

27 April 2021

To: All firms registered in BCA's Contractors Registration System (CRS) and Public Sector Panels of Consultants (PSPC)

Circular on Simplified Claim Process for Extension of Time and Prolongation Costs in Public Sector Construction Contracts due to COVID-19 Events

This circular informs all contractors registered in CRS that Government Procuring Entities ("GPEs") have been advised on the following, to:

- a) Grant common extension of time ("EOT") for delay in works due to COVID-19 for period from 7 August 2020 to 31 December 2020, where applicable;
- b) Co-share a base 0.1% of awarded contract sum per month of delay for eligible contracts up to \$100mil; and
- c) Adopt common methods of computation for depreciation of contractor-owned equipment.

Background

2 Following the restart of construction works for most projects in August 2020, many construction projects continue to face challenges in resuming pace of work to pre-COVID levels as they adjust to new requirements such as compliance with the Safe Management Measures ("SMM") on site, mandatory Rostered Routine Testing ("RRT") and shortage in manpower due to border controls, etc. As these are unprecedented events, both contractors and GPEs have highlighted the difficulties in substantiating and assessing the EOT and the corresponding prolongation costs for such delay.

3 As informed in BCA's circular on "Commencement of COVID-19 (Temporary Measures) Act ["COTMA"] 2020 – Part 8A and Part 8B" dated 30 November 2020, the Government will continue to co-share the depreciation of contractor-owned equipment on an ex-gratia basis as part of the prolongation costs notwithstanding that such costs incurred are not part of the qualifying costs under COTMA Part 8B. Both contractors and GPEs have also highlighted the difficulties in substantiating and assessing claims based on depreciation of the construction equipment.

4 As such, BCA, major GPEs, the Singapore Contractors Association Limited ("SCAL") and other Trade Associations and Chambers ("TACs") such as the Singapore Institute of Architects ("SIA") and Singapore Institute of Surveyors and Valuers ("SISV") have discussed and agreed on 3 key approaches **to simplify the claim process for EOT and prolongation costs in public sector construction contracts due to COVID-19 events (see Figure 1 for overview and Para 5 to 8 for details).**

3 key approaches to simplify claim process for EOT and prolongation cost-sharing in public sector construction contracts						
<i>Applies to contracts eligible for COTMA Part 8B and ex-gratia reliefs i.e. tenders closed on or before 1 Jun 2020</i>						
01	Common EOT for loss of productivity between 7 Aug 2020 to 31 Dec 2020	Based on estimated loss of productivity based on year-on-year comparison with Industry-level Certified Progress Payment				
		Aug	Sep	Oct	Nov	Dec
		14 days	14 days	9 days	6 days	6 days
02	Base 0.1% of awarded contract sum per month of delay for qualifying costs of eligible contracts up to \$100mil (without need for substantiation)					
03	Common computation method for equipment-depreciation costs	<u>Equipment purchase value</u>				
		\$6k or below: Only top 5 will be evaluated				
		>\$6k to \$200k: Monthly rental market rate				
		>\$200k: Either audited financial statement OR straight-line depreciation				

Figure 1: Overview of Key Approaches to Simplify Claim Process for EOT and Prolongation Cost-Sharing in Public Sector Construction Contracts

Common EOT for delay due to loss of productivity from 7 August 2020 to 31 December 2020

5 **We have sought GPEs' support to grant common EOT for delay due to loss of productivity for the period from 7 August 2020 to 31 December 2020, on an ex-gratia basis¹**, for public sector construction contracts²:

- (i) in which the tender was closed on or before 1 June 2020³;
- (ii) that was not terminated by the Employer on or before 7 August 2020 under Clause 31 of PSSCOC (or equivalent clause under the contract); and
- (iii) that was not certified to be substantially completed on or before 7 August 2020 under Clause 17 of PSSCOC (or equivalent clause under the contract).

No claim for the common EOT is required from contractors. The common EOT will apply unless GPEs assess there are strong grounds⁴ which deter the grant of the common EOT. **Contractors which wish to seek longer EOT for the same period shall provide the necessary substantiation for GPEs' assessment. GPEs can grant such longer EOT if they assessed that the requests are appropriate.** Refer to **Annex A** for illustration.

¹ The period of EOT for the month that the works that were substantially completed before the end of the said month should be pro-rated accordingly.

² Refers to construction contracts involving works such as building, civil engineering works and addition & alteration (A&A) works. Supply and maintenance term contracts are not eligible for this EOT.

³ Notwithstanding, GPEs have the flexibility to grant common EOT for contracts with tender closed **after** 1 June 2020 if there are valid justifications to do so (e.g. contract duration was still based on pre-COVID estimate).

⁴ **Example:** Design stage in D&B contract where the progress of design works, which are not carried out on worksite, are not affected by the COVID-19 situation. In such cases, GPEs have the flexibility to reduce (or not to grant) common EOT accordingly.

Table 1: Common EOT to be granted to eligible contracts

Month	Industry-level Certified Progress Payment ^[a] (A)	Estimated loss of productivity (B = 100% - A)	Total EOT to be granted
Aug 2020	45%	55%	14 days ^[b]
Sep 2020	55%	45%	14 days
Oct 2020	72%	28%	9 days
Nov 2020	79%	21%	6 days
Dec 2020	79%	21%	6 days
Total EOT to be granted (Aug 2020 to Dec 2020):			49 days

[a] compared to Pre-COVID level on a year-on-year basis.

[b] EOT pro-rated only for period from 7 August 2020 to 31 August 2020.

Simplified claim process for prolongation cost claims

6 The following simplified processes for prolongation cost claims will apply for public sector construction contracts:

- (a) For eligible contracts with awarded contract sum up to \$100mil, GPEs will co-share 0.1% of awarded contract sum for every month of delay arising from COVID-19 events (substantiated with EOT). If the delay period within the calendar month is less than 1 month, GPEs will pro-rate accordingly using the number of days in that calendar month.

We have reminded GPEs to expedite the payment of prolongation cost claims, in particular for the universal 122 days granted under COTMA Part 8A (Tranche 1) and 49 days ex-gratia common EOT (Tranche 2), through the following steps:

Step 1: GPE to calculate co-sharing amount based on 0.1% of awarded contract sum per month of delay and inform the eligible contractor. See **Annex B** for illustration.

Step 2: The contractor shall include such amount in their next progress payment claim, for GPE's certification via the payment response.

Note for Para 6(a):

- 1) To avoid doubt, **contractors do not need to submit documentary proof (e.g. invoices and receipts) as substantiation to accompany their claim for the cost-sharing amount in Step 2.**
- 2) **If contractors wish to make further claim beyond the 0.1% (e.g. 0.12%), including any ex-gratia payment of contractor-owned equipment, for the same specified period, the contractors shall substantiate the total claim amount⁵ (i.e.**

⁵ Total claim amount refers to the **total incurred** prolongation costs under COTMA Part 8B and ex-gratia contractor-owned equipment for the same specified period. Note 2 of Para 6(b) will also apply. Example: GPE has paid \$100,000 (0.1% of awarded contract sum) to contractor for month of May 2020. Contractor substantiates its total claim amount of \$120,000 with documentary proof as incurred for month of May 2020 and thereby makes further claim of the additional \$20k (\$120k-\$100k).

0.12%) with documentary proof (e.g. invoices and receipts) for GPEs' assessment.

- 3) Contractors which have received such cost-sharing amount from GPEs shall continue to fulfill their obligations to cost-share qualifying costs under COTMA Part 8B with their sub-contractors.
 - 4) Notwithstanding COTMA Part 8B only applies to contracts entered into before 25 March 2020, the base 0.1% co-sharing will also apply to contracts which were entered into on or after 25 March 2020 but with tenders closed on or before 1 June 2020 as informed in Para 4(a) of BCA's circular "Commencement of COVID-19 (Temporary Measures) Act 2020 – Part 8A and Part 8B" dated 30 November 2020.
- (b) For eligible contracts with awarded contract sum above \$100mil, main contractors are required to submit breakdown of claim and documentary proof (e.g. invoices and receipts) for claim items with incurred cost⁶ above \$6,000 as part of the claim.

Note for Para 6(b):

- 1) For claim items with incurred cost of \$6,000 and below, GPEs can have the flexibility to certify the claim without documentary proof if GPEs assess that the claim items are reasonable. However, contractors may be asked to produce documentary proof for audit checks by the GPEs at any time. GPEs may also reserve the right to claw-back any overpayments.

Common methods of computation for depreciation of contractor-owned equipment

7 For computation of depreciation of contractor-owned equipment, the methods in Table 2 based on the construction equipment's purchase value and awarded contract sum of the contract will be adopted.

Table 2: Ex-gratia cost-sharing for contractor-owned equipment

For construction equipment with purchase value of <u>up to \$200,000/-</u>	For construction equipment with purchase value of <u>above \$200,000/-</u>
<p><u>Computation:</u></p> <p>Method 1 – Based on monthly rental rate⁷ where the contractor shall submit minimum one quote of monthly rental market rate for the equipment (or their past quotation for equipment of comparable brand/capacity). If rental quotation/receipt is not available, the contractor shall compute based on Method 2b "via straight line depreciation formula".</p>	<p><u>Computation:</u></p> <p>Use either one of the following methods required by the GPEs:</p> <p>Method 2a – based on audited financial statement: where the contractor shall submit audited financial statement and asset register and sieve out the depreciation costs of the identified equipment from audited financial statements/asset register; OR</p>

⁶ Incurred cost refers to the total amount incurred (before 50% cost-sharing) for unique item(s) per service rendered or per calendar month. Example: Suppose, for the month of Sep 2020, the contractor incurred rental cost of 5 identical (i.e. same brand/model) units of 12-metre Boom Lift. The rental cost of each unit is \$1,300 per month. In this example, a total incurred cost is \$6,500 (i.e. \$1,300*5) which is more than \$6,000 and would require documentary proof before GPEs' certification of the cost-sharing payment.

⁷ As the claim is on ex-gratia basis, GPE reserves the rights to adjust the monthly rental market rate provided by the contractor, based on GPE's own check with other available information or data. GPE's decisions are final.

<p><u>Substantiation:</u></p> <p>Documentary proof are required for all claim items and administration process shall follow Para 6(b) of this circular.</p> <p><u>For equipment with purchase value of less than \$6,000:</u></p> <p>Contractors shall submit not more than 5 unique claim items per claim. If more than 5 items are submitted, GPEs will only evaluate the claim for the 5 items with highest claim value.</p>	<p>Method 2b – based on straight-line depreciation formula where the contractor shall apply the following formula based on purchase price and useful life:</p> <p><i>Purchase value / 6 years*</i></p> <p>if scrap value can be ascertained:</p> <p><i>(Purchase value – scrap value) / 6 years*</i></p> <p><i>*Note: GPEs have the flexibility to adjust the useful lifespan of the equipment based on available data or documents submitted. E.g. if the equipment has been purchased for 10 years, the useful life can be adjusted to 10 years instead of 6 years.</i></p> <p><u>Substantiation:</u></p> <p>Documentary proof are required for all claim items and administration process shall follow Para 6(b) of this circular.</p>
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8 To avoid doubt, **contractor-owned equipment refers to construction equipment or device designed and intended for use in construction or material handling and is not intended to form part of the permanent works.**

- Examples of construction equipment include (but not limited to) excavators, tower cranes, passenger hoists, concrete placing equipment, scaffolds and formwork systems.
- Generic items such as electrical sockets / plug / cable / switches, water pipes, mobile phones, water dispenser, personal computers, desktop monitor, office equipment, wireless router and walkie talkie should not be interpreted as construction equipment.

Combined cap for claims under COTMA Part 8B and ex-gratia cost-sharing of contractor-owned equipment

9 With the above, the total cost-sharing under COTMA Part 8B and ex-gratia co-sharing of contractor-owned equipment would still be subject to the monthly cap of 0.2% of contract sum and overall cap of 1.8% of the contract sum.

Others & Clarifications

10 BCA would like to remind all contractors to remain extra vigilant during this period and take the following steps:

- 1) Adhere to safe management measures
- 2) Ensure employees go for Rostered Routine Testing (RRT)
- 3) Ensure that employees who are feeling unwell see the doctor immediately

11 For clarification on this circular, please direct your queries to <https://www.bca.gov.sg/feedbackform/>. Please visit BCA's COVID-19 webpage

(www1.bca.gov.sg/COVID-19) and subscribe to BCA's Telegram channel (<https://t.me/BCASingapore>) for latest updates.

Thank you.

Ng Man Hon
Director, Procurement Policies Department
Building and Construction Authority

(Transmitted via email)

Annex A: Illustration on the Grant of EOT

		Scenarios
Month	Total EOT	1) Suppose there were ongoing construction works from 7 August to 31 December 2020, GPE will grant the contractor a total of <u>49 days of EOT</u> . However, the contractor intends to claim a total of 90 days of EOT for the same period. The contractor will have to provide the necessary substantiation (e.g. comparison of planned and actual activity/programme on a critical path) for a total of 90 days of EOT. In an event where contractor is unable to justify his claim, contractor would still be granted a <u>minimum of 49 days of EOT</u> .
Aug 2020	14 days	
Sep 2020	14 days	
Oct 2020	9 days	
Nov 2020	6 days	
Dec 2020	6 days	
Total	49 days	
		2) Suppose the construction works were certified to be substantially completed under Clause 17 of PSSCOC on 15 October 2020, the contractor would be granted a <u>total of 32 days of EOT</u> [i.e. 14+14+(9*15/31)] for month of August till 15 October 2020.

Annex B: Sample Calculation of the Base 0.1% Co-sharing by GPE

- Awarded Contract Sum: \$100mil
- Specified Period: 7 Apr 2020 to 6 Aug 2020
- Formula: Cost sharing amount per calendar month = (0.1% of awarded contract sum) × (No. of days of delay due to COVID-19 events in the calendar month) ÷ (No. of days in the calendar month)

The table below shows the application of the cost-sharing amount formula for specified period from 7 Apr 2020 to 6 Aug 2020 (both dates inclusive) which GPE has computed a total cost-sharing amount of \$399,354.84 and will pay such amounts to contractor provided that there is no previous payment for prolongation cost made for the same specified period. If, under Scenario A, there was previous payment certified (i.e. \$100,000.00) for the same specified period, then GPE will pay the net additional amount of \$299,354.84 (\$399,354.84 - \$100,000.00).

Month	0.1% Cost-sharing Rate [A]	Awarded Contract Sum [B]	Total number of days of delay from 7 Apr to 6 Aug 2020 [C]	No. of days in calendar month [D]	Cost-Sharing Amount [A*B*C/D]
Apr	0.1%	\$100mil	24	30	\$80,000.00
May	0.1%	\$100mil	31	31	\$100,000.00
Jun	0.1%	\$100mil	30	30	\$100,000.00
Jul	0.1%	\$100mil	31	31	\$100,000.00
Aug	0.1%	\$100mil	6	31	\$19,354.84
Cost-Sharing Amount for Specified Period from 7 Apr 2020 to 6 Aug 2020:					\$399,354.84
Scenario A:	Previous payment made under COTMA Part 8B for the same specified period:				\$100,000.00
	Net Additional Cost-Sharing Amount:				\$299,354.84