**UPDATED CONTRACTUAL GUIDANCE**

**COVID 19 CLAUSES – BEWARE OF CONTRACT AMENDMENTS**

We attach for your information a copy of a letter issued by the CICV Forum to the Scottish Government Minister responsible for the Construction Industry.

The reasons for this letter arose as a result of consideration of recent Contracts put out to tender by three separate Scottish Local Authorities, which have amended the SBCC Standard Building Contracts to take cognizance of the contractual implications of a potential outbreak of Covid 19 resulting in a suspension of construction operations.

The implications of such an event has very significant financial implications for the main contractor and the supply chain, as a result of the transfer of risk.

The outcome would be that a contractor might be entitled to an extension of time [depending on the wording of the Building Contract] but would not be entitled to the recovery of any loss and expense. Further, the Employer/CA may be able to effectively suspend certification and payment obligations without consequence, if there is Covid event.

The CICV Forum recommends the following:

1 Carefully read Tender Documents to see if there is a “Covid 19” Clause. If a non-standard contract is used i.e. a main contractors’ own terms and conditions, then check these carefully

2 Take legal advice on the wording of any amendments, and request clarification from the Procuring Body what the purpose of the amendment is and why they consider the amendment to be necessary.

3 Assess the risk.

4 Try to negotiate out any onerous provisions.

5 Decide if you wish to expose your business to the associated risks.

You are requested to refer any onerous and/or punitive conditions of contract to your Member Body in order that we can provide evidence of such practices, as we have been doing on a regular basis. The CICV Forum is currently engaged with the Scottish Government to discourage such contract amendments, and to highlight the punitive impact of such amendments.

**CICV Forum**

**Commercial and Pipeline Group**

**20 August 2020**

**Attached: CICV Forum letter to Scottish Government 18 August 2020**