



# RIAS

The Royal Incorporation  
of Architects in Scotland

## Practice Information Note

### FI2014

#### **Extension of Time and Contractors' claims: when construction sites re-open**

RIAS Practice Services is receiving queries from practices who are raising the impact of social distancing measures once construction sites open up again.

Adhering to social distancing is likely to reduce contractors' activity and productivity significantly and for many months and result in requests for extensions of the contract period.

#### **Extension of the contract period**

The contractor will be required to make the case for an extension of time in the usual way under a neutral Relevant Event such as a statutory authority, after the Base Date, exercising its statutory powers which directly affects the execution of the Works (clause 2.29.13 of SBCC SBC/Q/Scot 2016 Ed (the "Contract") or Force Majeure (clause 2.29.15 of the Contract). The RIAS Contracts Committee warned that the contractors are likely to make cases for additional money.

It should be noted that neither the exercise of statutory powers, after the Base Date (unless the change to the Statutory Requirements after the Base Date necessitates an alteration to the CDP) nor Force Majeure, constitute Relevant Matters under clause 4.22 of the Contract, giving rise to payment for loss and expense under clause 4.20 of the Contract. It is only if the limitations on access to the site, to working space or the carrying out of the works is imposed by the Employer does it become a Variation (clause 5.1.2) for which the contractor is entitled to additional payment and for the resultant loss and expense. It is therefore very important that the Architect avoids giving any instructions regarding the manner of the carrying out of the works which could be construed as constituting such an imposition by the Employer. It is up to the contractor to run his operations on site as he will and, of course, in compliance with any Statutory Requirements in force at the time.

#### **Professional Fees**

The increased burden of protracted Contract Administration is likely to affect RIAS Practices. With the prolongation of services on construction projects, practices may need to resource jobs for longer than anticipated. How can professional services fees be renegotiated or adjusted accordingly?

The mechanism for charging additional professional fees should be covered in the architect's appointment with his/her client. The RIAS Appointments allow for extra fees when extra work is required.

*If appointed under SCA 2018 or ASP 2018, Part One of the conditions (conditions common to all commissions) clearly states that additional fees may be due for extra work.*

*Dealing with the aftermath of contractor insolvency, breach of contract etc... would normally be considered extra work. Authority is given under Clause 1.5.7 of the Architect's Appointment. Architects should clarify, at the outset, with the client the*



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*extent to which additional fees may be necessary and agree the relevant hourly rate(s). It is wise to confirm such agreements in writing.*

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