

Our ref: BCA ID 86.10.18

Procurement Policies Department
Business Development Group

27 October 2021

Dear Sir/Madam,

CLARIFICATIONS ON PUBLIC SECTOR APPROACH FOR COTMA PART 10A

This circular informs the Built Environment (“BE”) sector on clarifications for the public sector approach of providing base 1.3% additional payment for eligible construction contracts under Part 10A of the COVID-19 (Temporary Measures) Act 2020 (“COTMA”).

Background

2 The following circulars were earlier issued to address foreign manpower salary costs increase for eligible public sector construction contracts:

Date of Circular	Key Information in Circular
6 August 2021	Commencement of COTMA Part 10A from 6 August 2021
18 August 2021	For eligible construction contracts under COTMA Part 10A, the public sector will take a proactive stance by offering an additional 1.3% of monthly progress payment (i.e. the “ 1.3%-Adjustment ”) to address foreign manpower salary costs increase for the period of 1 October 2020 to 30 September 2021 ¹ .

Clarification to the Public Sector Approach for COTMA Part 10A

3 BCA has received feedback from the industry that contractors would need time to consolidate the foreign manpower salary costs increase (the “**manpower cost increase**”) from their subcontractors, and it is difficult to ascertain whether the actual manpower cost increase would be higher than the base 1.3%-Adjustment initiated by the government agencies under their eligible construction contracts. BCA also noted that there had been perception that the 1.3%-Adjustment was regarded as the final settlement after which contractors should not make further claims on manpower cost increase under COTMA Part 10A to government agencies, if contractors had signed the agreement to adjust the contract sum.

¹ For the Built Environment (“BE”) sector, the prescribed period (“relief period”) under Part 2, Part 8B and Part 10A of the COVID-19 (Temporary Measures) Act has been extended from 30 September 2021 to **31 December 2021**. Refer to BCA circular dated 29 September 2021.

BCA would like to clarify the following:

- a) ***The 1.3%-Adjustment is a base amount which may be increased if contractors are able to provide substantiation for a higher amount.***
- b) ***Main contractors which wish to request an amount beyond the 1.3%-Adjustment can approach the government agency (i.e. their clients) to put up their claim with substantiation latest by 28 February 2022.*** This also provides the government agency an opportunity to address contractor's request for co-sharing of manpower cost increase before contractor's consideration to apply for a Part 10A assessor determination. If the claim contains any suspected fraud, e.g. fabricating or tampering with payslips or other documents, government agencies reserve the rights to claw back any amount already provided to the contractor.
- c) ***For closure on the negotiation process, contractors will be given only one opportunity² to submit such request for each applicable period³.*** Hence, ***contractors should properly determine the applicable period in which such costs have been incurred and submit their substantiations supported with documentary proof (such as manpower deployment records and payslips) on a best effort basis.*** To facilitate a systematic presentation for the negotiation, contractors can refer to the claimed costs breakdown form (accessible at <https://go.gov.sg/cotma10a-costs-breakdown>) to prepare their substantiations for government agencies' assessment.

4 Main contractors can take note of the following scenarios and discuss with their public sector client accordingly:

Scenario A: Contractor has **accepted** government agency's 1.3%-Adjustment (**without any qualification** to reserve its rights to negotiate for further manpower cost increase or the contractor has agreed to the 1.3%-Adjustment as final settlement for manpower cost increase)

Follow up by Agency/Contractor

- a) Government agency (or "**Agency**") would pay out the computed amount based on the agreement.
- b) ***Contractor which wishes to put up their request for higher % of cost-sharing to the agency can do so on or before 28 February 2022 with substantiation*** (e.g. payslips and manpower deployment records). Agency would evaluate contractor's request. If Agency agrees on the amount, Agency will formalise this negotiation with the contractor via a supplemental agreement. The supplemental agreement is to be read together with the earlier agreement made under the 1.3%-Adjustment.

² To avoid doubt, contractors who did not accept the 1.3%-Adjustment shall also be given only one opportunity to submit such request latest by 28 February 2022.

³ The applicable period refers to any month(s) between October 2020 to December 2021. For example: On 1 November 2021, contractor submitted a request to negotiate for manpower cost increase incurred during October 2020 to June 2021 ("**1st Request**"). Subsequently on 1 December 2021, contractor submitted another request to negotiate for manpower cost increase incurred during March 2021 to October 2021 ("**2nd Request**"). Since contractor has already utilised its one opportunity to negotiate cost incurred during March 2021 to June 2021 in its 1st Request, Agency will disregard that period in the 2nd Request. To avoid doubt, Agency will assess cost incurred during July 2021 to October 2021 in the 2nd Request.

Scenario B: Contractor *accepted* government agency's 1.3%-Adjustment *with qualifications* (e.g. reserve its rights to negotiate for further manpower cost increase)

Follow up by Agency/Contractor

- a) Agency would pay out based on the agreement since contractor has accepted the agreement.

Note b) under Scenario A applies if the contractor wishes to request for an amount beyond the 1.3%-Adjustment.

Scenario C: Contractor *rejects* government agency's 1.3%-Adjustment or *has not replied* within the timeline (and the contractor also has not submitted substantiation for its intended claimed amount)

Follow up by Agency/Contractor

- a) As the contractor could have perceived Agency's 1.3%-Adjustment as a final settlement and rejected it as a result, Agency would therefore give the contractor another opportunity to consider the 1.3%-Adjustment. Agency would inform eligible contractor that they can put in the adjustment amount as indicated in the 1.3%-Adjustment as payment claim where Agency will pay in its payment response.
- b) To avoid doubt, if the contractor does not include any adjustment amount in their payment claims despite being informed by the Agency, there is no action required from the Agency.

Note b) under Scenario A applies if the contractor wishes to request for an amount beyond the 1.3%-Adjustment.

5 Cost-sharing of manpower cost increase from 1 Oct 2021 to 31 Dec 2021. With reference to the BCA circular dated 29 September 2021 on the "Extension of Relief Period Under COTMA for Relevant Contracts in the Built Environment Sector", a 3-months extension of relief period for COTMA Part 10A was announced – where the last day of relief period i.e. 30 September 2021 was extended to 31 December 2021. For this extended period from 1 October 2021 to 31 December 2021, BCA will continue to monitor and review the impact of manpower cost increase and the need for government agencies to co-share such costs increase (by increasing the progress payment), taking into account of the latest wage data of Work Permit Holders against the Foreign Worker Levy rebate already provided to contractors.

Clarifications

6 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.

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Building and Construction Authority

(Transmitted via email)