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Procurement Policies Department
Business Development Group

10 November 2021

Dear Sir/Madam,

CIRCULAR ON EX-GRATIA EXTENSION OF TIME (EOT) DUE TO COVID-19 EVENTS FOR JANUARY – JUNE 2021 IN PUBLIC SECTOR CONSTRUCTION CONTRACTS

This circular informs the Built Environment sector on the grant of ex-gratia extension of time (“EOT”) for delay in public sector construction contracts due to COVID-19 for period from 1 January 2021 to 30 June 2021.

Background

2 The following circulars were earlier issued to help ease claims for EOT under eligible construction contracts:

Date of Circular	Key Information in Circular
30 November 2020	For period between 7 April 2020 and 6 August 2020: Part 8A of the COVID-19 (Temporary Measures) Act 2020 (“COTMA”) provides a universal EOT of 122 days.
27 April 2021	For period between 7 August 2020 to 31 December 2020: 49-day ex-gratia EOT to be granted to eligible contracts for delay due to loss of productivity arising from COVID-19 related events.

Ex-gratia EOT for delay due to loss of productivity from January 2021 to June 2021

3 As the COVID-19 pandemic situation continues to impact the productivity on site, construction activities have not been able to reach pre-COVID level and led to further delays for construction projects. Hence, for eligible public sector construction contracts, **government agencies will grant ex-gratia EOT of 34-days (or part thereof) due to loss of productivity for the period from 1 January 2021 to 30 June 2021**, see Table 1 for details. The eligibility criteria remain the same as the previous BCA circular dated 27 April 2021 i.e. for public sector construction contracts¹:

- (i) in which the tender was closed on or before 1 June 2020²

¹ 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.

² Notwithstanding, government agencies have the flexibility to grant ex-gratia 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).

- (ii) that were 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).

Table 1: Ex-gratia EOT to be granted to eligible construction contracts

Month	Industry-level Certified Progress Payment (compared to pre-COVID level) (A)	Estimated loss of productivity (B = 100% - A)	Total EOT to be granted ^[a]
Jan 2021	86%	14%	4 days
Feb 2021	77%	23%	6 days
Mar 2021	81%	19%	6 days
Apr 2021	78%	22%	6 days
May 2021	77%	23%	7 days
Jun 2021	84%	16%	5 days
Total EOT to be granted (Jan 2021 to Jun 2021):			34 days

[a] Similar to the 49-days ex-gratia EOT as announced in BCA circular dated 27 April 2021, the ex-gratia EOT for 1H2021 was computed based on the estimated loss of productivity in terms of industry monthly progress payment (i.e. industry output) as compared to pre-COVID level.

- 4 The following procedure will continue to apply:
- No claim for the ex-gratia EOT is required from contractors.** The ex-gratia EOT will apply unless the government agency assesses there are strong grounds³ which deter the grant of the ex-gratia EOT.
 - Contractors which wish to seek longer EOT for the same period shall provide the necessary substantiation for government agencies' assessment.** Government agencies can grant such longer EOT if they assess such requests to be appropriate. For more information, please visit the FAQs weblink at <https://go.gov.sg/bca-faqs-simplified-claim-process>.

5 For the ex-gratia EOT for eligible contracts regarding the period from 1 July 2021 to 31 December 2021, a similar grant of ex-gratia EOT will be announced when industry output data is available. For contracts which are not eligible for the ex-gratia EOT but are using the Public Sector

³ 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, government agencies have the flexibility to reduce (or not to grant) ex-gratia EOT accordingly.

Standard Conditions of Contract (PSSCOC) (8th Edition), contractors can rely on contractual provisions under the PSSCOC (8th Edition) to claim for EOT for such COVID-related delay.

See below table for more details including an overview of time-related contractual relief announced for construction contracts since last year.

Eligibility criteria	Period			
	Year 2020		Year 2021	
	7 Apr 2020 to 6 Aug 2020	7 Aug 2020 to 31 Dec 2020	1 Jan 2021 to 30 Jun 2021	1 Jul 2021 to 31 Dec 2021
Public sector construction contracts in which tenders were <u>closed on or before 1 June 2020</u>	<u>122-days</u> universal EOT under COTMA Part 8A	<u>49-days</u> ex-gratia EOT as announced in BCA circular dated 27 Apr 2021	Government agency to grant <u>34-days ex-gratia EOT</u> [See Para 3 of this circular]	<i>Similar grant of ex-gratia EOT will be announced later</i> when industry monthly progress payment data is available.
Public sector construction contracts in which tenders were <u>closed after 1 June 2020</u>	Contractors can rely on contractual provisions under the PSSCOC (8th Edition) Clause 14.2 to claim for EOT for such COVID-related delay.			
Private sector construction contracts	<u>122-days</u> universal EOT under COTMA Part 8A	Contracting parties can take reference from BCA's circular and negotiate on the appropriate period of EOT to be provided.		

6 **Private sector construction contracts:** Contracting parties can take reference from this circular and negotiate on the appropriate period of EOT to be provided.

7 **Simplified claim process for COTMA Part 8B prolongation cost.** For eligible construction contracts, government agencies will continue to compute the prolongation cost pay-out based on the EOT provided for COVID-related delay from 1 January 2021 to 30 June 2021, via the simplified claim formula⁴.

Clarifications

8 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.

⁴ Refer to Paragraph 4 of BCA Circular dated 7 Jul 2021 on Further Simplified Claim Process for Prolongation Costs in Public Sector Construction Contracts due to COVID-19 Events.

Thank you.

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

(Transmitted via email)