, not to have been a correctly rendered invoice, the Principal will -
  - (a) pay any amount owed to the Consultant within thirty days of receipt of a correctly rendered invoice or, if additional information is required by the Principal pursuant to clause 6.3, thirty days after receipt of the additional information;
  - (b) deduct any amount owed to the Principal from the next invoiced payment or, if no other payment is due to the Consultant pursuant to this agreement, recover the amount from the Consultant as a debt due to the Principal.
- 6.8 Payment of money to the Consultant will not constitute an admission by the Principal that any of the consultancy services have been performed in accordance with this agreement.

## **7. No Agency**

The Consultant will not -

- (a) represent itself or allow itself to be represented as an employee or agent of the Principal; or
- (b) by virtue of this agreement be or become an employee or agent of the Principal.

## **8. Conflict of Interest**

- 8.1 The Consultant warrants that, to the best of its knowledge, it does not, and is not likely to have any conflict of interest in the performance of this agreement. If a conflict or risk of conflict of interest arises (without limitation, because of work undertaken for any person other than the Principal) the Consultant will immediately give notice of the conflict of interest, or the risk of it, to the Principal.
- 8.2 The Consultant will take all reasonable measures to ensure that its employees, agents and subcontractors do not engage in any activity or obtain any interest which is in conflict with providing the consultancy services to the Principal fairly and independently. The Consultant will immediately give notice of any conflict of interest relating to the activities or interests of any of its employees, agents or subcontractors to the Principal.
- 8.3 If the Principal is given notice of a conflict of interest pursuant to clause 8.1 or 8.2, the Principal may proceed in accordance with clause 16 to terminate this agreement.

## **9. Contract Material**

- 9.1 Unless otherwise specified in Schedule 2 pursuant to clause 9.4 or clause 9.5, title to and intellectual property rights in all new contract material will vest in the Principal in accordance with clauses 9.2 and 9.3.
- 9.2 Title to and intellectual property rights in all new contract material, including each and every stage of design and production of it, will upon its creation be transferred to the Principal without need for further assurance. The Principal grants to the Consultant a paid up non-exclusive, non-transferable licence to use the new contract material but only for the purpose of advertising and promotion of the Consultant and its business and not for any commercial purpose.
- 9.3 This agreement does not affect intellectual property rights in existing contract material but the Consultant grants, and will ensure that relevant third parties grant, to the Principal a paid up non-exclusive, non-transferable licence -
  - (a) to use, reproduce and adapt for its own use;
  - (b) to perform any other act with respect to copyright; and
  - (c) to manufacture, sell, hire or otherwise exploit a product or process or to provide a service or to licence a third party to do any of those things in respect of, the existing contract material but only as part of the contract material (and any further development of that material).

- 9.4 Where specified in Schedule 2, right and title to the intellectual property rights in the contract material so specified are assigned to the Consultant and the Consultant grants to the Principal a non-exclusive, non-transferable, irrevocable and paid-up licence to use, reproduce and adapt the contract material on the terms and conditions specified in Schedule 2.
- 9.5 Where specified in Schedule 2, right and title to the intellectual property rights in the contract material so specified will vest in the parties as co-owners in equal shares on the terms and conditions specified in Schedule 2.
- 9.6 Upon the expiration or earlier termination of this agreement, the Consultant will deliver to the Principal all records, contract material and all copies of it, and if necessary, transfer or have transferred any intellectual property rights to the Principal.
- 9.7 The Consultant will ensure that contract material and records are used, copied, supplied or reproduced only for the purposes of this agreement.
- 9.8 Prior to commencing work in relation to the contract material, the Consultant will obtain from every person who is to create contract material, and provide to the Principal, a written assignment from that person to the Principal of any intellectual property rights which may vest in that person as a result of that person performing the work.
- 9.9 Clauses 9.6, 9.7 and 9.8 do not apply to contract material specified in Schedule 2 for the purposes of clause 9.4 or clause 9.5.
- 9.10 If any contract material is produced or reproduced in an electronic format, the Consultant must deliver it to the Principal in a format approved in writing by the Principal.
- 9.11 If any contract material is produced or reproduced in an electronic format or stored electronically, the Consultant must not store it on a foreign computer without keeping the current version of the contract material on separate media as specified in Schedule 2 and delivering it to the Principal at the intervals specified in Schedule 2.
- 9.12 The Consultant must not produce, reproduce or store contract material in such a way that it is mixed with, attached to or indistinguishable without the use of a computer from, material that is not the subject of this agreement.
- 9.13 For the purposes of this clause 9, "*foreign computer*" means a hard disk or other similar device affixed to a computer that is not the property of the Principal.
- 9.14 Intellectual property rights in records supplied to the Consultant by the Principal for reproduction or guidance remains vested in the Principal.

## **10. Project Management**

- 10.1 The Principal appoints the Project Officer as its agent for the purposes of this agreement.
- 10.2 The Consultant will -
  - (a) liaise with and report to the Project Officer; and
  - (b) attend meetings and briefings with the staff of the Principal as reasonably required by the Project Officer.
- 10.3 Reports by the Consultant to the Project Officer must be in writing, unless otherwise permitted by the Project Officer.

## **11. Disclosure of Information**

- The Consultant will -
- (a) keep all records and other information in a secure location so that no unauthorised person is able to gain access to them; and
  - (b) ensure that records are kept confidential and are not disclosed to any person other than the Principal and the Project Officer except -
    - (i) where required by law; or
    - (ii) with the Principal's consent.



## **12. Security and Access**

- 12.1 The Consultant will, when using the Principal's premises or facilities, comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities notified to the Consultant by the Principal.
- 12.2 The Consultant will give the Project Officer, and any other persons authorised in writing by the Principal, reasonable access to premises occupied by the Consultant where the consultancy services are being undertaken and will permit them to inspect any contract material or other material related to the consultancy services.
- 12.3 The Project Officer and any other person authorised by the Principal, when at the Consultant's premises will comply with all rules, directions and procedures including those relating to security and to workplace health and safety in effect at the premises or in regard to the facilities as notified by the Consultant to the Principal.

## **13. Suspension of Services**

- 13.1 The Principal may by notice require the Consultant to suspend the progress of the whole or any part of the consultancy services for a specified period within a reasonable time after receipt of the notice, if suspension is required by the Principal because of any change in the nature, scope or timing of the consultancy services to be provided.
- 13.2 The Principal may by notice require the Consultant to recommence work on all or any part of the suspended consultancy services.
- 13.3 Where the Consultant is required to suspend consultancy services pursuant to clause 13.1 -
  - (a) the Consultant and the Principal will negotiate in good faith as to reasonable compensation payable to the Consultant; and
  - (b) any previously agreed completion dates for the consultancy services will be postponed by a period equivalent to the duration of the suspension.
- 13.4 The Principal will reimburse the Consultant for additional costs reasonably and properly incurred by the Consultant as a result of suspension of the consultancy services pursuant to clause 13.1. If the Consultant and the Principal do not agree on the amount of reasonable compensation within thirty (30) days of the request for compensation by the Consultant, the amount will be determined pursuant to clause 26.
- 13.5 If a dispute referred to in clause 26.3 has arisen between the parties either party may, during the continuation of the dispute, by notice to the other party require the suspension of the progress of the whole or any part of the consultancy services from the date specified in the notice until the dispute has been resolved.

## **14. Variation**

- 14.1 The Principal may by notice require the Consultant to vary the consultancy services in nature, scope or timing.
- 14.2 Without limiting the generality of clause 14.1, the Principal may direct the Consultant to -
  - (a) increase, decrease or omit any part of the consultancy services;
  - (b) change the character or content of any part of the consultancy services;
  - (c) change the direction or dimensions of any part of the consultancy services;
  - (d) perform additional work.
- 14.3 Where the Principal requires a variation to the consultancy services, the parties will negotiate in good faith a variation of the fees and the time for completion and failing agreement, the fees and time for completion will be determined pursuant to clause 26. The Consultant will not commence work on the variation to the consultancy services without the Principal's consent and the written agreement of both parties to the varied fees and time for completion.



## **15. Payment for Reduced Consultancy Services**

- 15.1 In the event of a reduction in the consultancy services the Principal will pay the Consultant -
- (a) fees determined in accordance with clause 14.3;
  - (b) reasonable costs incurred by the Consultant directly attributable to the reduction in the consultancy services; and
  - (c) compensation for reasonable set up costs incurred by the Consultant.
- 15.2 Where the fee for the consultancy services is a lump sum, the Principal will not be liable to pay any amounts to the Consultant pursuant to clause 15.1 where it would result in amounts greater than the fees and expenses specified in Schedule 2 being paid to the Consultant.
- 15.3 Where fees are on a schedule of rates basis the rates for the reduced consultancy services will be subject to negotiation and agreement between the Principal and the Consultant and failing agreement, resolved pursuant to clause 26.
- 15.4 The Consultant will not be entitled to compensation for loss of prospective profits.

## **16. Default of the Consultant and Termination**

- 16.1 If the Consultant -
- (a) fails to comply with any of the terms and conditions of this agreement;
  - (b) fails to comply with a direction of the Project Officer given in accordance with this agreement; or
  - (c) enters into any arrangement or proceedings for the purpose of insolvency administration or is placed under official management;
- the Principal may suspend payments under this agreement and require the Consultant to show cause why the agreement should not be terminated.
- 16.2 If the Principal suspends payments pursuant to clause 16.1, the Principal must -
- (a) give the Consultant notice of the suspension, specifying the reason; and
  - (b) require the Consultant to show cause within fourteen days of the notice why the agreement should not be terminated.
- 16.3 If the Consultant fails to show cause within the period specified in the notice to the satisfaction of the Principal, the Principal may without prejudice to any other rights, terminate the agreement by notice to the Consultant as of the date specified in the notice.
- 16.4 If the Consultant -
- (a) abandons or refuses to proceed with the consultancy services;
  - (b) fails to comply with clause 8 (Conflict of interest);
  - (c) fails to comply with clause 17 (Compliance with laws);
  - (d) fails to comply with clause 19 (Insurance); or
  - (e) fails to comply with clause 27;
- the Principal may terminate this agreement by notice to the Consultant as of the date specified in the notice.
- 16.5 Upon termination of this agreement pursuant to clause 16.3 or clause 16.4, all money which has been paid and all money to be paid for work done to the date of the termination will be in full and final satisfaction of all claims by the Consultant under this agreement.

## **17. Compliance with Laws**

The Consultant must comply with all relevant laws and the requirements of any statutory authority in performing the consultancy services.



## 18. Indemnities

- 18.1 The Consultant will be liable for loss or damage (including personal injury whether or not resulting in death) suffered by the Principal, its officers, servants or agents, arising from the unlawful or negligent acts or omissions of the Consultant in the course of the performance (or attempted or purported performance) of the consultancy services.
- 18.2 The Consultant releases and indemnifies the Principal and all its officers, servants and agents from and against all actions, proceedings, claims and demands which may be brought or made against any of them by any person, including the Consultant, arising from -
- (a) any wilful or negligent act or omission of the Consultant;
  - (b) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Consultant;
  - (c) death, injury, loss or damage suffered by the Consultant or any of its visitors, invitees or licensees except where the death, injury, loss or damage is caused by the wrongful act or omission of the Principal.

## 19. Insurance

- 19.1 The Consultant must have and maintain for the duration of this agreement workers' compensation insurance in relation to any employees of the Consultant for an unlimited amount, including liability under statute and at common law.
- 19.2 Where specified in Schedule 2, the Consultant must effect in connection with the provision of the consultancy services -
- (a) public liability insurance;
  - (b) professional indemnity insurance.
- 19.3 The insurances must be effected with an insurer, include terms and conditions acceptable to the Principal and be maintained for the duration of this agreement.
- 19.4 If the Consultant is required by this agreement to effect professional indemnity insurance, the Consultant must maintain a policy on terms and conditions no less favourable to the Principal than those approved pursuant to this clause 19 for the period specified in Schedule 2 after completion of the consultancy services or termination of this agreement and, upon request in writing, produce evidence to the Principal that it has been maintained.
- 19.5 The Consultant will -
- (a) before performing any of the consultancy services; and
  - (b) upon request in writing at any time by the Principal, produce evidence to the Principal that the insurances required by this clause 19 have been effected and maintained.

## 20. Unavoidable Delay

- A party will not be entitled to exercise its rights and remedies upon the default of the other party (whether at common law or pursuant to this agreement) if that default -
- (a) is caused by force majeure; or
  - (b) continues for less than three (3) days.

## 21. Waiver

- 21.1 A right under this agreement will only be waived where the waiver is in writing and is signed by the relevant party.
- 21.2 A waiver by either party will not prejudice its rights in respect of any subsequent breach of this agreement by the other party.

## 22. Governing Law

This agreement will be governed by and construed in accordance with the law of Queensland and the parties submit to the jurisdiction of the courts of that State.



### **23. Entire Agreement**

This agreement constitutes the entire agreement between the parties in relation to its subject matter.

### **24. No Subcontracting**

24.1 Subject to clause 24.4, the Consultant will not subcontract any part of the consultancy services without the Principal's consent.

24.2 Any consent given by the Principal for the Consultant to subcontract -  
(a) will not operate as an authority to transfer responsibility to the subcontractor; and  
(b) will not relieve the Consultant from any of its liabilities or obligations under this agreement.

24.3 The Consultant will not assign this agreement or any of the benefits under this agreement without the Principal's consent.

24.4 The Consultant may subcontract the consultancy services so specified (if any) in Schedule 2 to the subcontractors specified in Schedule 2.

### **25. Further Assistance**

The Consultant will do all things reasonably required by the Principal to give effect to this agreement or to perfect or protect the rights of the Principal including, without limitation, giving or obtaining of confidentiality undertakings acceptable to the Principal in relation to records and the consultancy services.

### **26. Resolution of Disputes**

26.1 Any dispute associated with this agreement will be the subject of mediation for a period of fourteen days (or longer period agreed between the parties) by a mediator appointed by agreement between the parties.

26.2 If the parties fail to agree as to the appointment of a mediator within seven days after a dispute arises, the mediator will be appointed by the Arts Law Centre of Australia in accordance with the rules of the Arts Law Centre Mediation Service.

26.3 For the purposes of this clause 26, a dispute will have arisen between the parties when a party gives notice to that effect to the other party.

### **27. Year 2000 Compliance**

27.1 The Consultant warrants that:

- (a) all contract material and deliverables are Year 2000 Compliant; and
- (b) the delivery of the consultancy services by the Consultant will not compromise the Year 2000 Compliant status of the Principal's technology and equipment.

### **28. Clauses to Survive Termination**

The following clauses will survive termination or expiration of this agreement -

- (a) clause 9 (intellectual property);
- (b) clause 19.4 (maintenance of professional indemnity insurance);
- (c) clause 25 (assistance to protect rights of Principal);
- (d) clause 27 (Year 2000 compliance).

### **29. Notices**

Notices must be in writing and may be delivered by prepaid postage, by hand or by facsimile transmission to the parties at the address specified in Schedule 2 or other address subsequently notified by a party to the other. Notices will be deemed to be given -

- (a) two (2) days after deposit in the mail with postage prepaid;
- (b) immediately upon delivery by hand;
- (c) immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's transmitter, unless sent on a Saturday or Sunday or after 5.00pm on any other day ("a week day"), in which case the notice will be deemed to be given at 9.00am on the next week day.

**Addresses for notices**

*Principal*

All notices for the Principal are to be addressed to the Project Officer as follows -

*Consultant*

All notices for the Consultant are to be addressed as follows -

**Accordingly the Parties have Executed this Agreement on the Dates  
Appearing Below.**

Signing for and on behalf of the State of Queensland acting through

this ..... day of ..... 2000

by .....

.....

(full name)

who is a duly authorised officer in the presence of:

.....

The Common Seal of ..... ACN

was duly affixed in accordance with its Constitution

this ..... day of ..... 2000

by .....

.....

(full name)

a Director and

by .....

.....

(full name)

a Directory/Secretary in the presence of:

.....



# Schedule 1

## *The Consultancy Services*

### *Public Art Project Management Brief*

The scope of services outlined below will need to be tailored to the project. The amount of information provided may vary on a project-by-project basis. The sections entitled the Site, the Building, Program Information and the Public Art Advisory Group will be drawn from the Integrated Cultural Opportunities Assessment (ICOA) form.

The complete Integrated Cultural Opportunities Assessment (ICOA) report, as a reference document, which has been approved by *[insert name of Principal's representative]* should be attached.

### *Project Description*

*[Insert ICOA sections 1 and 4]*

### *Project Objectives*

- to provide a building with fabric and services appropriate to the owner/occupier concerned with energy efficiency and long-term life cycle costs;
- to provide a high-quality environment for all users within the determined quality, cost, time and scope parameters;
- to achieve quality and efficiency in building design, value for money in capital and recurrent costs, and operational efficiency without compromising service provision; and
- to demonstrate flexibility for current and future office planning and usage, and facilitate low-cost, low-waste fit-out changes with minimal disruption to tenants.

### *The Site*

*[Insert ICOA section 6]*

- physical location
- description of site and precinct heritage status
- planning documents related to the site or precinct
- environmental, social, cultural and historical research

### *The Building*

*[Insert ICOA sections 4.1, 5 and 6]*

- physicality
- type of building
- major attributes
- proposed usage
- preliminary cost estimates
- 2% allocation

A copy of the plans and elevations for the project should be included with the brief.

## ***Procurement System***

**All processes will need to be approved by:**

*[Insert name of Principal's representative, agency/department name]*

**The Public Art Project Manager will report to:**

*[Insert name of Building Project Manager, agency/department name]*

Include information about other relevant contractors and consultants responsible for the design of the project (e.g., architect, structural engineer, services engineer, landscape architect).

An organisational chart should be provided to ensure that the contractual and approval chains are clearly evident.

## ***Program Information***

*[Insert ICOA section 4.2]*

It is envisaged that the Public Art Project Manager and the selected artists will provide input into the design process no later than the design development stage of the project.

Schematic Design *[Insert dates spanned]*

Developed Design *[Insert dates spanned]*

Construction *[Insert dates spanned]*

Handover *[Insert date]*

NB: It is expected that all public artworks will be installed, handed-over and evaluated no later than *[insert date]*.

## ***Public Art Advisory Group***

A Public Art Advisory Group will provide instruction to the Public Art Project Manager throughout the project (see Art Built-in Guidelines Section 4.1: Public Art Project Definition). The Department of Public Works requires that the Public Art Advisory Group include representatives from:

- Principal or procuring agency
- Public Art Agency
- Project Manager
- Managing Contractor
- Principal Architect or Associate
- Public Art Project Manager

Inclusion of other members such as building users and community representatives is recommended.

The Public Art Project Manager shall ensure that all meetings of the Public Art Advisory Group are documented with Agendas and Minutes.

*[Insert contact names and details of the Public Art Advisory Group members]*

## ***Scope of Services***

The Public Art Project Manager is responsible for advising on and administering the processes by which the Principal procures artwork/s for the project and is responsible to the Principal's representative and the Public Art Advisory Group. The Public Art Project Manager is the key point of contact between artists and the Principal. The Public Art Project Manager must seek the requisite approvals for all processes from the Principal.



## ***Artworks Budget***

The Public Art Project Manager will be required to draft a notional budget at this stage that indicates the likely expenditure breakdown in order to give the client an indication of the component parts of an artworks budget. The budget will be recast when more information is available, after concept design and the design development phases are complete.

The Public Art Project Manager will also be required to ensure that artists include all the appropriate and necessary elements in the individual final artworks budgets.

- Draft notional budget indicating expenditure breakdown of the Art Built-in allocation including:
  - (a) Concept design fees (plus additional travel and accommodation costs where anticipated);
  - (b) Design Development fees (plus additional travel and accommodation costs where anticipated); and
  - (c) Final Artworks budget. This will include all costs for each artist commissioned which could include all or some of the following:
    - Artist design fees at commissioning phase
    - Artwork administration costs (artist travel and accommodation, management and overseeing the realisation of the design and successful installation and completion of the artwork)
    - Fabrication and installation costs (including fabrication and delivery of artwork, installation, artwork plaques/signage, framing, lighting, photographic documentation)

The role of the Public Art Project Manager will also include:

- Drafting the artworks commissioning brief.
- Advising the Principal on options for selecting artists for the project. This may be by closed or open tender process, direct purchase or direct commission. In many instances the Public Art Project Manager will be asked to source artists from regional Queensland.
- Initial Selection of Artists

NOTE: Public Art Project Managers are required to clearly document methodology used throughout in the sourcing and selection of artists from expressions of interest phase through to final commissioning. This is to ensure accountability and probity of decision making and is a requirement of all Government departments under Queensland Government purchasing policy.

## ***Calling for Expressions of Interest from Artists***

(Closed tender, direct purchase or direct commission)

- Draft and forward a call for expressions of interest to selected artists, outlining the design program, concept design fee, procedure and timeline.
- Provide advice to artists regarding the expressions of interest process.
- Where required provide a shortlist of artists based on the requirements of the artworks commissioning brief.
- Make a formal slide presentation to the Public Art Advisory Group for their consideration and recommendation.
- Assist the Public Art Advisory Group in selecting the artists to be invited to progress to concept design ie. submit Concept Design Proposals.
- Make recommendations to Public Art Advisory Group on appropriate concept design fees and a design timeline.
- Make recommendations to Public Art Advisory Group on appropriate concept design content.

(Open tender)

- Assist in the preparation of advertisement for a public call for expressions of interest from artists.
- Provide advice to artists regarding expressions of interest process.
- Take receipt of expressions of interest from artists.



- Make a formal slide presentation to the Public Art Advisory Group for their consideration and recommendation.
- Assist the Public Art Advisory Group in selecting the artists to be invited to submit Concept Design Proposals.
- Make recommendations on appropriate concept design fees and a design timeline.
- Make recommendations on appropriate concept design content.
- Draft and forward a request for Concept Design Proposals from artists, outlining the design program, concept design fee, procedure and timeline.

In all cases Public Art Project Managers will be required to:

- Give feedback to unsuccessful artists on their submissions.
- Seek approval from the Principal for artists selected to submit Concept Design Proposals based on the recommendations of the Public Art Advisory Group.
- Provide the appropriate numbers of copies of documents for obtaining concept design proposals from artists and copies for each member of the Public Art Advisory Group.
- Minute and document the meeting and outcomes.

This stage will need to be completed no later than [*insert date*].

### ***Requests for Concept Design Proposals***

- Notify selected artists and organise a formal briefing meeting and a site visit.
- Send the shortlisted artists a letter of invitation to submit Concept Design Proposals including briefing documents, conditions of contract and site plans.
- Request that the artists respond to the brief and provide the Public Art Advisory Group with initial concept design/s, drawings, an artist statement and budget breakdown.
- Advise and assist artists in regard to the design process, including roles and responsibilities of artists, artwork/s budgets, timelines, insurance and appropriate insurance brokers, contact with built environment professionals (such as engineers), presentation and documentation of their concept designs and safety standards.
- Advise and assist artists in their roles and responsibilities during the design stage, corresponding with artists where necessary.
- Liaise with the Project Manager and the Public Art Advisory Group.

### ***Concept Design Presentation***

- Take receipt of the concept design submissions.
- Invite artists to present their proposal to the Public Art Advisory Group.
- Coordinate the meeting for artists to present their concept designs to the Public Art Advisory Group.
- Coordinate the payment of concept design fees, accommodation and travel costs.
- Assist the Public Art Advisory Group in selecting the artists/designs to be developed.
- Minute and document the meeting and outcomes.

### ***Requests for Design Development Proposals***

- Draft and forward a letter of invitation to artists chosen to develop their designs.
- Provide feedback to artists for development of their designs.
- Coordinate payment of design development fees, contracts, accommodation and travel costs.
- Advise and assist artists in their roles and responsibilities during the design development stage.
- Liaise with the Principal's representative where necessary.
- Coordinate meetings between artists and the Principal's representative.
- Assist the Public Art Advisory Group in recommending artists/designs to be selected.
- Convene Public Art Advisory Group meetings to determine recommendations on developed designs.



## ***Recommendation of Artists to be Commissioned***

- Return design proposals not selected by the Public Art Advisory Group.
- Obtain feedback from artists at the end of the design development phase and coordinate a debriefing session.

## ***Procurement***

- Request the selected artists to document the designs commissioned for fabrication.
- Advise and assist artists in understanding their roles and responsibilities.
- Advise artists on their responsibility to provide structural engineering certificates, warranties, conservation advice and any other information required in the final documentation stage.
- Report on procurement progress to the Project Manager.
- Advise and assist the Project Manager with progress payments.
- Coordinate the payment of procurement fees.
- Advise artists on the requirement to provide maintenance manuals for the final artworks. A Maintenance Manual is a mandatory requirement before artists can receive final payment.

## ***Promotion***

- Advise and assist the Principal with documenting the commissioning process.
- Advise and assist the Principal with launching the project and with promotional packages.
- Advise and assist the Principal with identifying media opportunities to promote the project.

## ***Submission Requirements***

The following criteria should be addressed as part of the consultant Public Art Project Manager's submission:

### ***Mandatory Criteria***

- Relevant Experience
- Track Record
- Management
- Methodology
- Technical Skills
- Time Performance
- Price/Budget

### ***Confidentiality***

The Public Art Project Manager is obliged to keep confidential any records and information obtained through the consultancy.

### ***Form of Contract***

The successful Public Art Project Manager is required to enter into a standard Consultancy Agreement with the Principal.

## Schedule 2

### **Key personnel** (clause 4.1)

*[List the Consultant here if the consultancy services are only to be performed by the Consultant.*

*If the Consultant will involve other key personnel, they must be listed here]*

### **Consultant's warranties as to qualifications, admissions and memberships**

(Clause 3.3)

*[If relevant, list the qualifications etc of the Consultant. A curriculum vitae of the Consultant may be attached if desired]*

### **Compliance with standards and specifications** (Clause 3.4)

*[May be sufficient to simply refer to the Public Art Project Manager's Brief. However, if there are additional specifications that need to be complied with, they should be detailed here]*

### **Assistance to be provided by the Principal** (Clause 3.5)

*[May be sufficient to simply refer to the Public Art Project Manager's Brief. If, however, the Principal is to provide certain further assistance to the Consultant, this should be detailed here]*

### **Fees to be paid for the consultancy services** (Clause 5.1)

*[Set out the total amount of the fee to be paid to the Consultant for the consultancy services. e.g \$1,500. This amount must be GST inclusive]*

### **Expenses for which Consultant may be reimbursed** (Clause 5.4)

*[Specify those expenses which the Principal must reimburse. Any expenses not listed here, the Principal is not obliged to pay unless consent is sought. If all expenses are included in the fee specified above, say "Nil"]*

### **Payment of fees** (Clause 6.2)

*[Detail here the various stages when payment will be made.]* For example:

Stage 1	Selection of artist by (insert date)	\$500
Stage 2	Finalise contractual arrangements with artist by (insert date)	\$500
Stage 3	Final evaluation of project by (insert date)	\$500

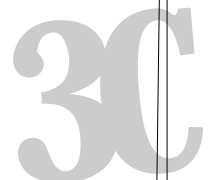
It is recommended that two equal payments will be made to the Public Art Project Manager upon completion of the following milestones:

- Finalisation of the contractual arrangements of the artists; and
- Handover and evaluation of the project.

### **Intellectual property rights** (Clause 9.4 and clause 9.5)

*[Existing contract material is the material the Consultant brings to the project whether owned by third parties or the Consultant. This is licensed to the Principal under clause 9.3 unless otherwise specified below.*

*New contract material means material created by or on behalf of the Consultant as a result of this contract. It becomes the property of the Principal under clause 9.2 unless otherwise specified below.*



If the position is to be other than as expressed above, then the following information needs to be inserted here:

- Specify what intellectual property the Consultant will own if any (Clause 9.4). If none, there is no need to specify anything here.
- Specify what intellectual property the Consultant and the Principal will co own if any (Clause 9.5). Also, need to specify whether:
  - the parties are to pay royalties to each other for use of the specified intellectual property;
  - the parties may make free use of the intellectual property without need to account to the other. If there is no co-owned intellectual property, there is no need to specify anything here]

**Storage and delivery of contract material produced in electronic format**

(Clause 9.10 and Clause 9.11)

[Only complete this section if the Principal requires contract material to be delivered in electronic format. If so, specify the media (e.g., 3 inch floppy disk) on which the contract material is to be kept and when it is to be delivered (e.g., At the end of each stage)]

**Project Officer** (Clause 10)

The Principal appoints:

Contact telephone number: ..... facsimile: .....

**Public liability insurance** (Clause 19.2)

[e.g., Amount: \$5M (or such other amount to be agreed between the parties).

*This is a commercial issue for the Principal to negotiate with the Consultant. The Principal may, for commercial reasons (based on an assessment of the relative value of the contract and the relative risks involved) decide not to require insurance]*

**Professional indemnity insurance** (Clauses 19.2 and 19.4)

[e.g., Amount: \$5M (or such other amount to be agreed between the parties)

*Period: 5 years (or such other period to be agreed between the parties).*

*For public liability insurance, this is a commercial issue for the Principal to negotiate with the Consultant. The Principal may, for commercial reasons (based on an assessment of the relative value of the contract and the relative risks involved) decide not to require insurance]*

**Specified Subcontractors** (Clause 24.4)

[Specify those subcontractors to whom the Consultant may subcontract the consultancy services. If only for certain parts of the consultancy services, specify which parts.

*e.g., John Smith – preliminary selection of artists prior to evaluation in stage 1.]*



# Part 4 : Public Art Procurement

## Tool 4A *Expression of Interest for Artists*

First Name, Last Name

Title

Postal Address

Dear First Name

### **Re: Art Built-in: *[insert project name]* expressions of interest for Public Art Commission**

The Agency/Department/Principal/Principal's Representative is calling for expressions of interest from suitable artists to undertake an Art Built-in project within the proposed new *[insert name and location of building]*. See the capital works building project summary and artworks commissioning brief attached.

Artists or agents representing artists should supply the following material to register an expression of interest:

- artist's curriculum vitae of no more than two pages, and
- **no more than five slides of current or relevant work** (photographs are acceptable; for film/performing arts/literary projects, this might be reviews of work completed, samples of current work or videotape compilations of past projects).

This information will assist a Public Art Advisory Group, convened by *[insert Principal or Principal's Representative]*, to determine an appropriate shortlist of artists for the commission. The Public Art Advisory Group will consider artists on the basis of existing and relevant work and on their professional track record. Expressions of interest will be returned to artists.

Please note that, at this stage, artists are not required to provide details (concept drawings/drafts) and are specifically requested not to send *[e.g. maquettes/proposed texts/scripts]*. Failure to meet these requirements may be judged as a lack of compliance with the commission requirements and may prejudice further consideration. **Additional work will not be viewed in the selection process.**

No payment is being offered for an expression of interest. However, after the Public Art Advisory Group has reviewed the expressions of interest, a limited number of artists will be requested to produce a concept design proposal, including detailed drawings/maquettes/drafts/scripts and a detailed budget, for which a concept design fee of *[insert amount]* will be paid. A detailed briefing meeting for shortlisted artists will be coordinated (face-to-face where possible) before they begin work on concept design proposals.

All expressions of interest must reach *[insert address and contact person]* by *[insert date]*.

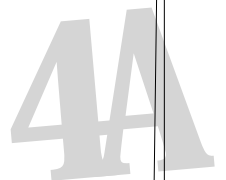
A Public Art Advisory Group will shortlist all expressions of interest and an officer will, in due course, request formal fee proposals in accordance with the Queensland Government's State Purchasing Policy [www.qgm.qld.gov.au/purchasingpolicy/](http://www.qgm.qld.gov.au/purchasingpolicy/) Selection Criteria are attached.

Please note that although you may express an interest there is no guarantee that you will be asked to provide a fee proposal for this job.

Please contact *[insert contact officer's name and phone number]* if you require clarification.

Yours sincerely

**Principal/Principal's Representative  
Agency/Department**



## ***Selection Criteria for Artists***

In accordance with the Value Selection Process detailed in the State Purchasing Policy (Part C, Section 7), submissions by artists/consultants to undertake a public art function in a project should be assessed using the criteria and weightings in the table below.

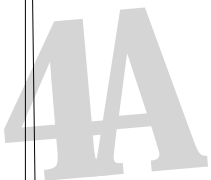
Each artist/consultant will be assessed and scored (0–5) against these criteria as follows:

- 5 Excellent
- 4 Very good
- 3 Good, better than average
- 2 Acceptable
- 1 Marginally adequate
- 0 Will fail to satisfy required standards

Weightings will then be applied to the scores before totalling. The highest weighted score indicates the successful consultant.

<b>Assessment Criteria</b>	<b>Weighting</b>
<b>Artistic Merit</b> (artistic quality of work)	<b>50%</b>
<b>Relevant Experience</b> (previous work of this type)	<b>20%</b>
<b>Track Record</b> (general reputation for work, competence, capacity)	<b>20%</b>
<b>Management</b> (organisation, acceptable insurance, economic stability, quality systems)	<b>10%</b>
<b>Total</b>	<b>100%</b>

[End Tool 4A]



# Part 4 : Public Art Procurement

## Tool 4B *Approval to Engage Artists for Concept Design*

Place:	
Building:	
Project Name:	
Project Number:	
Department:	
Authorised Officer:	
Date:	

### 1. Shortlisted artists


### 2. Public Art Advisory Group meeting to review shortlist *[Insert date of meeting]*

--

### 3. Artists selected for interview


### 4. Artist interviews *[Insert date of meeting]*

--

### 5. Artists selected to undertake a concept design

Names	Concept Design Fee



**6. Selected artists advised** *[Insert date notified]*


**7. Approval**

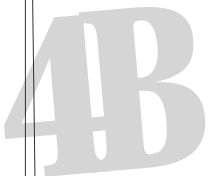
To commission the listed artist/s to prepare a preliminary concept design for the stated preliminary concept design fee in accordance with the Conditions of Contract.

Approved by: ..... Director-General/Authorised Officer

Date: .....

This approval form is to be faxed back to the Public Art Agency (07) 3250 1201 upon gaining approval to engage artists for concept design.

[End Tool 4B]



# Part 4 : Public Art Procurement

## Tool 4C *Request for Concept Design Proposal from Artists*

First Name, Last Name

Title

Company

Postal Address

Dear First Name

### **Re: Invitation to submit Concept Design for *[insert project name]***

Thank you for your expression of interest for the above project. You have been selected to submit a Concept Design Proposal to the Principal and Public Art Advisory Group for the above project. You will be contacted shortly, along with the other short-listed artists for this project, to attend a preliminary briefing and site visit. See the attached Instructions for the Preparation of Concept Design Proposals, which gives details of assessment criteria for artists in this part of the design phase.

For the Public Art Advisory Group (PAAG) to evaluate Concept Design Proposals for this project, we require your formal acceptance of the attached Concept Design Agreement and Schedules 1 and 2.

Your fee proposal should include:

- a response to the assessment criteria for artists undertaking concept design in accordance with the Instructions for Preparation of Concept Design Proposals
- acceptance of the attached Concept Design Agreement and Schedules 1 (Artworks Commissioning Brief) and Schedule 2 (Payment Terms)

If your proposal is successful, these documents and your letter of confirmation will form the basis of a contractual arrangement between you and this *[insert agency/department]*.

You should note that the delivery program for this public art project is *[insert time scale from ICOA]* and the target completion date is *[insert date]*.

You should note that other Concept Design Proposals have been sought and that no contractual relationship will exist between you and this *[insert agency/department]* unless and until the *[insert agency/department]* accepts your Concept Design Proposal in writing.

Your letter of confirmation and Concept Design Proposal should be forwarded to *[insert project officer's name]* by close of business on *[insert date]*. If you require any further information, please contact *[insert project officer's name and phone number and/or e-mail]*.

Yours sincerely

**Public Art Project Manager for  
(Principal's Art Built-in Representative)**

4C

## ***Instructions to Artists for Preparation of Concept Design Proposals***

When submitting your concept design proposal, you are requested to provide **only** the information listed below.

### **Artistic Merit**

Please submit your initial concept design/s in a visual format that gives the Public Art Advisory Group sufficient information about the work to assess its artistic merit.

### **Methodology**

Provide a conceptual statement about your proposed artwork, including details of the appropriate research undertaken for the project. Your statement should demonstrate the relationship between the proposed artwork and the Artworks Commissioning Brief.

### **Technical Skills**

Detail any specific technical requirements and initial solutions for the implementation of the work. Please address any potential risk-management issues or specific maintenance issues with respect to the proposed artwork.

### **Relevant Experience**

Please include one page listing your experience relevant to undertaking this project. Please ensure that all projects listed are **recent and relevant**.

### **Track Record**

Please include one page outlining your level of **competence, capacity and general reputation** in relation to this type of work.

### **Management**

It is not mandatory at the concept design stage to have current public liability and professional indemnity insurance. However, should your work be selected for design development, insurance will be required. It must be stated in your submission that you accept the General Conditions of Contract provided.

# Part 4 : Public Art Procurement

## Tool 4C Assessment Criteria for the Concept Design Proposal

In accordance with the Value Selection Process detailed in the State Purchasing Policy (Part C, Section 7), submissions by consultants applying to undertake the concept design for a project should be assessed using the criteria and weightings in the table below.

Each consultant will be assessed and scored (0–5) against these criteria as follows:

- 5 Excellent
- 4 Very good
- 3 Good, better than average
- 2 Acceptable
- 1 Marginally adequate
- 0 Will fail to satisfy required standards

Weightings will then be applied to the scores before totalling. The highest weighted score indicates the successful consultant.

Assessment Criteria – Concept Design Proposal	Weighting
<b>Artistic Merit</b> (originality of concept, conceptual relevance to the Artworks Commissioning Brief/Project)	40%
<b>Methodology</b> (how project is to be tackled, scope of work)	15%
<b>Technical Skills</b> (people, systems, specific abilities)	5%
<b>Relevant Experience</b> (previous work of this kind)	20%
<b>Track Record</b> (general reputation for work, competence, capacity)	15%
<b>Management</b> (organisation, acceptable insurance, economic stability, quality systems)	5%
<b>Total</b>	100%

### Variations from Specification

Any proposal which does not comply in every respect with the requirements of the Artworks Commissioning Brief may be rejected unless specific deviations are identified and clarified in your submission.

Alternative proposals may be considered **providing a conforming submission is lodged for them.**

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### **Sub-consultants' Proposals (If Required)**

If your proposal includes proposals from sub-consultants, include a two-page statement from each firm or individual, listing their team for the project, and the relevant experience of team members for each stage of the project. These proposals should be included with the hard copy of your submission and delivered on the tender date.

### **Format**

Submit your proposal as only one hard copy, delivered in accordance with the letter of invitation by the closing time and date. Please note that this is the official copy, which will be included in the project file, and it must be delivered as stipulated by the closing time and date.

The hard copy is to be bound by an easily removable binder in the top left-hand corner — any other binding makes the proposal hard to file and will only be ripped off and thus wasted.

Please ensure that the envelope containing the hard copy of your proposal includes the following **completed Concept Design Proposal Cover Sheet** as a title page. It should be stapled to the front of your submission.

# Part 4 : Public Art Procurement

## Tool 4C *Concept Design*

### *Proposal Cover Sheet*

<b>Name of Project:</b>	
<b>Name of Agency/Department:</b>	
<b>Name of Artist/Organisation Submitting Proposal:</b>	

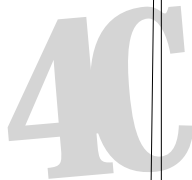
Please tick to indicate the following criteria has been addressed in this fee proposal:

- Artistic Merit**
- Methodology**
- Technical Skills**
- Relevant Experience**
- Track Record**
- Management**

I/We accept and agree to the Conditions of Contract and the terms of reference outlined in the Integrated Cultural Opportunities Assessment.

Signature: ..... Date: .....

[End Tool 4C]



# *Agreement for the Commissioning of a Concept Design*

---

*Between*

*The State of Queensland*

*and*

*[Name of the Artist/Designer]*

*Crown Solicitor  
State Law Building  
50 Ann Street  
Brisbane*

*Facsimile: 3239 6386  
Telephone: 3239 6107*

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# *Contents*

---

1	Interpretation
2	Term
3	Design Services
4	Security and Access
5	Changes and Approvals
6	Payment
7	GST
8	Further Commissioning Work
9	Intellectual Property
10	Warranty
11	Confidentiality and Disclosure
12	Property
13	Termination
14	Disputes
15	No Subcontracting
16	Year 2000 Compliance
17	Waiver
18	Variation
19	Governing Law
20	Entire Agreement
21	Notices



**This agreement** is made this ..... day of ..... 2000.

**Between: The State of Queensland** acting through ..... of ..... in the State of Queensland.  
("the Principal")

**And:** ..... of ..... in the State of Queensland.  
[*name and address of artist/designer*] ("the Artist/Designer")

### **Background**

- A. The Principal wishes to commission the Artist/Designer to create a Concept Design Proposal for a project.
- B. The Principal may also commission other artists/designers to create certain Concept Design Proposals for the same project.
- C. The Artist/Designer wishes to accept the commission on the terms set out here.

## **Now the Parties Agree as Follows -**

### **1. Interpretation**

1.1 In this agreement:

(a) the following definitions apply:

**"Agreement"** means this document and all schedules to it.

**"Artworks Commission Brief"** means the brief to which the Concept Design Proposal must respond as described in Schedule 1.

**"Commencement Date"** means the date of commencement of this Agreement as specified in Schedule 1.

**"Completion Date"** means the date for completion of the Concept Design Proposal specified in Schedule 1.

**"Concept Design Proposal"** means an original design work in accordance with the Artworks Commission Brief.

**"Design Services"** means those services described in clause 3.

**"Intellectual Property Rights"** means all copyright, patents, designs, trade marks and any rights in relation to inventions, whether actual or pending and includes the rights to register any of those rights.

**"Schedule"** means a schedule to the Agreement.

**"Year 2000 Compliant"** means information technology with processing capability which:

(i) correctly identifies all dates and the centuries in which they occur;

(ii) correctly processes all dates and date related data including, without limitation:

- comparing;
- sequencing;
- calculating (such as adding and subtracting); and
- executing functions commencing or ending on a particular date or dealing with particular periods;

(iii) does so irrespective of the century in which the dates occur and whether or not the relevant processing spans centuries;

(iv) correctly distinguishes between leap years and non-leap years;

(v) correctly deals with the transition from 31 December 1999 to 1 January 2000, in each case, without reduction of functionality (compared with processing only 20th century dates), interruption or other material adverse effect.

- (b) clause headings are not to be used to interpret the agreement;
- (c) words in the singular include the plural and words in the plural include the singular as the context requires;
- (d) a reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule of this Agreement.

## **2. Term**

- 2.1 This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue until the Design Services have been performed in accordance with the Agreement.

## **3. Design Services**

- 3.1 The Artist/Designer agrees to submit a Concept Design Proposal to the Principal.
- 3.2 The Artist/Designer will complete the Concept Design Proposal in accordance with Artworks Commission Brief by the Completion Date.
- 3.3 The Artist/Designer will:
  - (a) inform itself of the Principal's stated requirements in respect of the Artworks Commission Brief generally;
  - (b) consult regularly with the Principal throughout the performance of the Agreement;
  - (c) act professionally at all times and exercise professional skill, care and diligence in performing the Design Services.

## **4. Security and Access**

- 4.1 The Principal will allow the Artist/Designer reasonable access to such of the Principal's premises and any other areas under the Principal's control as is necessary to enable the Artist/Designer to complete the Concept Design Proposal.
- 4.2 The Artist/Designer will, when using the Principal's premises or facilities, comply with all rules, directions and procedures including those relating to security and workplace health and safety as are advised to the Artist/Designer.

## **5. Changes and Approvals**

- 5.1 The Principal may request such changes to the Concept Design Proposal as it considers necessary to fulfil the requirements of the Artworks Commission Brief. The Principal will, at all times, respect the independence and integrity of the Artist/Designer.
- 5.2 The Principal will advise the Artist/Designer of such changes within fourteen days of completion of the Concept Design Proposal in accordance with the terms of this Agreement. The Artist/Designer agrees to perform such changes to the Concept Design Proposal as the Principal reasonably requests.

## **6. Payment**

- 6.1 The Principal will pay the Artist/Designer for the Design Services in accordance with Schedule 2.
- 6.2 Subject to subclause 6.3, the Artist/Designer shall receive the design fee as specified in Schedule 2, within thirty days of receipt of the Concept Design Proposal by the Principal.
- 6.3 Where the Principal requests changes to the Concept Design Proposal pursuant to clause 5, the design fee shall be payable within thirty days of acceptance by the Principal.
- 6.4 The Artist/Designer shall not be entitled to any additional fees for any changes made pursuant to clause 5.
- 6.5 The Artist/Designer shall not be entitled to any payment otherwise than as provided in this clause 6.

4C

## **7. GST**

- 7.1 The payments to be made by the Principal to the Artist/Designer pursuant to clause 6 are GST inclusive payments and the Artist/Designer shall not be entitled to recover any additional sums from the Principal to cover any liability for GST.
- 7.2 The Artist/Designer shall, if requested by the Principal, provide a valid tax invoice for GST purposes.

## **8. Further Commissioning Work**

- 8.1 The Artist/Designer acknowledges that the Principal may engage other artists/designers to develop concept design proposals in accordance with the Artworks Commission Brief.
- 8.2 The Principal, in its absolute discretion, may approve a concept design proposal (which may or may not be the Concept Design Proposal) for continued development and ultimate commissioning.
- 8.3 Should the Principal approve the Concept Design Proposal the subject of this Agreement, for development, the Artist/Designer shall enter into a further agreement for design development with the Principal on the terms specified in Schedule 3.

## **9. Intellectual Property**

- 9.1 The Principal acknowledges that the Artist/Designer will retain all Intellectual Property Rights in the Concept Design Proposal and any materials and drafts created as part of producing the Concept Design Proposal in accordance with the Artworks Commission Brief.
- 9.2 Should the Principal approve the Concept Design Proposal and the parties enter into a further agreement in accordance with clause 8.3, the parties shall negotiate in good faith to reach agreement about the intellectual property ownership rights arising out of any further development of the Concept Design Proposal.
- 9.3 Notwithstanding any other clause of this Agreement, the Principal may use images of the Concept Design Proposal for the purposes of promotion, publicity and critical review without recourse to the Artist/Designer.

## **10. Warranty**

- 10.1 The Artist/Designer warrants that the provision of the Design Services and the Concept Design Proposal in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.
- 10.2 The Artist/Designer warrants that he/she will respect the cultural and spiritual significance of Indigenous people and refrain from incorporating elements derived from Indigenous cultural heritage into the Concept Design Proposal without the informed consent of the traditional custodians.

## **11. Confidentiality and Disclosure**

- 11.1 The Artist/Designer will keep confidential and will not disclose to any other person, except as required under this Agreement, all information and materials which have been provided for and on behalf of the Principal for the purposes of performing the Design Services.
- 11.2 The Principal shall not disclose to any other person, except as required by this Agreement or by law, any of the Artist's/Designer's confidential information.

## **12. Property**

- 12.1 The Artist/Designer acknowledges that property in the Concept Design Proposal shall not pass to the Principal until receipt by the Principal in accordance with subclause 6.2.

### **13. Termination**

- 13.1 Prior to the fulfilment of the conditions specified in clause 6.2, either party may terminate this Agreement by giving fourteen (14) days notice in writing.
- 13.2 On or after the events specified in clause 6.2, the Artist/Designer may, subject to clause 13.3, terminate the Agreement upon the failure of the Principal to comply with clause 6.
- 13.3 The Artist/Designer shall advise the Principal in writing that a default has occurred under clause 6 and allow the Principal fourteen (14) days to make payment. In the event that payment is not received within fourteen (14) days, the Artist/Designer may exercise the right conferred by clause 13.2, without prejudice to any other rights and remedies he/she may have.
- 13.4 On or after the events specified in clause 6.2, the Principal may, subject to clause 13.5, terminate the Agreement for any of the following reasons:
- (a) Failure by the Artist/Designer to comply with clause 3;
  - (b) Failure by the Artist/Designer to comply with clause 4.2;
  - (c) Failure by the Artist/Designer to comply with clause 5.2;
  - (d) Failure by the Artist/Designer to comply with clause 10;
  - (e) Failure by the Artist/Designer to comply with clause 11.1;
  - (f) Failure by the Artist/Designer to comply with clause 15; and
  - (g) Failure by the Artist/Designer to comply with clause 16.1.
- 13.5 The Principal shall advise the Artist/Designer in writing of the nature of the default and allow the Artist/Designer fourteen (14) days to rectify the default. In the event that the default is not rectified within fourteen (14) days, the Principal may exercise the right conferred by clause 13.4, without prejudice to any other rights and remedies it may have.
- 13.6 Upon termination of this Agreement pursuant to clause 13.4, all money which has been paid and all money to be paid for Design Services performed by the Artist/Designer under this Agreement will be in full and final satisfaction of all claims by the Artist/Designer under this Agreement.
- 13.7 The following clauses shall survive termination of this Agreement:
- (a) Clause 9;
  - (b) Clause 10;
  - (c) Clause 11; and
  - (d) Clause 16.1.

### **14. Disputes**

- 14.1 The parties agree to submit any disputes which arise out of this Agreement to mediation either by a mediator agreed between the parties or, failing agreement within seven (7) days, in accordance with the rules of the Arts Law Centre Mediation Service, a program of the Arts Law Centre of Australia.
- 14.2 The parties agree to comply with clause 14.1 prior to having recourse to litigation or arbitration, unless there is a need to seek urgent injunctive relief.

### **15. No Subcontracting**

- 15.1 The Artist/Designer shall not subcontract the whole or any part of the Design Services without the prior written consent of the Principal.

### **16. Year 2000 Compliance**

- 16.1 The Artist/Designer warrants that:
- (i) where relevant, the Work is Year 2000 Compliant; and
  - (ii) the delivery of the Design Services by the Artist/Designer will not compromise the Year 2000 Compliant status of the Principal's technology and equipment.

## **17. Waiver**

- 17.1 A party's rights under this Agreement shall only be waived where the waiver is in writing and signed by both parties.
- 17.2 A waiver by a party will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the other party.

## **18. Variation**

- 18.1 This Agreement may only be varied by agreement in writing and signed by both parties.

## **19. Governing Law**

- 19.1 This Agreement will be governed by and construed according to the law of the State of Queensland and the parties submit to the jurisdiction of the courts of that State.

## **20. Entire Agreement**

- 20.1 This Agreement constitutes the entire Agreement between the parties in relation to its terms and subject matter.

## **21. Notices**

- 21.1 Notice must be in writing and may be delivered by pre-paid post, by hand or by facsimile transmission to the parties at the respective addresses specified at the commencement of this Agreement.
- 21.2 Notices will be deemed to be given:
- (a) Two days after posting by pre-paid post;
  - (b) Immediately upon proof of delivery by hand;
  - (c) Immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's facsimile transmitter. If that transmission notice indicates transmission on a Saturday or Sunday or after 5pm on any week day, the notice is deemed to be given on the next week day.

sample

**The Parties have Executed this Agreement on the Dates Appearing Below.**

Signed for and on behalf of the State of Queensland acting  
through *[name of Principal]*

by .....

*[name of position/designation of signatory]*

this..... day of .....2000

in the presence of:

.....  
.....

*[name and address of witness]*

Signed by .....

*[name of Artist/Designer]*

this..... day of .....2000

in the presence of:

.....  
.....

*[name and address of witness]*

sample

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# Schedule 1

**Commencement Date** .....

*[Insert date on which this Agreement commences]*

**Completion Date** .....

*[Insert date by which the Concept Design Proposal is to be completed]*

**The Artworks Commission Brief** .....

*[The brief to be given to the Artist/Designer describing the reasons and scope around which the Concept Design Proposal is being developed]*

## **Artworks Commission Brief**

### **1. Introduction**

#### **1.1 Overview**

Description of building, its intended purpose, overall construction costs.

### **2. Design Philosophy**

#### **2.1 Site**

Description of the site in terms of position, its relationship with surrounding buildings, and public space, community usage of the area and location of major landmarks or other sites of importance which impact on the site.

#### **2.2 Objectives**

The abstract of the conceptual themes addressed in the design of the building, its perceived identity in relation to the community/users of the building, its relationship with the location of the site and the corporate objectives of the organisation.

#### **2.3 Public Space**

Describe the relationship between the building and the public space (existing outside or within the design of the building).

#### **2.4 Building Concept**

The rationale for the physical outcomes of the design of the building.

#### **2.5 Building Form**

Description of the actual building, spaces, including high profile positions both inside and outside building. Details of materials and colour schemes used for the building.

### **3. Artworks**

#### **3.1 Art Built-in Component**

Detail the financial allocation for integrated artworks into the building.

#### **3.2 Suggested Artwork Interpretations**

An overview and rationale of suggested artworks (fittings, furniture, three or two dimensional artworks).

#### **3.3 Commissioning Process**

Detail the commissioning process for each of the integrated cultural opportunities in the building. (e.g., Open Competition, Limited or Direct Commission, Direct Purchase)

### **4. Services**

#### **4.1 Artworks Service Requirements**

All artworks need to address in their brief, service requirements such as structural support and lighting.

**5. Potential Locations**

**5.1 Attached Plans**

Architectural plans, with site specifications, should be attached with possible locations for artworks detailed.

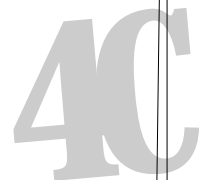
**Schedule 2**

***Payment Terms***

Nature of Payment	Amount	Date Due
Design Fee	\$	<i>[Specify date the Concept Design Proposal is to be delivered]</i>

**Schedule 3**

*[Agreement for Design Development]*



# Part 4 : Public Art Procurement

## Tool 4D *Approval to Engage Artists for Design Development*

Place:	
Building:	
Project Name:	
Project Number:	
Department:	
Authorised Officer:	
Date:	

**1. Presentation of preliminary concept designs** *[Insert date of meeting]*

--

**2. Artists presenting preliminary concept designs**


**3. Artist/s selected for design development**

Artwork Opportunity	Artist	Design Development Fee	Submission Date

**4. Approval**

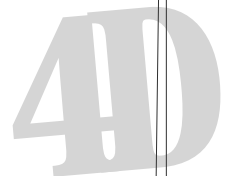
To commission the listed artist/s to undertake a design development for the stated design development fee in accordance with the Conditions of Contract.

Approved by: ..... Director-General/Authorised Officer

Date: .....

This approval form is to be faxed back to the Public Art Agency (07) 3250 1201 upon gaining approval to engage artists for design development.

[End Tool 4D]



# Part 4 : Public Art Procurement

## Tool 4E *Request for Design Development Proposal from Artists*

First Name, Last Name

Title

Company

Postal Address

Dear First Name, Last Name

### **Re: Invitation to submit Design Development Proposal for [insert name of project]**

You have been selected by the Principal and Public Art Advisory Group for the above project to further develop your Concept Design Proposal. See the attached Instructions for the Preparation of Concept Design Proposals, which gives details of assessment criteria for artists in this part of the design phase.

Your fee proposal should include:

- a response to the assessment criteria for artists undertaking concept design in accordance with the Instructions to Artists for Preparation of Design Development Proposals
- acceptance of the attached Design Development Agreement and Schedules 1, 2 and 3. Indicated in Schedule 1 is the Principal's requirements for design development endorsed by the Public Art Advisory Group advising on this Art Built-in project. Schedule 2 indicates the design fee for this stage of the design process. Schedule 3 is a copy of the Artworks Commissioning Contract which will be used should your developed design be accepted.

If your design development proposal is successful, these documents and your letter of confirmation will form the basis of a contractual arrangement between you and this [insert agency/department].

You should note that the delivery program for this public art project is [insert time scale from ICOA] and the target completion date is [insert date].

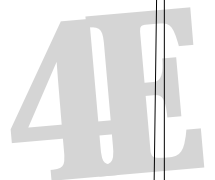
You should note that other design proposals have been commissioned for development and that no contractual relationship will exist between you and this [insert agency/department] unless and until the [insert agency/department] accepts your developed design proposal in writing.

Your letter of confirmation and developed design should be forwarded to [insert project officer's name] by close of business on [insert date]. If you require any further information, please contact [insert project officer's name and phone number and/or e-mail].

Congratulations on your selection. I look forward to viewing your developed artwork/design proposal. If you have any questions please contact [insert name of Public Art Project Manager and contact details].

Yours sincerely

**Public Art Project Manager  
(Principal's Art Built-in Representative)**



## ***Instructions to Artists for Preparation of Design Development Proposal***

When you submit your proposal, you are requested to provide only the information listed below.

### **Artistic Merit**

Please submit your developed design in a format that gives the Public Art Advisory Group sufficient information about the work to assess its artistic merit.

### **Management**

Please indicate your acceptance of the work outlined in each stage of the project in the Artworks Commissioning Brief and also the Conditions of Contract. Give specific details of both public liability and professional indemnity insurances. Also provide names and telephone numbers of referees for the project team (please ensure that the details are current and that the people are contactable).

### **Methodology**

A program is required that shows the proposed start and finish dates for each stage, review dates, approvals, consultative meetings and resources, based on the indicative program included in the Integrated Cultural Opportunities Assessment and the Artworks Commissioning Brief. Any additional information provided in this section regarding the methodology proposed by the project team should be limited to two pages.

### **Technical Skills**

Detail any specific technical requirements, including engineering certification (where appropriate) and initial solutions for implementation of the work. Please address any risk-management issues or specific maintenance issues with respect to the proposed artwork.

In addition, please deal with any issues raised by the Public Art Advisory Group at the concept design stage.

### **Time Performance**

Briefly detail your ability to meet the target dates given in your program.

### **Budget**

Please include **a one-page** schedule showing lump-sum fees for all applicable stages, with a percentage breakdown for stages. Please note that your estimated disbursements for each stage of the project **must** be included in the fee for each stage of the project. Please provide a separate schedule indicating the disbursements allowed for each stage.

Your fee proposal should also include hourly rates for the project team and a project fee cash-flow on a monthly basis throughout the project. **In addition to your artist/design fees, you should make allowance for your time spent in managing the project and for materials.**



# Part 4 : Public Art Procurement

## Tool 4E Assessment Criteria

In accordance with the Value Selection Process detailed in the State Purchasing Policy (Part C, Section 7), submissions by consultants applying to undertake design development for a project should be assessed using the criteria and weightings in the table below.

Each consultant will be assessed and scored (0–5) against these criteria as follows:

- 5 Excellent
- 4 Very good
- 3 Good, better than average
- 2 Acceptable
- 1 Marginally adequate
- 0 Will fail to satisfy required standards

Weightings will then be applied to the scores before totalling. The highest weighted score indicates the successful consultant.

Assessment Criteria – Design Development Proposal	Weighting
<b>Artistic Merit</b> (originality of concept, conceptual relevance to the Artworks Commissioning Brief/Project)	35%
<b>Management</b> (organisation, acceptable insurance, economic stability, quality systems)	10%
<b>Methodology</b> (how project is to be tackled, scope of work)	15%
<b>Technical Skills</b> (people, systems, specific abilities)	10%
<b>Time Performance</b> (as proposed for project – likelihood of meeting it)	20%
<b>Budget</b>	10%
<b>Total</b>	100%

### Variations from Specification

Any proposal which does not comply in every respect with the requirements of the Public Art Advisory Group and the Artworks Commissioning Brief may be rejected unless specific deviations and the reasons for them are identified in the submission.

Alternative proposals may be considered **providing a conforming submission is lodged for them.**



### **Sub-consultants' Proposals (If Required)**

If your proposal includes proposals from sub-consultants, include a two-page statement from each firm or individual, listing their team for the project, and the relevant experience of team members for each stage of the project. Sub-consultants' proposals should be included with the hard copy of your submission and delivered on the tender date.

### **Format**

Submit your proposal as **only** one hard copy, delivered in accordance with the letter of invitation by the closing time and date. Please note that this is the official copy, which will be included in the project file, and it must be delivered as stipulated by the closing time and date.

The hard copy is to be bound by an easily removable binder in the top left-hand corner — any other binding makes the proposal hard to file and will only be ripped off and thus wasted.

Please ensure that the envelope containing the hard copy of your proposal includes the following **completed Design Development Proposal Cover Sheet** as a title page. It should be stapled to the front of your submission.

If you are providing three-dimensional developed designs or maquettes, please label them clearly with the following information: artist's name, project title and proposed location of artwork.



# Part 4 : Public Art Procurement

## Tool 4E *Design Development*

### *Proposal Cover Sheet*

<b>Name of Project:</b>	
<b>Name of Agency/Department:</b>	
<b>Name of Organisation/ Consultant Submitting Proposal:</b>	

Please tick to indicate the following criteria has been addressed in this fee proposal:

- Artistic Merit**
  - Management**
  - Methodology**
  - Technical Skills**
  - Time Performance**
  - Budget**
- |  |           |
|--|-----------|
| <input type="checkbox"/> <b>Proposed Fee</b> | <b>\$</b> |
|--|-----------|

I/We accept and agree to the Conditions of Contract and the terms of reference outlined in the Integrated Cultural Opportunities Assessment.

Signature: ..... Date: .....

[End Tool 4E]



# *Agreement for the Development of a Design*

---

*Between*

*The State of Queensland*

*and*

*[Name of the Artist/Designer]*

*Crown Solicitor  
State Law Building  
50 Ann Street  
Brisbane*

*Facsimile: 3239 6386  
Telephone: 3239 6107*

*4E*

# *Contents*

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This agreement is made this ..... day of ..... 2000.

**Between: The State of Queensland** acting through ..... of ..... in the State of Queensland.  
("the Principal")

**And:** ..... of ..... in the State of Queensland.  
[*name and address of artist/designer*] ("the Artist/Designer")

### Background

- A. The Principal wishes to commission the Artist/Designer to further develop an original Concept Design Proposal for a project.
- B. The Artist/Designer wishes to accept the commission to produce a Developed Design on the terms set out here.

## The Parties Now Agree as Follows -

### 1. Interpretation

1.1 In this agreement:

(a) the following definitions apply:

**"Agreement"** means this document and all schedules to it.

**"Artworks Commission Brief"** means the brief to further develop the Concept Design Proposal as described in Schedule 1 and any additional requirements advised to the Artist/Designer.

**"Commencement Date"** means the date of commencement of this Agreement as specified in Schedule 1.

**"Completion Date"** means the date for completion for the Developed Design as specified in Schedule 1.

**"Concept Design Proposal"** means the original work created by the Artist/Designer in accordance with the Agreement for the Commissioning of a Concept Design between the parties dated on the date specified in Schedule 1.

**"Design Development Services"** means those services described in clause 3.

**"Developed Design"** means the original work, materials, maquettes and any other thing produced in accordance with clause 3.

**"Intellectual Property Rights"** means all copyright, patents, designs, trade marks and any rights in relation to inventions, whether actual or pending and includes the rights to register any of those rights.

**"Schedule"** means a schedule to the Agreement.

**"Year 2000 Compliant"** means information technology with processing capability which:

(i) correctly identifies all dates and the centuries in which they occur;

(ii) correctly processes all dates and date related data including, without limitation:

- comparing;
- sequencing;
- calculating (such as adding and subtracting); and
- executing functions commencing or ending on a particular date or dealing with particular periods;

(iii) does so irrespective of the century in which the dates occur and whether or not the relevant processing spans centuries;

(iv) correctly distinguishes between leap years and non-leap years;

(v) correctly deals with the transition from 31 December 1999 to 1 January 2000;



- (b) clause headings are not to be used to interpret the agreement;
- (c) words in the singular include the plural and words in the plural include the singular as the context requires;
- (d) a reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule of this Agreement.

## **2. Term**

- 2.1 This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue until the Design Development Services have been performed in accordance with the Agreement.

## **3. Design Development Services**

- 3.1 The Artist/Designer will further develop the Concept Design Proposal into an original Developed Design in accordance with the Artworks Commission Brief by the Completion Date.
- 3.2 The Artist/Designer will:
  - (a) inform itself of the Principal's stated requirements in respect of the Design Development Services and the Artworks Commission Brief;
  - (b) consult regularly with the Principal throughout the performance of the Agreement;
  - (c) act professionally at all times and exercise professional skill, care and diligence in performing the Design Development Services.

## **4. Security and Access**

- 4.1 The Principal will allow the Artist/Designer reasonable access to such of the Principal's premises and any other areas under the Principal's control as is necessary to enable the Artist/Designer to complete the Developed Design.
- 4.2 The Artist/Designer will, when using the Principal's premises or facilities, comply with all rules, directions and procedures including those relating to security and workplace health and safety as are advised to the Artist/Designer.

## **5. Changes and Approvals**

- 5.1 The Principal may request such changes to the Developed Design as it considers necessary to fulfill the requirements of the Artworks Commission Brief. The Principal will, at all times, respect the independence and integrity of the Artist/Designer.
- 5.2 The Principal will advise the Artist/Designer of such changes within fourteen days of completion of the Developed Design in accordance with the terms of this Agreement. The Artist/Designer agrees to perform such changes to Developed Design as the Principal reasonably requests.

## **6. Payment**

- 6.1 The Principal will pay the Artist/Designer for the Design Development Services in accordance with Schedule 2.
- 6.2 Subject to clause 6.3, the Artist/Designer shall receive the design fee as specified in Schedule 2 within thirty days of receipt of the Developed Design by the Principal.
- 6.3 Where the Principal requests changes to the Developed Design pursuant to clause 5, the design fee shall be payable within thirty days of acceptance by the Principal.
- 6.4 The Artist/Designer shall not be entitled to any additional fees for any changes made pursuant to clause 5.
- 6.5 The Artist/Designer shall not be entitled to any payment otherwise than as provided in this clause 6.



## **7. GST**

- 7.1 The payments to be made by the Principal to the Artist/Designer pursuant to clause 6 are GST inclusive payments and the Artist/Designer shall not be entitled to recover any additional sums from the Principal to cover any liability for GST.
- 7.2 The Artist/Designer shall, if requested by the Principal, provide a valid tax invoice for GST purposes.

## **8. Further Commissioning Work**

- 8.1 The Artist/Designer acknowledges that the Principal may engage other designers to develop their designs in accordance with the Artworks Commission Brief.
- 8.2 The Principal, in its absolute discretion, may approve a design work (which may or may not be the Developed Design) for commissioning.
- 8.3 Should the Principal commission the Developed Design, the Artist/Designer shall enter into a further agreement to commission an artwork with the Principal on the terms specified in Schedule 3.

## **9. Intellectual Property**

- 9.1 The Principal acknowledges that the Artist/Designer will retain all Intellectual Property Rights in the Developed Design and any materials and drafts created as part of producing the Developed Design in accordance with the Artworks Commission Brief.
- 9.2 Should the Principal approve the Developed Design and the parties enter into a further agreement in accordance with clause 8.3, the parties shall negotiate in good faith to reach agreement about the intellectual property ownership rights arising out of the Developed Design.
- 9.3 Notwithstanding any other clause of this Agreement, the Principal may use images of the Developed Design for the purposes of promotion, publicity and critical review without recourse to the Artist/Designer.

## **10. Warranty**

- 10.1 The Artist/Designer warrants that the provision of the Design Development Services and the Developed Design in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.
- 10.2 The Artist/Designer warrants that he/she will respect the cultural and spiritual significance of Indigenous people and refrain from incorporating elements derived from Indigenous cultural heritage into the Developed Design without the informed consent of the traditional custodians.

## **11. Confidentiality and Disclosure**

- 11.1 The Artist/Designer will keep confidential and will not disclose to any other person, except as required under this Agreement, all information and materials which have been provided for and on behalf of the Principal for the purposes of performing the Design Development Services.
- 11.2 The Principal shall not disclose to any other person, except as required by this Agreement or by law, any of the Artist's/Designer's confidential information.

## **12. Insurance**

- 12.1 The Artist/Designer acknowledges that property in the Developed Design shall not pass to the Principal until acceptance by the Principal in accordance with clause 6.
- 12.2 The Artist/Designer shall maintain with an insurer, such public liability and professional indemnity insurance as is necessary to cover such liability of the Artist/Designer as may arise as a result of the performance of this Agreement. Upon request by the Principal, the Artist/Designer shall provide proof that the appropriate insurance has been effected.



### **13. Termination**

- 13.1 Prior to the fulfillment of the conditions specified in clause 6.2, either party may terminate this Agreement by giving fourteen (14) days notice in writing.
- 13.2 On or after the events specified in clause 6.2, the Artist/Designer may, subject to clause 13.3, terminate the Agreement upon the failure of the Principal to comply with clause 6.
- 13.3 The Artist/Designer shall advise the Principal in writing that a default has occurred under clause 6 and allow the Principal fourteen (14) days to make payment. In the event that payment is not received within fourteen (14) days, the Artist/Designer may exercise the right conferred by clause 12.2, without prejudice to any other rights and remedies he/she may have.
- 13.4 On or after the events specified in clause 6.2, the Principal may, subject to clause 13.5, terminate the Agreement for any of the following reasons:
- (a) Failure by the Artist/Designer to comply with clause 3;
  - (b) Failure by the Artist/Designer to comply with clause 4.2;
  - (c) Failure by the Artist/Designer to comply with clause 5.2;
  - (d) Failure by the Artist/Designer to comply with clause 10;
  - (e) Failure by the Artist/Designer to comply with clause 11.1;
  - (f) Failure by the Artist/Designer to comply with clause 12.2;
  - (g) Failure by the Artist/Designer to comply with clause 15; and
  - (h) Failure by the Artist/Designer to comply with clause 16.1.
- 13.5 The Principal shall advise the Artist/Designer in writing of the nature of the default and allow the Artist/Designer fourteen (14) days to rectify the default. In the event that the default is not rectified within fourteen (14) days, the Principal may exercise the right conferred by clause 13.4, without prejudice to any other rights and remedies it may have.
- 13.6 Upon termination of this Agreement pursuant to clause 13.4, all money which has been paid and all money to be paid for Design Development Services performed by the Artist/Designer under this Agreement will be in full and final satisfaction of all claims by the Artist/Designer under this Agreement.
- 13.7 The following clauses shall survive termination of this Agreement:
- (a) Clause 9;
  - (b) Clause 10;
  - (c) Clause 11;
  - (d) Clause 12.2; and
  - (e) Clause 16.1.

### **14. Disputes**

- 14.1 The parties agree to submit any disputes which arise out of this Agreement to mediation either by a mediator agreed between the parties or, failing agreement within seven (7) days, in accordance with the rules of the Arts Law Centre Mediation Service, a program of the Arts Law Centre of Australia.
- 14.2 The parties agree to comply with clause 14.1 prior to having recourse to litigation or arbitration, unless there is a need to seek urgent injunctive relief.

### **15. No Subcontracting**

- 15.1 The Artist/Designer shall not subcontract the whole or any part of the Design Development Services without the prior written consent of the Principal.

### **16. Year 2000 Compliance**

- 16.1 The Artist/Designer warrants that:
- (i) where relevant, the Work is Year 2000 Compliant; and
  - (ii) the delivery of the Design Development Services by the Artist/Designer will not compromise the Year 2000 Compliant status of the Principal's technology and equipment.



## **17. Waiver**

- 17.1 A party's rights under this Agreement shall only be waived where the waiver is in writing and signed by both parties.
- 17.2 A waiver by a party will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the other party.

## **18. Variation**

- 18.1 This Agreement may only be varied by agreement in writing and signed by both parties.

## **19. Governing Law**

- 19.1 This Agreement will be governed by and construed according to the law of the State of Queensland and the parties submit to the jurisdiction of the courts of that State.

## **20. Entire Agreement**

- 20.1 This Agreement constitutes the entire Agreement between the parties in relation to its terms and subject matter.

## **21. Notices**

- 21.1 Notice must be in writing and may be delivered by pre-paid post, by hand or by facsimile transmission to the parties at the respective addresses specified at the commencement of this Agreement.
- 21.2 Notices will be deemed to be given:
- (a) Two days after posting by pre-paid post;
  - (b) Immediately upon proof of delivery by hand;
  - (c) Immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's facsimile transmitter. If that transmission notice indicates transmission on a Saturday or Sunday or after 5pm on any week day, the notice is deemed to be given on the next week day.

sample

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**The Parties have Executed this Agreement on the Dates Appearing Below.**

Signed for and on behalf of the State of Queensland acting  
through *[name of Principal]*

by .....

.....  
*[name of position/designation of signatory]*

this ..... day of ..... 2000

in the presence of:

.....

.....  
*[name and address of witness]*

Signed by .....

*[name of Artist/Designer]*

this ..... day of ..... 2000

in the presence of:

.....

.....  
*[name and address of witness]\**

sample

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## Schedule 1

**Commencement Date** .....

*[Insert date on which this Agreement commences]*

**Completion Date** .....

*[Insert date by which the Developed Design is to be completed]*

**Agreement** for the Commissioning of a Concept Design.....

*[Insert date of the earlier Concept Design Commissioning Agreement]*

**The Artwork Commission Brief** .....

*[Attach the brief to be given to the Artist/Designer as to what the development work involves]*

## Schedule 2

### **Payment Terms**

Nature of Payment	Amount	Date Due
Design Fee	\$	<i>[Specify date the Concept Design Proposal is to be delivered]</i>

## Schedule 3

*[Agreement to Commission an Artist/Designer]*

sample

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# Part 4 : Public Art Procurement

## Tool 4F *Approval to Commission Artists*

Place:	
Building:	
Project Name:	
Project Number:	
Department:	
Authorised Officer:	
Date:	

**1. Presentation of design developments** *[Insert date of meeting]*

--

**2. Artists presenting design developments**


**3. Design developments accepted**


**4. Description of artworks to be commissioned:**

Artist	Artwork Title/Date	Materials	Artwork Location	Cost



**5. Budget for completion of commission** (detailed budget breakdown attached)

--

**6. Approval**

To accept the design development and to commission the artist for the completion of the artwork in accordance with the Conditions of Contract.

Approved by: ..... Director-General/Authorised Officer

Date: .....

This approval form is to be faxed back to the Public Art Agency (07) 3250 1201 upon gaining approval to commission artists for final artworks.

[End Tool 4F]



# Part 4 : Public Art Procurement

## Tool 4G *Commissioning Artworks*

First Name, Last Name

Title

Company

Postal Address

*[insert date]*

Dear First Name

**Re: Artworks Commission for *[insert name of project]***

The principal of the above project wishes to commission you to create a final work in accordance with the Design Development Proposal you submitted. The attached requirements for the work have been endorsed by the Principal and the Public Art Advisory Group advising on this Art Built-in project and should be taken into account in the development of the work to completion.

Please sign the attached Agreement for Commissioning Artworks and return it to *[insert name and contact details of the principal's representative/ Public Art Project Manager]*

Congratulations on being commissioned. I look forward to viewing your final artwork/design. If you have any questions please contact *[insert name of Public Art Project Manager and contact details]*.

Yours sincerely

**Public Art Project Manager  
(Principal's Art Built-in Representative)**

[End of Tool 4G]

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# *Agreement for the Commissioning of an Artist/Designer*

---

*Between*

*The State of Queensland*

*and*

*[Name of the Artist/Designer]*

*Crown Solicitor  
State Law Building  
50 Ann Street  
Brisbane*

*Facsimile: 3239 6386  
Telephone: 3239 6107*

**4G**

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This agreement is made this ..... day of ..... 2000.

**Between: The State of Queensland** acting through ..... of  
..... in the State of Queensland.  
("the Principal")

**And:** ..... of ..... in the State of Queensland.  
[Name and address of Artist/Designer] ("the Artist/Designer")

### Background

- A. Under the Design Development Agreement, the Principal engaged the Artist/Designer to create an original Developed Design.
- B. The Principal wishes to commission the Artist/Designer to create certain original work in accordance with that Developed Design.
- C. The Artist/Designer wishes to accept the commission on the terms set out here.

## Now the Parties Agree as Follows -

### 1. Interpretation

1.1 In this agreement:

(a) the following definitions apply:

**"Agreement"** means this document and all schedules to it.

**"Artist/Design Services"** means the obligations of the Artist/Designer as described in clause 3.

**"Artworks Commission Brief"** means the brief to complete an original Work for a specific project as described in Schedule 1.

**"Commencement Date"** means the date of commencement of this Agreement as specified in Schedule 1.

**"Completion Date"** means the date for completion of the Work as specified in Schedule 1.

**"Design Development Agreement"** means the Agreement for the Development of a Design between the parties dated on the date specified in Schedule 1.

**"Developed Design"** means the original work, materials, maquettes and any other thing produced under the Design Development Agreement.

**"Intellectual Property Rights"** means all copyright, patents, designs, trade marks and any rights in relation to inventions, whether actual or pending and includes the rights to register any of those rights.

**"Work"** means the original work created by the Artist/Designer and described in Schedule 2.

**"Year 2000 Compliant"** means information technology with processing capability which:

(i) correctly identifies all dates and the centuries in which they occur;

(ii) correctly processes all dates and date related data including, without limitation:

- comparing;
- sequencing;
- calculating (such as adding and subtracting); and
- executing functions commencing or ending on a particular date or dealing with particular periods;

(iii) does so irrespective of the century in which the dates occur and whether or not the relevant processing spans centuries;

(iv) correctly distinguishes between leap years and non-leap years;

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- (v) correctly deals with the transition from 31 December 1999 to 1 January 2000, in each case, without reduction of functionality (compared with processing only 20th century dates), interruption or other material adverse effect.
- (b) clause headings are not to be used to interpret the agreement;
- (c) words in the singular include the plural and words in the plural include the singular as the context requires;
- (d) a reference to a clause, paragraph or Schedule is a reference to a clause, paragraph or Schedule of this Agreement.

## **2. Term**

- 2.1 This Agreement will commence on the Commencement Date and, unless terminated earlier in accordance with its terms, shall continue until the Artist/Design Services have been fully performed in accordance with the Agreement, or until the Completion Date, whichever is the later.

## **3. Artist/Design Services**

- 3.1 The Artist/Designer will complete the Work in accordance with the Artworks Commission Brief by the Completion Date.
- 3.2 The Artist/Designer may seek, in writing, an extension of the time for completion of the Work. The Principal may consent to the extension (such consent not to be unreasonably withheld) and any such consent must be given in writing.
- 3.3 The Artist/Designer will:
  - (a) inform himself/herself of the Principal's stated requirements in respect of the Work and the Artworks Commission Brief;
  - (b) consult regularly with the Principal throughout the performance of the Agreement;
  - (c) act professionally at all times and exercise professional skill, care and diligence in completing the Work; and
  - (d) use high quality tools and materials to ensure that the Work meets the standards and specifications (if any) specified in Schedule 2.

## **4. Security and Access**

- 4.1 The Principal will allow the Artist/Designer reasonable access to such of the Principal's premises and any other areas under the Principal's control in which the Work is to be integrated, so as to enable the Artist/Designer to complete the Work in accordance with the Artworks Commission Brief.
- 4.2 The Artist/Designer will, when using the Principal's premises or facilities, comply with all rules, directions and procedures including those relating to security and workplace health and safety as are advised to the Artist/Designer.
- 4.3 The Principal will make available to the Artist/Designer from time to time such assistance and such employees of the Principal as are reasonably necessary to enable the Artist/Designer to complete the Work in accordance with the Artworks Commission Brief.

## **5. Changes and Approvals**

- 5.1 The Principal may request in writing, such changes to the Work as it considers necessary to fulfill the requirements of the Artworks Commission Brief. The Principal will, at all times, respect the independence and integrity of the Artist/Designer.
- 5.2 The Principal will advise the Artist/Designer of such changes at any time during the course of producing the Work or, in any event, within fourteen days of completion of the Work in accordance with the terms of this Agreement. The Artist/Designer agrees to perform such changes to the Work as the Principal reasonably requests.

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## 6. Payment

- 6.1 The Principal will pay the Artist/Designer for the Artist/Design Services in accordance with the payment terms specified in Schedule 3.
- 6.2 The Artist/Designer shall receive from the Principal the commencement fee upon the date specified in Schedule 3.
- 6.3 The Artist/Designer shall receive from the Principal the interim fee upon the date specified in Schedule 3, subject to the Principal being satisfied that the Artist/Design Services are proceeding in accordance with the Artworks Commission Brief.
- 6.4 In accordance with Schedule 3, the balance of the sums specified shall be payable to the Artist/Designer upon acceptance by the Principal that the Work accords with the Artworks Commission Brief.
- 6.5 The Artist/Designer shall not be entitled to any additional fees for any changes made pursuant to clause 5.
- 6.6 The Artist/Designer shall not be entitled to any payment otherwise than as provided in this clause 6.

## 7. GST

- 7.1 The payments to be made by the Principal to the Artist/Designer pursuant to clause 6 are GST inclusive payments and the Artist/Designer shall not be entitled to recover any additional sums from the Principal to cover any liability for GST.
- 7.2 The Artist/Designer shall, if requested by the Principal, provide a valid tax invoice for GST purposes.

## 8. Intellectual Property and Title

*[Delete options not chosen]*

### *Option 1:*

- 8.1 All Intellectual Property Rights in the Work and any material and drafts created as part of producing the Work (including the Developed Design) will remain with the Artist/Designer.
- 8.2 The Artist/Designer grants to the Principal an irrevocable, royalty-free license to exercise the Intellectual Property Rights in the Work, and any materials and drafts created as part of producing the Work (including the Developed Design), for any purpose.

### *Option 2:*

- 8.1 All Intellectual Property Rights in the Work, and any material and drafts created as part of producing the Work (including the Developed Design) will, upon their creation, be owned jointly by the Artist/Designer and the Principal.
- 8.2 The Principal and the Artist/Designer shall jointly own, for the full period of subsistence of the Intellectual Property, all Intellectual Property Rights in the Work and any materials and drafts created as part of producing the Work (including the Developed Design) in accordance with the Artworks Commission Brief.
- 8.3 The Principal or the Artist/Designer shall be entitled, without recourse and without any liability to make any further payment (other than as specified in clause 6) to the other, to exercise any Intellectual Property Rights in respect of the Work.

### *Option 3:*

- 8.1 All Intellectual Property Rights in the Work, and any material and drafts created as part of producing the Work (including the Developed Design) will, upon their creation, be automatically assigned to the Principal.
- 8.2 The Principal grants to the Artist/Designer an irrevocable, royalty-free license to exercise the Intellectual Property Rights in the Work and any materials and drafts created as part of producing the Work (including the Developed Design) for the purpose of marketing and promotion of the Artist's/Designer's business by photographic or other two-dimensional representations and multi-media and digital forms of the Work, but in no other forms.

- 8.3/4 The title to the completed Work shall pass to the Principal upon acceptance of the Work by the Principal in accordance with clause 6.4.
- 8.4/5 Notwithstanding any other clause of this Agreement, either party may use images of the Work for the purposes of promotion, publicity and critical review without recourse to the other.

## 9. Moral Rights

- 9.1 Upon completion of the Work and at all times whilst the Work is being exhibited to the public, the Principal will ensure that the Artist/Designer is identified as the creator of the Work.
- 9.2 Without limiting the Principal's rights as specified in clause [8.1/8.2], the Principal will, as far as practicable, ensure that the Work is not subject to any material alteration, distortion or mutilation that is prejudicial to the Work or the reputation of the Artist/Designer.
- 9.3 Where the Artist/Designer reasonably considers that his/her reputation has been or will be prejudiced by a material alteration, distortion or mutilation of the completed Work, the Artist's/Designer's sole remedy will be to require that the Principal withdraw the Artist's/Designer's attribution from any public display of the Work.
- 9.4 The Principal will take all reasonable steps to maintain the completed Work in good order and repair. Where practicable, the Artist/Designer will be given the first opportunity to complete any repairs to the Work, subject to clause 9.5 and to the negotiation of a reasonable fee with the Principal.
- 9.5 Where repairs to the completed Work are necessary as a result of faulty materials or workmanship, the Artist/Designer will carry out all necessary repairs without fee.
- 9.6 The Artist/Designer may name the Work in consultation with the Principal.

## 10. Warranty

- 10.1 The Artist/Designer warrants that the provision of the Artist/Design Services and the Work in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party.
- 10.2 The Artist/Designer further warrants that he/she has all necessary right and title to [make the assignment/grant the licence] referred to in clause [8.1/8.2] including, without limitation, any necessary written assignments and permissions from any third party who may have some claim to, or Intellectual Property Rights in, the Work.
- 10.3 The Artist/Designer warrants that he/she will respect the cultural and spiritual significance of Indigenous people and refrain from incorporating elements derived from Indigenous cultural heritage into the Work without the informed consent of the traditional custodians.

## 11. Confidentiality and Disclosure

- 11.1 Except as required under this Agreement or with the Principal's written consent, the Artist/Designer will keep confidential and will not disclose to any other person all information and materials which have been provided for and on behalf of the Principal for the purposes of performing the Artist/Design Services.
- 11.2 The Principal will not disclose to any other person, except as required by this Agreement or by law, any of the Artist's/Designer's information which the Artist/Designer specifies in writing is confidential.

## **12. Insurance**

- 12.1 The Artist/Designer acknowledges that property in the Work shall not pass to the Principal until acceptance by the Principal in accordance with clause 6.4.
- 12.2 The Artist/Designer will maintain with an insurer, such public liability, professional indemnity and any other insurance as is necessary to cover such liability of the Artist/Designer as may arise as a result of the performance of this Agreement. Upon request by the Principal, the Artist/Designer shall provide proof that the appropriate insurance has been effected.

## **13. Termination**

- 13.1 Prior to the fulfillment of the condition specified in clause 6.2, either party may terminate this Agreement by giving thirty (30) days notice in writing.
- 13.2 On or after the events specified in clause 6.2, the Artist/Designer may, subject to clause 13.3, terminate the Agreement upon the failure of the Principal to comply with clause 6.
- 13.3 The Artist/Designer shall advise the Principal in writing that a default has occurred under clause 6 and allow the Principal thirty (30) days to make payment. In the event that payment is not received within thirty (30) days, the Artist/Designer may exercise the right conferred by clause 13.2, without prejudice to any other rights and remedies he/she may have.
- 13.4 On or after the events specified in clause 6.2, the Principal may, subject to clause 13.5, terminate the Agreement for any of the following reasons:
  - (a) Failure by the Artist/Designer to comply with clause 3;
  - (b) Failure by the Artist/Designer to comply with clause 4.2;
  - (c) Failure by the Artist/Designer to comply with clause 5.2;
  - (d) Failure by the Artist/Designer to comply with clause 10;
  - (e) Failure by the Artist/Designer to comply with clause 11.1;
  - (f) Failure by the Artist/Designer to comply with clause 12.2; and
  - (g) Failure by the Artist/Designer to comply with clause 16.1.
- 13.5 The Principal shall advise the Artist/Designer in writing of the nature of the default and allow the Artist/Designer thirty (30) days to rectify the default. In the event that the default is not rectified within thirty (30) days, the Principal may exercise the right conferred by clause 13.4, without prejudice to any other rights and remedies it may have.
- 13.6 Upon termination of this Agreement pursuant to clause 13.4, all money which has been paid to the date of termination, to the Artist/Designer, will be in full and final satisfaction of all claims by the Artist/Designer under this Agreement.
- 13.7 The following clauses shall survive termination of this Agreement:
  - (a) Clause 8;
  - (b) Clause 9;
  - (c) Clause 10;
  - (d) Clause 11;
  - (e) Clause 12.2; and
  - (f) Clause 16.1.

## **14. No Sub-Contracting**

- 14.1 The Artist/Designer will not sub-contract the whole or any part of his/her obligations under this Agreement other than to a sub-contractor approved in writing by the Principal.

## **15. Disputes**

- 15.1 The parties agree to submit any disputes which arise out of this Agreement to mediation either by a mediator agreed between the parties or, failing agreement within seven (7) days, in accordance with the rules of the Arts Law Centre Mediation Service, a program of the Arts Law Centre of Australia.
- 15.2 The parties agree to comply with clause 15.1 prior to having recourse to litigation unless there is a need to seek urgent injunctive relief.

## **16. Year 2000 Compliance**

- 16.1 The Artist/Designer warrants that:
- (i) where relevant, the Work is Year 2000 Compliant; and
  - (ii) the delivery of the Artist/Design Services by the Artist/Designer will not compromise the Year 2000 Compliant status of the Principal's technology and equipment.

## **17. Waiver**

- 17.1 A party's rights under this Agreement shall only be waived where the waiver is in writing and signed by both parties.
- 17.2 A waiver by a party will not prejudice any of its rights in respect of any subsequent breach of this Agreement by the other party.

## **18. Variation**

- 18.1 This Agreement may only be varied or extended by agreement in writing and signed by both parties.

## **19. Governing Law**

- 19.1 This Agreement will be governed by and construed according to the law of the State of Queensland and the parties submit to the jurisdiction of the courts of that State.

## **20. Entire Agreement**

- 20.1 This Agreement constitutes the entire Agreement between the parties in relation to its terms and subject matter.

## **21. Notices**

- 21.1 Notice must be in writing and may be delivered by pre-paid post, by hand or by facsimile transmission to the parties at the respective addresses specified at the commencement of this Agreement.
- 21.2 Notices will be deemed to be given:
- (a) Two days after posting by pre-paid post;
  - (b) Immediately upon proof of delivery by hand;
  - (c) Immediately upon an apparently successful facsimile transmission of the entire notice being noted by the sender's facsimile transmitter. If that transmission notice indicates transmission on a Saturday or Sunday or after 5pm on any week day, the notice is deemed to be given on the next week day.

4G

**The Parties have Executed this Agreement on the Dates Appearing Below.**

Signed for and on behalf of the State of Queensland acting  
through *[name of Principal]*

by .....

*[name of position/designation of signatory]*

this ..... day of ..... 2000

in the presence of:

.....  
.....

*[name and address of witness]*

Signed by .....

*[name of Artist/Designer]*

this ..... day of ..... 2000

in the presence of:

.....  
.....

*[name and address of witness]\**

sample

# Schedule 1

**Commencement Date** .....

*[Insert date on which this Agreement commences]*

**Completion Date** .....

*[Insert date by which the Work is to be completed]*

**Design Development Agreement** .....

*[Insert date of the earlier Design Development Agreement]*

**The Artworks Commission Brief** .....

*[Attach the brief to be given to the Artist/Designer as to what the Work is about. Include, as necessary, a context, a description, proposed title, dimensions, materials, etc.]*

# Schedule 2

## **The Work**

The Work means the creation and completion of [describe work] in accordance with the Developed Design and in accordance with the Artworks Commission Brief.

*[what other and more detailed ways can the work be described?]*

The Work shall have, as a minimum, the following features as required by the Principal and Public Art Advisory Group:

- .....
- .....
- .....

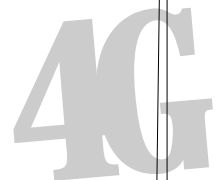
The Work shall meet the following minimum standards and specifications:

- .....
- .....
- .....

# Schedule 3

## **Payment Terms**

Nature of Payment	Amount	Date Due
Commencement Fee	\$	<i>[Specify date the first installment is payable – may be on Commencement Date]</i>
Interim Fee	\$	<i>[Specify date the interim amount is payable]</i>
Final Fee	\$	<i>[Upon acceptance by the Principal that the Work has been completed by the Completion Date and that the Work accords with the Artworks Commission Brief]</i>



# Part 4 : Public Art Procurement

## Tool 4H ***Guide to Purchasing and Direct Commissioning of Artworks***

The Queensland Government's Art Built-in policy means that from 1 July 1999 the government commits 2% of capital works building project costs towards the integration into public buildings and spaces of art and design by Queensland artists and artworkers. The Public Art Agency has been set up to implement this policy. Advice about the policy and its implementation is available from the Public Art Agency. Some exemptions and conditions apply.

Copies of the *Art Built-in Policy*, the *Art Built-in Guidelines* and the *Art Built-in Toolkit* are available by visiting the Public Art Agency website [www.arts.qld.gov.au/publicartagency/](http://www.arts.qld.gov.au/publicartagency/) or by contacting the Public Art Agency on (07) 3250 1200 for a hard copy.

Art Built-in takes a holistic approach to planning for, procuring and maintaining artworks assets as part of government building procurement in line with the Department of Public Works Capital Works Management Framework, Maintenance Management Framework and Managing for Outcomes.

The *Art Built-in Guidelines* give an overview of requirements for best-practice public art procurement and advocate a whole-of-government approach for the integration of artists and designers into the development, design and cultural animation of capital works building projects. When you are planning for and procuring new public art assets, you will need to consider what management and maintenance practices will be appropriate for these special, potentially appreciating assets.

The *Guidelines* outline the process that agencies/departments will need to go through to implement Art Built-in. This Guide to Purchasing and Direct Commissioning is intended to be used at the Procurement Strategy stage — in particular, for commissioning of new works or direct purchasing of artworks. It makes reference to sample contracts and commissioning briefs included in the *Art Built-in Toolkit* and stresses the importance of the Integrated Cultural Opportunities Assessment (ICOA) process in getting a quality public art outcome for your project.

### ***Public Art Project Definition and the Integrated Cultural Opportunities Assessment (ICOA)***

The decision to commission or purchase artworks in implementing Art Built-in should be founded on an understanding of what kind of public art you want. This is determined at the Project Definition stage. At this stage, after budget approval, agencies/departments will need to define more clearly the public art component of a given project. Defining all public art requirements and determining the procurement method/s are achieved by undertaking an Integrated Cultural Opportunities Assessment or ICOA. (See Section 4.1 of the *Art Built-in Guidelines* and **Tools 2B and 2C**.)

Through the ICOA process, an agency can commission public art projects that meet its service delivery objectives and match the current and projected needs of the building and its users, its community and its environment. The purpose of the ICOA is to identify new public art opportunities in the context of the building development and the agency's existing collection of public art, and to give guidance on which procurement process or processes should be used for the project.



For instance, information obtained through the ICOA process will form part of the Artworks Commissioning Brief and will be the basis of the invitation to provide a fee proposal when existing artworks are being purchased for public buildings. The sample Artworks Commissioning Brief is Schedule 1 to the Concept Design Agreement in **Tool 4C: Request for Concept Design Proposal from Artists**.

An ICOA is essentially the principal agency asking itself and its design team a series of questions about what kind of opportunities are available for expending the 2% appropriately within a given project.

For larger projects where the public art allocation is \$50,000 or above, a full and detailed ICOA process is required. For smaller projects, the ICOA does not need to be a complex undertaking. For a \$250,000 project (where the public art budget is only \$5000) an ICOA might take the form of the Public Art Advisory Group, comprising the design team in consultation with the principal, going through a checklist that covers aspects such as:

- budget and timeline for the project
- information about the building, its location, its regional context and what kind of public profile or access it has
- environmental, social, cultural and historical significance of the site or the existing building
- impact of the development on the community, tourism, the economy and planning
- access to and usage of the building by tenants and the public
- local/regional cultural planning
- potential cultural opportunities.

See **Tool 2B: How to Perform an ICOA** and **Tool 2C: ICOA Checklist and Form**.

From this information, agencies can determine whether it is more appropriate to purchase or commission works or whether a more complex integrated art and design solution should be pursued. A combination of procurement strategies can be used in bigger projects where the budget allows. Indeed, commissioning and/or purchasing may form one component of a project alongside a more integrated approach. See *Art Built-in Guidelines* Section 4.2, p.11.

### **Public Art Advisory Group**

For larger projects a Public Art Advisory Group needs to be established to advise the principal agency on artworks to be commissioned. In smaller projects where there is not a great deal of money allocated for public art, the Public Art Advisory Group might comprise the architect, the interior designer, the principal's representative, and perhaps a building tenant and a member of the public who will use the building. The Public Art Advisory Group, however big or small, will advise on appropriate artworks. The final decision rests with the principal or the principal's representative.

Where commission by open or limited competition and/or purchase of artworks is agreed as the procurement method, agencies will need to ensure that artworks:

- meet and enhance the corporate objectives of the agency
- complement the existing collection of artworks held by the agency, and by government generally (an audit of the existing State Government Collection of Public Art will guide, in part, decisions about what to purchase or commission)
- constitute a good art investment for government and the people of Queensland (when commissioning artworks, agencies are essentially contributing to the State Government Collection of Public Art that sits alongside the public collections of the Queensland Art Gallery and the Queensland Museum).

# Part 4 : Public Art Procurement

## Tool 4H

As with any other kind of purchasing, getting the right expert advice and making an informed decision will help to minimise risk. If you are unsure what to do, contact the Public Art Agency.

### ***Public Art and the State Purchasing Policy***

The State Purchasing Policy applies to the purchase of all goods, equipment and related services, construction contracts and service contracts by departments and statutory bodies as defined in the *Financial Administration and Audit Act 1997*. This includes the commissioning of services to produce artworks to a brief and the purchasing of artworks.

The values that underpin the State Purchasing Policy — open and effective competition, value for money, enhancing the capabilities of local business and industry, environmental protection, and ethical behaviour and fair dealing — must be kept in mind when commissioning or purchasing artworks.

There are many similarities between the commissioning of works of art and the tendering for delivery of other services. However, there are some major differences that have to do with artistic merit, intellectual property, staged payments and moral rights. The last is an important issue for artists: moral rights include public acknowledgment of the artist as the creator of the work, consulting if there is a need to relocate an artwork, and not improving or making alterations to the material form of a work (for example, by changing colour or removing parts).

### **Commissioning**

Common approaches to the commissioning of new works are by open competition or by limited competition/direct commission.

### **Open Competition**

Open competition is the preferred means of commissioning of major new artworks under the Art Built-in policy. Open competition through a public tender will provide access to employment opportunities for all artists, including young and emerging artists and regional artists. See the sample Artworks Commissioning Brief in Schedule 1 to the Concept Design Agreement in **Tool 4C: Request for Concept Design Proposal from Artists**.

### **Limited Competition/Direct Commission**

Limited competition, or direct commission, where agencies source artists from existing databases or through commercial galleries, is a cost-effective means of procuring works. This may be appropriate where the total building cost is less than \$5million and the 2% allocation is thus less than \$100,000. However, this approach does not allow for the equity of opportunities made possible by open competition.

Agencies can source artists either directly through a commercial gallery or agent, or by contacting government-funded service organisations such as the Queensland Artworkers Alliance, Craft Queensland or the Queensland Potters Association.

Alternatively, agencies can commission a Public Art Project Manager and/or curator who will respectively manage the Art Built-in component of the building project and source artists on behalf of agencies. (See **Tools 3A, 3B and 3C**.) Whether agencies commission an external consultant such as a Public Art Project Manager or designate a departmental officer to act in this capacity, this function is crucial in coordinating the Art Built-in component of the project.



### ***Purchase of Existing Works (Permanent or Temporary)***

Purchase of existing works would be appropriate for building projects valued between \$250,000 and \$2,500,000, where the 2% allocation is less than \$50,000. However, this approach is limited in its capacity to involve artists in the design development of capital works projects, which is best-practice public art and the conceptual basis of the Art Built-in policy.

If your public art budget for a given project is under \$20,000, local purchasing conditions will apply. The Public Art Agency can advise on local purchasing guides for departments purchasing artworks. Existing local instructions may not be appropriate for the purchase of artworks. However, to ensure a quality outcome and to minimise risks in procuring artworks, it is recommended that:

- In all instances, invitations for quotation are sought in written form when purchasing artworks. Oral quotations are not sufficiently detailed for the purchase of artworks.
- Preferred supplier arrangements are inappropriate for the purchase of artworks because Art Built-in seeks to ensure that equity is maintained in the distribution of benefits across Queensland. Therefore it is inappropriate to enter into preferred-supplier arrangements or prequalification of artists as consultants. (Public Art Project Managers and other related consultants will be prequalified under the PQC system).
- The focus is on integration of artworks. Purchasing existing artworks may be appropriate in some instances but this approach has limited capacity to achieve the goal of integration, which is central to the implementation of Art Built-in.

In all cases an ICOA will guide the choice of the most appropriate procurement method.

### ***Artworks Commissioning Brief***

Whether you are commissioning a new work of art by open competition or direct commission,

# Part 4 : Public Art Procurement

## Tool 4H

There are many organisations and individuals that represent artists and designers in Queensland. For example:

Private Sector	<ul style="list-style-type: none"><li>• Commercial galleries</li><li>• Commercial design firms</li></ul>
Not-for-profit sector	<ul style="list-style-type: none"><li>• State government funded cultural organisations, such as the Queensland Artworkers Alliance, Craft Queensland and the Queensland Potters Association</li><li>• Design Institute of Australia</li></ul>
Other	<ul style="list-style-type: none"><li>• Some artists choose to represent themselves.</li></ul>

A list of commercial galleries that are members of the Australian Commercial Galleries Association representing Queensland artists is available from the ACGA (Qld) President, Mr Lance Blundell, Redback Art Gallery, ph: (07) 3357 6064 or e-mail [redbacka@eis.net.au](mailto:redbacka@eis.net.au) You can also visit the Australian Commercial Galleries site at [www.acga.com.au](http://www.acga.com.au) A list of commercial galleries operating in Queensland is available from the Public Art Agency. The Queensland Artworkers Alliance runs an Artist Employment Service and, for a small fee, has a slide register of artists' works available for viewing by the public. The Artist Employment Service is on-line at [www.artworkers.com.au](http://www.artworkers.com.au)

The Public Art Agency can also direct agencies wishing to source artists for public art opportunities to databases of artists or commercial galleries.

### **Corporate Collections**

Corporate collections do more than just decorate the walls. A collection can subtly communicate an organisation's corporate philosophy to clients and staff. The arts can add value to an organisation indirectly through the development of corporate culture and the personal enrichment of staff.

A lack of diverse stimuli and the necessity to focus your core business may result in a lack of awareness of things existing outside your immediate environment. However, involvement in the arts can give your organisation focus outside a specialist area such as health, law or emergency services, and can foster a culture of thinking more broadly about how your organisation is perceived and how it fits into the bigger picture.

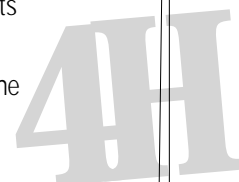
Art exposes management and staff to stimuli other than the humdrum involved in the delivery of core business. This is particularly important when government agencies are increasingly required to be more competitive and creative in the way they spend public money in the delivery of services to the community.

And there are monetary considerations. Unlike many other government assets, artworks commissioned or purchased under Art Built-in may appreciate in value and in some cases may grow significantly in value over time. Artworks are an expression of public culture that can provide a valuable and lasting legacy for the whole community.

As with other investment options, there are ways to manage risk when acquiring artwork. A range of dedicated arts specialists are available to provide expert advice to government agencies purchasing or commissioning art under the Art Built-in policy. See Anderson, Peter. 1997. *Investing In The Arts: A Guide to Wise Collecting and Investment in the Visual Arts, Craft and Design*, Arts Queensland, Queensland Government. Copies are available from the Public Art Agency.

The first step is to seek advice on how to proceed. The Public Art Agency can talk you through the process, but the *Art Built-in Guidelines* and this *Art Built-in Toolkit* will help you step by step.

[End Tool 4H]



# Feedback and Evaluation

This section allows users to give feedback to the Public Art Agency on the Art Built-in Toolkit, on the Art Built-in process generally and on any other issues that arise in the implementing of Art Built-in in State Government building projects.

Copy and fax these forms to the Public Art Agency and we will use your comments to improve our processes, our tools, and the information and the advice we give to our clients.

Thank you for taking the time to send us your comments and suggestions.

## Questions

### 1. Planning

Art Built-in Project Definitions Discount items for budget calculation Guide to transferring and pooling Lodgement of allocation	This stage is essentially about identifying a list of eligible Art Built-in projects in a given agency/department's capital works program for the next financial year.  The assessable budget for each project is calculated so that the 2% allocation can be determined.  This information is then submitted to the Public Art Agency.
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**Q: Is this stage clear? Are there any improvements that should be made, or is there other information that you need?**

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**Q: Is it clear who should carry out this stage?**

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### 2. Consultation and Research

How to form a Public Art Advisory Group Performing an Integrated Cultural Opportunities Assessment ICOA Checklist and Form	This stage sets the public art project parameters, identifies cultural opportunities and public art procurement methods, and allows a suitable process to be implemented.
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**Q. Is it apparent from these tools how you would undertake the coordination of this stage of the project?**

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**Q. Does the ICOA Checklist and Form make it clear what information you have to provide?**


**Q. Is it clear from the ICOA Checklist and Form how recommendations will be made for appropriate public art within the project?**


**Q. Can you suggest additional information that should be included?**


**3. Public Art Project Management**

Approval to engage a Public Art Project Manager Call for expressions of interest for Public Art Project Managers Request for fee proposal (including Public Art Project Manager's Agreement)	These tools show how to engage an appropriate Public Art Project Manager for an Art Built-in project. The contract (with detailed information in Schedules 1 and 2) is included.
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**Q. Are these tools effective and easy to understand?**


**Q. Does this process comply with other consultancy engagement processes?**


**Q. Would you include any additional information? If so, please list.**


# Feedback and Evaluation

## 4. Public Art Procurement

Expression of interest for artists	If the Public Art Project Manager is engaged, that person will administer this stage of the project.  However, this stage may, in some circumstances, be undertaken by the nominated officer within an agency/department.  Such officers may not have cultural expertise, and will be relying on that of the Public Art Advisory Group.
Approval to engage artists for concept design	
Request for concept design proposal from artists (including agreement)	
Approval to engage artists for design development	
Request for design development proposal from (including agreement)	
Approval to commission artists	
Commissioning artworks (including agreement)	
Guide to purchase and direct commissioning of artworks	

**Q. Are these tools effective and easy to understand and use? Would you include any additional information?**

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### ***General Comments***

**Q. Does the Toolkit give a clear understanding of the process/processes that are required to undertake an Art Built-in project, from calculating the budget to commissioning an artwork?**

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**Q. Do you have any general suggestions about presentation?**

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**Q. How do you think the *Art Built-in Toolkit* could be improved?**

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You can fax back the feedback and evaluation sheets at any time on (07) 3250 1201. Please feel free to contact the Public Art Agency directly by phoning (07) 3250 1200 or e-mail: [public.arts@arts.qld.gov.au](mailto:public.arts@arts.qld.gov.au)