

23 December 2021

Dear Sir/Madam,

**CIRCULAR ON ADOPTING PANDEMIC RESILIENT CONTRACTING PRACTICES FOR PUBLIC SECTOR CONSULTANCY AGREEMENTS**

This circular informs the Built Environment (“BE”) sector that the public sector will be adopting the following contracting practices for pandemic resilience contracting. Specifically, the public sector Standard Consultancy Agreement (SCA) has been amended to allow for:

- (a) Remuneration for project prolongation;
- (b) Remuneration for additional services rendered during project prolongation;
- (c) Provision of provisional sum for cost items that can be anticipated and co-sharing of unknown cost items; and
- (d) Clarification on computation of the equal monthly payment during the construction stage due to project prolongation

arising from a pandemic outbreak.

Background

2 The COVID-19 pandemic is an unprecedented event. The standard consultancy contracts used in both private and public sectors currently do not cater for additional remuneration for consultants due to project prolongation and additional costs incurred due to a pandemic outbreak. Industry stakeholders had also provided feedback on the uncertainties in pricing for new consultancy tenders. These factors could result in unnecessary increase in consultancy fees or consultants under-pricing their risks, leading to potential downstream inability to fully commit to the project and ensure project delivery. To address these issues, the New Contracts Workgroup<sup>1</sup> (“Workgroup”) involving private and public sector stakeholders was convened in February 2021, to look into appropriate strategies to effect equitable risk sharing among project parties for pandemic outbreaks in new construction<sup>2</sup> and consultancy tenders.

Pandemic resilient standard consultancy agreements

3 The Workgroup suggested the following approaches to address the issues faced by consultants due to pandemic outbreak:

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<sup>1</sup> The Workgroup is co-led by BCA, Real Estate Developers' Association of Singapore (“REDAS”) and Singapore Contractors Association Limited (“SCAL”) and comprises representatives from JTC Corporation (“JTC”), Land Transport Authority (“LTA”), Ministry of Law (“MinLaw”), Surbana Jurong Private Limited (“SJ”), Singapore Institute of Architects (“SIA”), Singapore Institute of Surveyors and Valuers (“SISV”), and WongPartnership LLP (“WP”).

<sup>2</sup> The workgroup had earlier concluded the review for the Public Sector Conditions of Contract (“PSSCOC”) 8<sup>th</sup> Edition. For more details, please refer to the following link for the circular: [www.go.gov.sg/bca-circular-pandemic-resilient-contracts](http://www.go.gov.sg/bca-circular-pandemic-resilient-contracts).

S/N	Issue	Suggested Approach
1	<p><u>Project Prolongation Due to Pandemic Outbreak</u></p> <p>Consultants continue to perform the typical work scopes required from them during the lengthened construction stage lasting for months (e.g. certification of progress payments, site coordination, attend regular project meetings etc) with no compensation.</p>	<p>Inclusion of an additional clause to allow for co-sharing of prolongation cost incurred by consultants due to lengthened project duration arising from pandemic outbreaks.</p>
2	<p><u>Remuneration for Additional Scope Due to Pandemic Outbreak</u></p> <p>Consultants might be required to take up additional work scopes (i.e. not in original scope of work, e.g. redesign to meet new pandemic requirements) as a result of pandemic outbreaks (not arising from lengthening of contract duration), with no clarity on whether they would be entitled to remuneration.</p>	<p>Inclusion of an additional clause to allow for fair remuneration to consultants for the additional services rendered.</p>
3	<p><u>Additional Expenses Incurred by Consultant</u></p> <p>The Workgroup has identified 2 groups of cost-related risks:</p> <p><b>(a) Known-unknown costs</b></p> <p>i.e. Additional known cost items anticipated due to pandemic, but the extent or costs are unknown at the point of tender. Such costs could include but not limited to mandatory Polymerase Chain Reaction (“PCR”) tests and Antigen Rapid Test (“ART”), arising from the current pandemic where the period for which such tests would be required, and whether government subsidies would be extended are unknown.</p>	<p>Inclusion of an additional clause to allow the employer to provide a provisional sum so that consultants would not be required to price in these known-unknown costs, and to allow them to be reimbursed when actual costs are incurred. The provisional sum should exclude costs incurred as a result of consultants’ negligence.</p>
	<p><b>(b) Unknown-unknown costs</b></p> <p>i.e. additional costs incurred arising from pandemic outbreaks which both the client and consultant are unable to identify at the point of tender. For example, new measures that could be formulated or implemented to manage or control the pandemic.</p>	<p>Inclusion of an additional clause to allow for 50% co-sharing for unknown-unknown costs, to allow for more equitable sharing of risks arising from pandemic outbreak among contract parties.</p>

S/N	Issue	Suggested Approach
4	<p><u>Cashflow-related Issue</u></p> <p>Due to lengthened project duration, some GPEs may decide to re-compute the equal monthly payment using the new lengthened construction period, thereby reducing the equal monthly payment.</p>	<p>To make clear that the equal monthly payment during the construction stage should not be reduced and affected by EOT.</p>

#### Approach for public sector consultancy tenders and agreements

4 The public sector is supportive of the recommendations by the Workgroup and will incorporate the amendments (tabulated in Annex A) in public sector consultancy tenders called from 1 Feb 2022 onwards, to effect a more equitable sharing of risks among project parties. Government agencies that are ready may implement these practices with immediate effect. For on-going consultancy tenders, government agencies which are ready can issue a corrigendum to include the latest amendments. The latest Standard Consultancy Agreement (SCA) can be downloaded from <https://www1.bca.gov.sg/procurement/post-tender-stage/standard-consultancy-agreement>.

#### Approach for private sector consultancy agreements

5 Moving forward, the BE sector could look forward to some of the commonly used agreement or contract forms in the private sector (e.g. SIA Conditions of Appointment, ACES Standard Conditions of Engagement) incorporating some of the suggested approaches in para 3 above into their respective standard contracts when ready. Meanwhile, private sector contract parties are encouraged to adopt these approaches to allow for more equitable sharing of risks among project parties in new tenders.

#### Clarifications

6 For clarification on this circular, please direct your queries to <https://www.bca.gov.sg/feedbackform/>.

Thank you.

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

(Transmitted via email)

**Annex A: Amendments to Public Sector Standard Consultancy Agreement (SCA) for Pandemic Resilient Contracting**

**(i) Amendments to the Main Terms and Conditions of the Public Sector Standard Consultancy Agreement (SCA) in *italic***

**1.3 DEFINITION**

(1) Words importing the singular only also include the plural and the masculine includes the feminine and vice-versa where the context requires.

...

(5) *“Contract” means the contract between the Employer and the Contractor in respect of the Works and shall have the same meaning as defined in Clause 1.1 of the Public Sector Standard Conditions of Contract for Construction Works.*

...

(12) *“Pandemic Outbreak” means a pandemic or an outbreak of infectious disease occurring over a wide geographical area crossing international boundaries, usually affecting a large number of people, declared by:*

*(a) The World Health Organisation or any international-health related authority;*

*(b) The health-related authority in the geographical area where the pandemic or infectious disease is occurring; or*

*(c) The Ministry of Health of Singapore*

(13) “Project” means the proposed works stated in the Appendix.

(14) *“Provisional Sum Item” means an item of work (including a measure to be adopted in respect of a Pandemic Outbreak) which shall only be executed or provided upon instruction in writing by the Employer, who may decide that the work in whole or in part or not at all may be carried out by the Consultant.*

...

(17) *“Superintending Officer” means the person, firm or corporation appointed as such by the Employer for the purposes of administering the Contract between the Employer and the Contractor in respect of the Works.*

**Rationale:** Clauses 1.3(5), 1.3(12), 1.3(14) and 1.3(17) are added as these terms would be frequently referenced throughout the Standard Consultancy Agreement.

**(i) Amendments to the Main Terms and Conditions of the Public Sector Standard Consultancy Agreement (SCA) in *italic***

**5 REMUNERATION OF THE CONSULTANT**

...

(5) *Where an extension of time has been granted for performance of the Works by:*

(a) *the Superintending Officer under the Contract; or*

(b) *under the applicable laws,*

*to address a Pandemic Outbreak (the duration of such extension, the “**Pandemic Outbreak EOT Duration**”), the Consultant shall be entitled to remuneration by the Employer for the Pandemic Outbreak EOT Duration computed in accordance with the formula as set out in Annex B of the Appendix.*

Rationale: The new Clause 5(5) allows co-sharing of prolongation cost between the Employer and Consultant due to lengthened project duration arising from Pandemic Outbreak.

**7 ADJUSTMENT OF FEE**

7.3 *Additional Services arising from or in relation to a Pandemic Outbreak*

(1) *In the event the Employer instructs the Consultant in writing to provide services in addition to the Services and such additional services arise from or are in relation to a Pandemic Outbreak (“Pandemic Outbreak Additional Services”), the fee payable by the Employer to the Consultant for the Pandemic Outbreak Additional Services shall be at the rates set forth in the Appendix, or if no rate for any Pandemic Outbreak Additional Service is set forth in the Appendix, at such rate to be agreed in writing between the Employer and the Consultant. Where there is no rate set forth in the Appendix for any Pandemic Outbreak Additional Service and the Employer and the Consultant fail to agree on the fee payable by the Employer to the Consultant for such Pandemic Outbreak Additional Service, the Consultant shall not be obliged to perform such Pandemic Outbreak Additional Service.*

Rationale: The new Clause 7.3(1) provides clarity and certainty to consultants that they would be entitled to remuneration for additional services required to be rendered by the Employer arising from Pandemic Outbreak.

**16 PROVISIONAL SUM**

(1) *Where the Consultant is required by the Employer to execute or provide a measure described as a Provisional Sum Item in relation to the Project, the Consultant shall be reimbursed for the actual cost of such Provisional Sum Item, provided that (i) such costs are no higher than fair market rates incurred for the Provisional Sum Item, and (ii) such costs did not, directly or indirectly, arise out of or in connection with any negligence, breach of contract, unlawful or wrongful action or omission, fraud, bad faith, wilful misconduct or breach of any duty of the Consultant, any of its sub-consultants or sub-contractors, or any of their respective directors, officers, employees or agents.*

Rationale: The new Clause 16(1) allows the Employer to include a provisional sum for known-unknown costs arising from Pandemic Outbreak or any other additional non-pandemic related items, and to reimburse the Consultant accordingly.

(ii) Amendments to the Annexes of the Public Sector Standard Consultancy Agreement (SCA) in *italic*

## ANNEX B – REMUNERATION OF THE CONSULTANT

### 2 ADDITIONAL EXPENSES

2.1 In addition to the Consultant's fee stated in Clause 5 of this Agreement, the Employer hereby agrees to reimburse the Consultant the following approved expenses *in relation to the Project*:

...

(10) *50% of Pandemic Compliance Costs. For the purposes of this Clause 2.1(10), "Pandemic Compliance Costs" means costs incurred by the Consultant in relation to the Project to comply with prevailing laws and regulations in respect of a Pandemic Outbreak, but excluding (i) all costs reimbursed to the Consultant under any other provision of this Agreement, and (ii) all costs in respect of which the Consultant receives or will receive or is eligible to receive any government or statutory relief or subsidy.*

Rationale: The new Clause 2.1(10) allows for co-sharing of unknown compliance costs that could arise from future Pandemic Outbreak.

### 3 REMUNERATION FOR PROJECT PROLONGATION

3.1 *Project Prolongation Arising From a Pandemic Outbreak*

(1) *For the purposes of Clause 5(5) of the Agreement, the formula for computing the Consultant's remuneration by the Employer for the Pandemic Outbreak EOT Duration shall be as follows:-*

$$\left( \begin{array}{c} \text{Estimated} \\ \text{equal} \\ \text{monthly} \\ \text{payment for} \\ \text{Stage 4 of} \\ \text{Annex C} \end{array} \times \begin{array}{c} \text{Pandemic} \\ \text{Outbreak} \\ \text{EOT} \\ \text{Duration} \end{array} \right) - \begin{array}{c} \text{Any relevant} \\ \text{government or} \\ \text{statutory relief /} \\ \text{subsidy received by} \\ \text{Consultant due to} \\ \text{Pandemic Outbreak} \\ \text{in relation to the} \\ \text{Project} \end{array} \Big] \times 50\%$$

Rationale: The new Clause 3.1(1) provides a pre-determined formula for the computation of the remuneration quantum in the event of project prolongation arising from a Pandemic Outbreak.

(ii) Amendments to the Annexes of the Public Sector Standard Consultancy Agreement (SCA) in *italic*

**ANNEX C – PAYMENT SCHEDULE**

1.0 Interim payments to the Architect shall be made upon the completion and acceptance by the Employer of the items of Services provided as set out below: -

...

*^ “equal monthly payments” shall refer to payments of a sum on a monthly basis for the construction stage, such sum to be computed based on the amount of fees payable under item 4.1a above divided equally by the number of months over which the construction stage of the Project is scheduled to be completed as set out in the Employer’s Requirements. The calculation of such “equal monthly payments” shall not take into account any extension of time that may be granted by the Superintending Officer under the Contract, or under any applicable laws, unless otherwise agreed in writing between the Employer and the Consultant. No monthly payments will be made to the Consultant during such periods of extension.*

Rationale: The footnote was added to make clear that the equal monthly payment during the construction stage should not be reduced and affected by EOT.

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