

**Ministry of Education**

**Ministère de l'Éducation**

Capital Program Branch

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**2021: SB22**

**Date:** October 5, 2021

**Memorandum to:** Directors of Education  
School Business Officials  
Secretary/Treasurers of School Authorities

**From:** Paul Bloye  
Director  
Capital Program Branch

**Subject:** Construction Action Plan – COVID-19 Related Incremental  
Direct Costs for School Board Capital Projects Survey and  
Principals for Pandemic Related Provision Language

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COVID-19 has impacted the construction industry resulting in additional costs and delays to school boards' capital projects. The timing and types of impacts of COVID-19 has varied, from the declaration of an emergency at the onset of the pandemic on March 17<sup>th</sup>, 2020, which caused the closure of non-essential construction sites; to interruptions in the material and equipment supply chain; as well as, to the ongoing extra health and safety measures needed on site due to government public health orders.

The government has been monitoring the situation closely and taking action to address the various challenges this pandemic has brought to school board capital projects in terms of extra costs due to the more stringent health and safety requirements, the loss of productivity, and lengthening of timelines for completion of projects. The extra costs were reflected in the results of the COVID-19 Incremental Cost Survey conducted in August 2020, which asked school boards to report on anticipated or incurred COVID-19 related incremental costs for capital projects under construction.

## COVID-19 Incremental Costs Survey

As COVID-19 continues to evolve and impact the construction industry, the ministry is building on the survey completed by school boards last August. This survey is meant to update the information on the direct incremental COVID-19 costs with organized cost categories on defined projects.

### Cost Criteria

To gain a better understanding of the financial impacts of COVID-19 on your construction projects, we are again seeking your assistance from your Finance and Facilities staff to identify any actual or anticipated incremental costs related to issues such as:

- physical distancing;
- project scheduling;
- sanitation and Personal Protective Equipment; and
- materials and manufacturing.

Using the template, school boards are to report any costs that have been or will be incurred directly as a result of the COVID-19 pandemic and the subsequent government public health orders issued since the initial declaration of emergency and outline their plan to manage these incremental costs. Further details regarding the cost categories can be found in Appendix A.

### Project Criteria

School boards are requested to report on capital projects in the template with the following criteria:

- Projects formally approved and funded by the Ministry of Education;
- Construction work on these projects were underway or commencing on or after March 17, 2020 (the day the government declared a provincial state of emergency under the *Emergency Management and Civil Protection Act*); and
- Incremental costs incurred or to be incurred are directly due to the impacts of COVID-19.

This includes projects funded through the Capital Priorities Program and the Child Care Capital and Early Years Capital Program. This excludes federal-provincial programs such as the Climate Action Incentive Fund and COVID-19 Reliance Infrastructure Stream of the Investing in Canada Infrastructure Program (CVRIS-ICIP).

Projects types that would fall under these funding streams include:

- New School Builds;
- Permanent Additions;
- Child Care Centres and/or EarlyON Child and Family Centre Additions and Retrofits;
- Major Capital Renovations or Capital Retrofits.

School board projects funded through annual allocation-based programs and/or board funds, which have experienced extraordinary and incremental COVID-19 related costs, are expected to be managed by the board. This includes projects funded under School Renewal Allocation (SRA), School Condition Improvement (SCI), Proceeds of Disposition (POD) or Temporary Accommodations (TA). It is important to note that there have been significant COVID related investments made in school renewal since the start of the pandemic.

The COVID-19 related incremental costs should not include costs to be covered by a school board's respective insurance provider under the existing policies; or by the project's existing funding, including project contingency funding. School boards are encouraged to keep all the documentation to support the information contained in the survey.

The information is to be collected and submitted through the attached template by each school board. Please submit the completed template no later than October 26, 2021 to your board's Capital Analyst.

If you have any questions or require additional information on completing the template, please contact your Capital Analyst.

## **Principles for Pandemic Related Provision Language**

In addition, the ministry is providing some specific contracting principles for pandemic related provision language that school boards should consider incorporating into their major capital project agreements with general contractors. These provisions are encouraged for future capital projects including projects that have not yet gone to tender. These principles seek to anticipate pandemic-like scenarios within the contract and are intended to assist in establishing clear responsibilities for managing subsequent pandemic induced costs in any future pandemic or public health emergency situation.

These principles for pandemic related provision language encouraged by the ministry for school boards to incorporate into their agreements with general contractors for major capital projects can be found in Appendix B.

The ministry will continue to work with the education sector to assess additional costs associated with addressing the COVID-19 public health emergency.

If you have any questions or require additional information, please contact your Capital Analyst.

Sincerely,

*Original signed by:*

Paul Bloye  
Director  
Capital Program Branch

Attachments:

- Appendix A: Cost Criteria and Examples
- Appendix B: Principles for Pandemic Related Provision Language

## APPENDIX A: Cost Criteria

This section provides details on the types of COVID-19 related incremental costs that school boards need to report on as part of the survey:

- Incremental costs must be shown to have been or will be incurred directly as a result of the COVID-19 pandemic and the subsequent government public health orders.
- Delays or accelerated schedules must be shown to have been a result of the COVID-19 pandemic and the subsequent government public health orders and not due to delays in the performance of the work as planned in the original project schedule.
- Government public health orders constitute, but are not limited to, orders made under the *Emergency Management and Civil Protection Act* and *Reopening Ontario (A Flexible Approach to COVID-19) Act, 2020*, in respect to the COVID-19 pandemic, that increased the health and safety protocols and requirements on construction sites resulting in higher capital construction costs.
- Only COVID-19 related incremental costs incurred on or after March 17<sup>th</sup>, 2020 when the government first declared a state of emergency for the province under the *Emergency Management and Civil Protection Act* are eligible. The end date will be when related government public health orders are repealed (or no longer in effect) or otherwise on a date communicated by the ministry. Anything between these start and end dates would constitute 'During COVID-19' and should be included in the survey. This includes the government order shut down of construction sites in the spring of 2020.
- Only include COVID-19 related incremental costs that are 1) not eligible for coverage by a school board's respective insurance provider under the existing policies; or 2) cannot be covered by the project's existing funding.
- COVID-19 related incremental costs should fall into four categories: Physical Distancing Costs; Costs from Scheduling Issues; Personal Protective Equipment (PPE) and Cleaning Costs; and Material and Manufacturing Costs. A breakdown of each one and criteria for each category are provided below.

Physical Distancing Costs: These costs are required to maintain a safe distance between workers sharing a common space, such as in a breakroom or lunchroom. This also applies to spaces required to change clothes before and after work. Examples include:

- Cost of renting additional office trailers to maintain physical distancing during breaks, lunches, meetings, and when changing work clothes.
- Cost of renting additional toilets.
- Overtime premium to maintain delivery date due to limited number of staff on site.

Costs from Scheduling Issues: These costs are required if the completion date of the project cannot be delayed or the supply of services and materials are delayed. This will apply only if directly related to government issued public health orders. Examples include:

- The cost of keeping the construction site safe and secure for the time the construction site was temporarily closed under a government order.
- The premium portion of salaries if staggered shifts are required to recover lost time.
- The overtime premium of salaries if extended shifts are required to recover lost time.
- Note that the regular hourly labour costs to execute the work should not be included unless shown that this labour would not be required but for the restrictions imposed by a government public health order.
- Costs stemming from delays in the delivery of material due to the pandemic. Note, however, that these costs are limited to those resulting from additional shifts or extended shifts to recover lost time or the cost of using an alternative supplier or material to reduce project delays.
- Costs associated with delays in obtaining municipal permits or site inspections.
- In the presence of project delays directly related to COVID-19, the contractor has the obligation to complete the project on time by means of an accelerated schedule with staggered shifts or overtime. If the project delays could not be recovered with an accelerated schedule, the costs of maintaining the construction site may be included.

Enhanced Sanitation and Personal Protective Equipment: This cost is for personal safety equipment required under the government issued public health orders that exceed the normal sanitation and protective equipment stipulated by the Ministry of Labour, Training, and Skills Development's health and safety standards. Examples include the costs related to the following:

- Personal Protective Equipment
- Cleaning products for enhanced cleaning.
- Labour for the increased frequency of cleaning.
- Labour and materials for the cleaning of additional trailers and toilets.

Materials and Manufacturing: Costs from the suppliers and manufactures who were impacted financially due to meeting the requirements of the government issued public health orders. Only the following incremental costs should be included:

- Additional costs passed on by manufactures and suppliers that can be clearly attributed to COVID-19.

- Cost premiums to use an alternative supplier or materials directly due to COVID-19.

The following chart below provides a quick reference to the various direct incremental COVID-19 costs that may be included within the four categories.

<b>Physical Distancing costs</b>	<b>Costs from Scheduling Issues</b>	<b>PPE and Cleaning</b>	<b>Material and Manufacturing</b>
<ul style="list-style-type: none"> <li>• Additional office trailers</li> <li>• Additional lunchroom trailers</li> <li>• Additional washrooms</li> </ul>	<ul style="list-style-type: none"> <li>• Reduced staff to limit contact</li> <li>• Unavailability of material</li> <li>• Due to shut down</li> <li>• Delays in Permits and Inspection</li> <li>• Overtime premiums</li> </ul>	<ul style="list-style-type: none"> <li>• Hand sanitizer</li> <li>• Masks and Face shields</li> <li>• Gloves</li> <li>• Enhanced cleaning of toilets and trailers</li> <li>• Additional trailers and toilets to clean</li> <li>• Additional cleaning products</li> </ul>	<ul style="list-style-type: none"> <li>• Additional costs from suppliers</li> <li>• Additional costs from manufactures</li> <li>• Additional costs due to alternative suppliers</li> <li>• Additional costs due to alternative materials</li> </ul>

## **APPENDIX B: Principles for Pandemic Related Provision**

The ministry encourages school boards to consider the incorporation of specific principles into their major capital project agreements with general contractors, which consider the COVID-19 pandemic and any future unforeseen public health crisis like a pandemic or epidemic.

Such principles for pandemic related provision are encouraged to be included in contracts for all projects that have yet to go to tender during this continued COVID-19 emergency state and for all future projects including projects post the COVID-19 pandemic.

School boards are encouraged to consider these contract principles for pandemic related provisions in conjunction and consultation with the school board's legal counsel.

Below is a list of nine pandemic principles that the ministry encourages school boards to consider in agreements with general contractors for major capital projects:

- 1) Contracts should anticipate the possibility of public health emergencies, such as pandemics and epidemics, which are beyond the control of the parties and result in unforeseen construction costs.
- 2) In the event of a public health emergency, the distribution of liability between the school board and the general contractor should be clearly outlined.
- 3) Bidders should include in their base bids estimated costs related to public health requirements in force at the time of the bid submission for a time period indicated by the school board.
- 4) Bidders should submit a Pandemic and Epidemic Response and Mitigation Plan detailing how they would prepare for and respond to any potential or actual public health emergency that may affect the project, including a subsequent outbreak of COVID-19.
- 5) In the event that a public health emergency requires the general contractor to incur incremental costs beyond those assumed in the base bids, contractors should be compensated, and schedule relief should be available if necessary.
- 6) In the event that a public health emergency causes supply chain delays, general contractors should receive schedule relief, which could include contract extensions, without penalty, as agreed upon by the parties. Neither party should be entitled to payment for costs incurred by such delays.



- 7) Contractors should not receive compensation that would result in profit. Any potential compensation should only cover increased liabilities incurred by the general contractor stemming from the public health emergency.
- 8) School boards should be entitled to a credit in their favour if public health requirements become less onerous or are eliminated during construction.
- 9) School boards should, with respect to construction projects, assume overall responsibility for compliance with applicable health and safety legislation in force during a public health emergency for workers under their direction and not under the management and control of a general contractor.