

Drainage Services Department
Technical Circular No. 2/2003

Authority to Approve Variations, Additional Payments and
Additional Time in Works Contracts

(This Circular should be seen by all assistant professionals and professionals of all ranks, Senior Treasury Accountant, accounting and clerical staff dealing with accounting matters)

Introduction

The Stores and Procurement Regulations (SPR) set out the different level of authorities for the approval of variations to contract expenditures.

2. This Circular sets out the department's requirements and procedures on the application of these regulations in contract administration. This includes approval to increase contract sums; referral of variations and other commitment of expenditure and time extensions for works contracts including term contracts. Reference should also be made to the respective consultancy agreements in respect of contracts managed by consultants.

3. DSD Technical Circular Nos. 3/92 and 2/94 are hereby cancelled.

4. Amongst the relevant WBTCs/ETWBTC(W)s, FCs (Financial Circulars) and the SPR which are currently in force, SPR 520 to SPR 525 are of specific relevance to this Circular.

Variations and Increase in Contract Sum within contract scope

5. Part A of the Schedule of Authorities for Variation of Contracts in Appendix V(B) of the SPR sets out the various level of authority in the approval of variations and additional payment in works contracts. This authority covers payment resulting in an increase to the original contract sum. The authority, in any event, is subject to funds being available within the Approved Project Estimate (APE) of the works contract in question.

6. In the context of SPR 520, the term “variation” refers, not only to those variations issued within the terms of the contract, but also to items in Appendix V(B) of the SPR which includes price fluctuations, remeasurements, claims and additional works outside the terms of the original contract.

7. In respect of variations and additional payments within the scope of the contract, the approval authorities are stated in Appendix V(B)AI of the SPR which is reproduced in Appendix I hereto.

8. For the purpose of this Circular, the term “contingencies” covers any provisional sum, contingency sum and daywork. The term “Original Contract Value” shall mean Contract Sum less contingencies, and the term “Contract Sum” shall mean the sum approved by the respective authority for expenditure on a contract, i.e. the tender sum approved for the award of that contract.

9. In the context of term contracts and for compliance with WTO GPA, the Original Contract Value referred to in SPR 520(e) shall mean the annual

estimated expenditure. However, in the application of approving authorities referred to in para 7 above the Original Contract Value of a term contract shall mean the estimated value of each Works Order.

10. In addition to the financial limits set out in Appendix I which govern the sum of all variations ordered under the contract, separate approval from the officers listed in Appendix II hereto is required for each individual variation based on the value of the variation concerned.

11. In situations where the approval of a variation will lead to an increase in contract sum which would require a higher ranking officer to approve but the individual value of the variation does not, such a variation should be approved by the higher ranking officer.

12. Approval for variations should be obtained before the variations are ordered. Retrospective approval would render the approval process meaningless and is not allowed. If a variation has to be ordered urgently, the appropriate approving officer should be notified of the details of the variation as soon as it has been ordered. This procedure applies strictly to emergencies only, such as the implementation of urgent safety measures.

13. If due to whatever reason the cost of a variation exceeds its estimate made at the time approval was given and the value of this variation turns out to be in excess of the limit of the officer who gave the approval, the project engineer should as soon as the deviation is known notify the appropriate

approving officer through the original approving officer the reason for the increase in estimate. If the increase is purely the result of remeasurement, under-estimation or price fluctuation, a notification with explanations would suffice and separate approval for such an increase is not required. However, if the increase is due to a change in scope or a change in the nature of the original variation, it should be treated as a new variation and the necessary approval from a suitably ranked officer listed in Appendix II is required prior to instruction given to the contractor of the change.

14. When a variation or additional payment is approved by the relevant officer and such approval would lead to an increase in the contract sum within his authority, no separate approval for an increase in contract sum is necessary.

Contractor's Alternative Design/Proposal and Additional Works outside contract scope

15. The approval for acceptance of an alternative design, method, etc., proposed by the contractor during the course of the works, is vested with officers at D2 rank or above. Such approval, however, is subject to there being no additional cost implications or no additional works outside the terms of the original contract.

16. In situations where additional works outside the terms of the original contract are required or acceptance is required of an alternative design, method, etc. proposed by the contractor during the course of works involving additional cost implications, provided that these additional works are within the approved

scope of the project (the PWSC paper) and subject to funds being available within the APE, the approving authorities are set out in Appendix III hereto.

Non-certified Claims

17. In situations where payment is required to settle a claim which is not certified under the contract and is not the subject of an arbitration award or an award of the court (examples are payments resulting from negotiation and mediation with the contractor), the approval of such payment is subject to availability of funds and the advice of the Legal Advisory Division (Works) of the Environment, Transport and Works Bureau.

18. The Director has been delegated the authority to approve payments of this nature up to an accumulated value of \$3.0 million. When this value is exceeded, approval is required from the Secretary for Financial Services and the Treasury. If it is proposed to settle a claim by negotiation, prior agreement on the negotiation strategy and a ceiling figure should be sought from the relevant authority in accordance with the stipulated financial limit.

Term Contracts

19. Term contracts are managed in a similar manner as described above. However, officers should also make reference to the policy stated in WBTC 15/99 on the management of maintenance works contracts. Star rates and variations are not encouraged and where tendered rates are not available,

separate tenders for such works, where practicable, are preferred. When star rates are required or when higher tendered percentages are necessary, their justifications shall be submitted for prior approval from officers at D2 level or above.

Referral of Variations and Other Commitments

20. Request for approval to variations or other financial commitments should give all relevant details including the reasons for the variation or additional payment and the estimated value. If the request is for a variation, its implication on the time for completion of the contract should be given. If the application involves an increase in contract sum, a breakdown of the revised contract sum and a financial statement of the project should be given. A sample of the breakdown and the financial statement is shown in Appendix IV.

21. In estimating the value of the variation, any savings to the Contract Sum arising from the variation itself should be accounted for in the submission. However, any other reductions which are not related to the variation in question should not be mixed up with or used to offset the value of the variations being procured. The estimate should also include any likely prolongation or disruption costs or other commitments to expenditure in addition to the direct cost of the works. However, officers should note that prolongation or disruption costs arising from variations should be treated as claims and they are subject to approval or referral procedures stated elsewhere in this Circular.

Standard Constraints on the Engineer

22. Where the contract adopts the 1999 edition of the GCC for capital works or the 2002 edition for term maintenance works, WBTC Nos. 19/2000, 20/2000 and 16/2002 introduce a financial constraint on the Engineer which is to be stated in the Appendix to the Form of Tender. The current policy is for the Engineer to obtain the agreement of the Employer before ordering variation with estimated expenditure in excess of \$300,000 or otherwise committing the Government to expenditure in excess of \$300,000, other than in respect of claims. This constraint applies to both in-house contracts as well as consultants managed contracts. The Employer is the officer delegated the authority to sign contracts with the contractor and in DSD this is usually the relevant Assistant Director. However, a higher ranking officer would be required to approve a proposed variation if it exceeds the financial limit of a D2 rank officer as indicated in Appendices I, II & III.

Referral of Claims for Additional Payment

23. Approval for payment of certified claims shall be in accordance with the schedule set out in Appendix I. However, in accordance with the standard constraints imposed on the Engineer under WBTCs 19/2000 and 20/2000 and 16/2002, the Engineer is required to report all claims to the Employer including the principles underlying the assessment of each claim for the Employer to provide his view on the matter before the Engineer notifies the contractor of his assessment.

24. Before the submission of any claim assessment to the Employer, the project officer should clear any contractual doubts with SE/CA. When the principle of assessment of the claim has been established, the assessment shall be submitted to the Employer via SE/CA, for his views.

Referral of Claims for Delay

25. For in-house contracts, report of delays to the progress of the contract works together with the assessment of extension of time for delays other than those solely in respect of inclement weather conditions or the hoisting of tropical cyclone warning signals should be submitted to the following officers for their views in respect of contracts under their control:-

- (a) For capital works contracts:
 - (i) where the extension of time, if granted, will not render the aggregate of all granted extensions of time to exceed 25% of the original time for completion of the contract – officers of D1 rank or above;
 - (ii) where the extension of time, if granted, will render the aggregate of all granted extension of time to exceed 25% of the original time for completion of the contract – officers of D2 rank or above.

- (b) For term contracts – officers of D1 rank or above.

For contracts managed by consultants, please refer to the requirements stated in the consultancy agreement.

Contracts Managed by Consultants

26. For contracts managed by consultants, project officers should ensure that the relevant procedures stipulated in WBTC No. 13/92 are followed for contracts not adopting the 1999 edition of the GCC for capital works or the 2002 edition of the GCC for term maintenance works. Otherwise WBTC 19/2000, 20/2000 and 16/2002 shall apply. As a general rule, prior approval for variation of value above \$300,000 should be obtained from the Employer. In the context of all consultancy agreements, the Employer is represented by the Director's Representative (DR) and this is normally the Assistant Director responsible for the project concerned. Claims for cost and extension of time (other than those solely in respect of inclement weather conditions or the hoisting of tropical cyclone warning signals) should be referred to the DR for his view before the consultants notifies the contractor of his assessment. However, where the value of the variations or additional payment exceeds the financial limit of a D2 officer, approval should be sought from a higher ranking officer as indicated in Appendices I, II, and III through the responsible Assistant Director.

27. Before any referral of variations or claims is made, the responsible project officer should ensure that all contractual doubts are cleared with SE/CA. Divisional heads should ensure that the submissions to the Employer have been properly checked and are in order before a recommendation is made.

Enquiries

28. All enquiries on this Circular should be addressed to SE/CA.

A handwritten signature in black ink, appearing to read 'T. K. Cheung', with a long horizontal stroke extending to the left.

(R T K Cheung)

Director of Drainage Services

Schedule of Authorities for Variation of Contracts

(Derived from Appendix V(B)AI of the SPR)

Rank of officer	Limit of authority
Senior Professional	Up to the limit that the estimated final contract sum, after including all variations and additional payment, would not exceed the total sum of the original contract value plus the contingencies specified in the contract
Officer at D1 rank	Up to the limit of the Senior Professional officer plus 5% of the original contract value or plus \$3.0 million, whichever is the greater
Officer at D2 rank	Up to the limit of the Senior Professional officer plus 10% of the original contract value or plus \$4.5 million, whichever is the greater
Officer at D3 rank or above	Up to the limit of the Senior Professional officer plus 20% of the original contract value or plus \$6.0 million, whichever is the greater
Controlling officer	No limit but within the A.P.E.

The financial limits stated above shall be updated to accord with any changes to the SPR.

Appendix II

Schedule of Authorities for Individual Variation of Contracts

(Taken from Appendix V(B)AI of the SPR)

Rank of officer	Individual value of variation
Professional	Not exceeding \$150,000
Senior Professional	Not exceeding \$300,000
Officer at D1 rank	Not exceeding \$1.0 million
Officer at D2 rank	Not exceeding \$2.0 million
Officer at D3 rank or above	Not exceeding \$3.0 million
Controlling officer	No limit

The financial limits stated above shall be updated to accord with any changes to the SPR.

**Schedule of Authorities for Additional Works
Outside the Terms of the Original Contract and
Acceptance of Alternative Design, Method etc.
Involving Additional Cost Implications**

(Taken from Appendix V(B)AIII & AIV of the SPR)

Rank of officer	Accumulated value of variations under the situations in paragraph 16 of this Circular
Senior Professional	Up to \$300,000
Officer at D1 rank	Up to \$600,000
Officer at D2 rank	Up to \$1.0 million
Officer at D3 rank or above	Up to \$2.0 million
Controlling officer	Up to \$3.0 million
Secretary for Financial Services and the Treasury	Up to 50% of the original contract value for contracts covered by WTO GPA but no limit for non-WTO GPA contracts

For the avoidance of doubt, please note that the accumulated value of variations shown above refers to the sum of all such variations with positive values only (i.e. such variations with negative values shall not be counted).

The financial limits stated above shall be updated to accord with any changes to the SPR.

THE BREAKDOWN OF THE REVISED CONTRACT SUM

			\$
(a)	Original contract sum		
(b)	Less Provisional Sums, Dayworks and Contingencies		
(c)	Original Contract Value (a – b)		
(d)	Any committed variations and claims		
(e)	Previously approved increased contract sum (c + d)		
(f)	Additional expenditure for the current approval:		
(g)	Revision in estimates for VO previously issued	\$	
(h)	Remeasurement changes in BQ items	\$	
(i)	Variation order	\$	
(j)	Total sum for the current approval (g + h + i)		
(k)	Revised contract sum (e + j)		

The above table shall be amended to suit the term contract features.

THE PRESENT STATUS OF THE APPROVED PROJECT ESTIMATES

PWP Item No.	Original APE	\$
Any adjustment to APE		\$
Any adjustment for other commitment		\$
Any Allocation Warrant		\$
Net APE available for this Contract		\$