

Our ref: BCA ID 86.10.18

Procurement Policies Department
Business Development Group

18 August 2021

Dear Sir/Madam,

CIRCULAR ON THE PUBLIC SECTOR APPROACH FOR COVID-19 (TEMPORARY MEASURES) ACT 2020 PART 10A – RELIEF FOR CONSTRUCTION CONTRACTS AFFECTED BY INCREASE IN FOREIGN MANPOWER SALARY COSTS

This circular informs the Built Environment (“BE”) sector on the public sector approach to provide additional payment to address the increased foreign manpower salary costs for the period of 1 October 2020 to 30 September 2021, in respect of eligible construction contracts, under Part 10A of COVID-19 (Temporary Measures) Act 2020 (“COTMA”).

Background

2 As informed in BCA’s circular dated 6 August 2021, Part 10A of COTMA has commenced on 6 August 2021¹. Part 10A provides a relief framework to allow contract parties to adjust the contract sum to address the increase in foreign manpower salary costs from 1 October 2020 to 30 September 2021 in respect of Work Permit Holders (“WPHs”) due to the COVID-19 pandemic. The intent of Part 10A is for parties to negotiate and reach a mutually agreeable arrangement to address the increase in foreign manpower salary costs, failing which parties can seek an Assessor’s determination to adjust the contract sum of a construction contract that satisfies the stipulated criteria under Part 10A.

Eligible contracts

- 3 COTMA Part 10A is applicable to a construction contract that satisfies the following criteria:
- ✓ Construction contract entered into before 1 October 2020, including construction contract that was automatically renewed on or after 1 October 2020;
 - ✓ Construction works under the construction contract have not been certified as completed as at 10 May 2021; and
 - ✓ Construction contract has not been terminated before 10 May 2021 (or the notice for the termination of the construction contract has not been given before 10 May 2021).

¹ Refer to BCA circular on the commencement of Part 10A at <https://go.gov.sg/cotma10a>.

COTMA Part 10A does not cover construction contracts for the carrying out of construction works at or on a residential property (within the meaning of the Residential Property Act (Cap. 274)) that do not require the approval of the Commissioner of Building Control under the Building Control Act (Cap. 29).

Approach for Public Sector Construction Contracts

4 While COTMA Part 10A is premised on negotiation between contract parties, there is merit for a common public sector approach to be adopted for foreign manpower salary costs increase under eligible construction contracts, so as to minimise the time and resources spent in negotiation. The following approach will be adopted:

- i) For the period of 1 October 2020 to 30 April 2021: **The public sector will take a proactive stance by offering a base 1.3% of monthly progress payment to address foreign manpower salary costs increase for eligible construction contracts under COTMA Part 10A.** 1.3% is an industry average figure derived from the estimated monthly increase of WPH wages (based on MOM's data) in the construction sector against industry-level certified progress payment for that month. MOM's data shows that the median WPH wages in May 2021 were 15 to 30% higher compared to pre-COVID levels. **Contractors that have incurred foreign manpower salary costs increase more than the industry average of 1.3% monthly progress payment can still put up their proposed adjustment to the Contract Sum to the respective GPE for negotiation.**
- ii) For the period of 1 May 2021 to 30 September 2021: As the Government has provided an additional \$160 of foreign worker levy rebate to all construction workers for every month from May 2021 to December 2021, based on the latest data, the levy rebate provided would cover more than 50% of the average increase in the wages of construction foreign workers from May 2021 onwards as compared to pre-COVID level. **GPEs would not increase the progress payment from 1 May 2021 to 30 September 2021 to address the increase in foreign manpower salary costs for the time being.** BCA will continue to monitor and review the impact of increased foreign manpower salary cost.

5 GPEs have been informed to adopt the following steps for eligible public sector construction contracts under para 3:

Step 1	GPE will calculate amount payable to the Contractor in respect of increased foreign manpower salary costs under COTMA Part 10A, based on 1.3% of monthly certified progress payment amount for every month during which the contractor experienced increased foreign manpower salary costs during the period between 1 October 2020 to 30 April 2021 and inform the contractor.		
	GPE will inform the Contractor using the sample below (Note: numbers shown are for illustration only):		
	<i>Relevant Period #</i>	<i>Monthly Certified progress payment amount for work done in Relevant Period ^</i>	<i>1.3% of monthly certified progress payment amount ^</i>
	1 Oct 2020 to 31 Oct 2020	\$500,000	\$6,500
	1 Nov 2020 to 30 Nov 2020	\$500,000	\$6,500

<i>1 Dec 2020 to 31 Dec 2020</i>	<i>\$500,000</i>	<i>\$6,500</i>
<i>1 Jan 2021 to 31 Jan 2021</i>	<i>\$500,000</i>	<i>\$6,500</i>
<i>1 Feb 2021 to 28 Feb 2021</i>	<i>\$500,000</i>	<i>\$6,500</i>
<i>1 Mar 2021 to 31 Mar 2021</i>	<i>\$500,000</i>	<i>\$6,500</i>
<i>1 Apr 2021 to 30 Apr 2021</i>	<i>\$500,000</i>	<i>\$6,500</i>
<i>Total amount payable by the GPE to the Contractor for increased foreign manpower salary costs under COTMA Part 10A for the Relevant Period (“Adjustment”)</i>		<i>\$45,500*</i>

For contracts using other payment structure e.g. milestone payments, GPE can estimate / pro-rate the value of work done for the Relevant Period and compute the Adjustment by applying 1.3% of such estimate / pro-rated value of work done for the Relevant Period.

^ Excludes Goods and Service Tax (GST), bonus, materials on site / off site, material fluctuation, design cost component, payments made in respect of ex-gratia payment and offset or claw-back from advance payment, deductions and co-sharing of prolongation costs if any.

** GST is applicable to the Adjustment if the contractor is GST-registered.*

Step 2

Contractor agrees and accepts the proposed Adjustment calculated by the GPE

- i) Contractor should accept the GPE’s offer in Step 1 in writing within the 14 days’ timeline to be stipulated by the GPE.
- ii) Upon the Contractor’s written acceptance of the Adjustment, Contractor should include the sum of the agreed Adjustment in their next progress payment claim. No further substantiating documents need to be obtained from the Contractor.
- iii) GPE proceeds to certify and make payment for the agreed Adjustment according with existing payment terms under the Contract.

Note: Contractor that wishes to claim more than the sum of Adjustment can prepare and put up full justifications and substantiating documents (such as actual payslips for Work Permit Holders engaged for the project, proof of Work Permit Holders’ deployment to the project) for his total proposed adjustment to the Contract Sum to the respective GPE for negotiation. GPE will not increase the progress payment by 1.3% as GPE would not be able to adjust the Contract Sum without Contractor’s acceptance of offer.

Approach for Private Sector Construction Contracts

6 Notwithstanding that the approach above applies to public sector construction contracts, private sector contract parties (including subcontracts) are encouraged to adopt similar method to minimise the potential time and resources spent in negotiation. COTMA sets the minimum approach to ensure that no single stakeholder bears an undue share of the burden imposed by COVID-19 and encourages contract parties to further discuss and mutually agree on how to co-share other additional costs incurred due to COVID-19. As COVID-19 is unprecedented and all parties would have suffered to certain extent, we hope all project parties can come together and agree on an amicable outcome for the project.

Clarification

7 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)