Guardian Property & Construction

Tender Clarification Register - Commercial

Subcontract No: ███	Tenderer: ███
Project: ███	Rev: 0
Title: ███	Date: 15/02/2021

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Item No.	Section / Clause	Date	Comment By	Exception / Clarification	Status (Open/Closed)
COMMERCIAL CLARIFICATIONS					
1.	Consequential Loss / Limitation of Liability **New Clause**	15/02/21	Tenderer	The Tenderer requests the insertion of the following new clause: *"(a) Consequential Loss* *The Subcontractor and the Main Contractor will not be liable to each other for any Consequential Loss suffered by the Subcontractor or the Main Contractor arising out of or in connection with the Subcontract.* *(b) Loss Limitation* *Notwithstanding any other provision of this Subcontract, the maximum liability of the Subcontractor to all persons or entities (including but not limited to the Main Contractor or the Principal and their respective personnel) listed under the Subcontract is limited to 50% of the Subcontract Sum.* *(c) Consequential Loss means loss of profits, loss of production, loss of revenue, and loss of business opportunities, or any special, contingent or penal damages."*	OPEN
			CLIENT		

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2.	Main Contract **Clause 2.2**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* in lieu of the existing wording under the following clauses: - Clause 2.2(b) - Clause 2.2(c) - Clause 2.2(d) - Clause 2.2(e)(ii) - Clause 2.2(e)(iii) - Clause 2.2(g)(i) - Clause 2.2(h) - Clause 2.2(i) Additionally, the Tenderer requests deletion of the wording following clause 2.2(i). Reason: The Tenderer has not reviewed, nor has it received, the Main Contract. The Tenderer is not a party to the Main Contract.	OPEN
			CLIENT		
3.	Subcontractor's warranties **Clause 2.3**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* in lieu of the existing wording under clause 2.3(c). Additionally, the Tenderer requests the insertion of *"as specified under the Subcontract"* following the existing wording under clauses 2.3(d), and 2.3(i)(i).	OPEN
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4.	Warranties unaffected **Clause 2.4**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* in lieu of the existing wording under clause 2.4(a). Reason: The Tenderer shall not be responsible for any Preliminary Design undertaken by the Main Contractor or others.	OPEN
			CLIENT		
5.	No warranty by Main Contractor **Clause 2.9**	15/02/21	Tenderer	The Tenderer requests the insertion of a new clause 2.9(b) in lieu of the existing clause 2.9(b): *"Only to the extent the Subcontractor is able to demonstrate it has incurred an additional cost or require additional time, the Subcontractor is permitted to make the necessary claims in accordance with the Subcontract".* Additionally, the Tenderer requires the insertion of *"Not Used"* under clause 2.10, in lieu of the existing wording. Reason: Should a change to Main Contractor supplied documentation or data occurs and if such change causes the Subcontractor to incur additional cost or require additional time, the Subcontractor requires the ability to make the necessary claims. The Subcontractor shall not be liable for the adequacy, accuracy of sufficiency of any documentation, information or data provided by the Main Contractor.	OPEN
			CLIENT		

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6.	Obligations unaffected **Clause 2.12**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* in lieu of the existing wording under clause 2.12(a). Reason: The Tenderer shall not be responsible for any design undertaken by the Main Contractor or others.	OPEN
			CLIENT		
7.	Security **Clause 5**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* under clauses 5.4(a)(iv) and 5.4(c)(iv). Reason: The release of security shall not be contingent on the Main Contractor getting its security released by the Principal.	OPEN
			CLIENT		
8.	Discrepancies **Clause 8.1**	15/02/21	Tenderer	The Tenderer requests the following amendment to the third paragraph of clause 8.1: *"If compliance with any direction under this subclause ▓▓ causes the Subcontractor to incur more or less cost than the Subcontractor, having complied with clause ▓▓, could reasonably have anticipated at the time of tendering, the direction* <u>shall be deemed Variation</u> ~~not entitle the Subcontractor any extra payment or an extension of time.~~ Reason: Should a change to Main Contractor supplied documentation or data occurs and if such change causes the Subcontractor to incur additional cost or require additional time, the	OPEN

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					Subcontractor requires the ability to make the necessary claims. The Subcontractor shall not be liable for the adequacy, accuracy of sufficiency of any documentation, information or data provided by the Main Contractor.	
				CLIENT		
9.	Changes **Clause 11.2**	15/02/21	Tenderer		The Tenderer requests the deletion of the word *"material"* under clause 11.2(a). Reason: The Tenderer requests entitlement to an increase to the Subcontract Sum and an extension of time, irrespective if the changes to legislation is material or immaterial. Additionally, the Tenderer requests the following amendment to the second paragraph of clause 11.4(f): *"The Subcontractor is not entitled to any claim as a result of any industrial dispute <u>caused by the Subcontractor</u> and the Main Contractor is not liable for any additional cost or any delay arising out of any industrial dispute, ~~whether caused by the Subcontractor or not~~, on the site or any other site occupied by the Main Contractor or Subcontractor and any <u>such</u> cost and time consequences of industrial relations shall be deemed to be included in the subcontract sum and the date for practical completion. <u>If an industrial dispute is not caused by the Subcontractor, the Subcontractor is entitled to claim for the additional cost and, or an extension of time"</u>*	OPEN
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10.	Industrial relations **Clause 11.4**	15/02/21	Tenderer	The Tenderer requests the following amendment to clause 11.4(a): *"The Subcontractor must prior to entering the* <u>Subcontract</u> ~~Main Contract~~*, provide to the Main Contractor…".* Reason: The Tenderer is of the view that the existing wording contains an error.	OPEN
			CLIENT		
11.	General **Clause 12.1**	15/02/21	Tenderer	The Tenderer requests the insertion of *"Not Used"* under clause 12.1(e). Reason: The Tenderer shall not be responsible for procuring access for itself, nor obtaining Approvals for itself.	OPEN
12.	Variation **Clause 25.3**	15/02/21	Tenderer	In lieu of *"Not Used"*, the Tenderer requests the insertion of the following wording under clause 25.3: *"The effect of the latent condition shall be a deemed Variation."* Reason: The Tenderer requires the ability to make a claim for events constituting a latent condition.	OPEN

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13.	Acceleration **Clause 32A**	15/02/21	Tenderer	The Tenderer requests deletion of clause 32A(c)(i)(C). Reason: The amount due and payable following acceleration of the WUS shall not be contingent on the amount approved by the Principal under the Main Contract.	OPEN
14.	Cleaning Up **Clause 27**	15/02/21	Tenderer	The Tenderer requests the following amendment to the first paragraph of clause 27: *"The Subcontractor shall keep the ~~site and~~ WUS clean and tidy and regularly remove rubbish and surplus material."* Reason: The Tenderer shall not be held responsible for cleaning and removing rubbish across the Site generally. This requirement shall be limited to the WUS only.	OPEN
15.	Notice of Delay **Clause 34.2**	15/02/21	Tenderer	The Tenderer requests deletion of the following wording under clause 34.2: *"As soon as it becomes evident to the Subcontractor that anything may delay to WUS, the Subcontractor shall promptly (and in any event within 1 business day of the potential delay becoming evident to the Subcontractor) give the Subcontract Superintendent written notice of:* *(a) the possible delay and the cause;*	OPEN

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					(b) *how the potential delay will affect its current construction program;* (c) *the measures which are available to overcome the delay or potential delay; and* (d) *the expected effect that the delay or potential delay will have on the expected date that the Subcontractor will reach practical completion."* Reason: The Tenderer does not consider it necessary to issue a Notice of Delay within 1 Business Day, then a further Notice of Delay within 2 Business Days, followed by a detailed extension of time claim.	
16.	Notice of Delay **Clause 34.2**	15/02/21	Tenderer	The Tenderer requests the insertion of *"within 5 Business Days"* in lieu of *"within 2 Business Day"* under the second paragraph of clause 34.2. Reason: The proposed 5 Business Day to provide the initial Notice of Delay is considered fair and reasonable.	OPEN
17.	Liquidated Damages	15/02/21	Tenderer	In the absence of any nominated amounts for liquidated damages under Item 35 of Annexure Part A, the Tenderer proposes 1% of the Subcontract Sum per week, capped at 5% of the Subcontract Sum.	OPEN

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	Clause 34.7			The Tenderer requests the insertion of *"Not Used"* in lieu of *"$30,000 per day"* under Item 35 of Annexure Part A. Reason: The proposed Subcontract liquidated damages of 1% of the Subcontract Sum per week, capped at 5% of the Subcontract Sum, shall be the Main Contractor's sole remedy for the Subcontractor's delay to the WUS.	
18.	Delay costs **Clause 34.9**	15/02/21	Tenderer	In lieu of *"Not Used"*, the Tenderer requests the insertion of the following wording under clause 34.9: *"For every day the subject of a request for an extension of time and for which the Subcontractor submits a claim for delay costs pursuant to clause 41.1, delay costs certified by the Subcontractor Superintendent shall be due and payable to the Subcontractor"* Reason: The Tenderer requests the ability to claim delay costs.	OPEN
19.	Payment **Clause 37**	15/02/21	Tenderer	The Tenderer requests the insertion of *"20 Business Days"* in lieu of *"30 Business Days"* under clause 37.2(d). Reason: The Tenderer requests payment terms of 20 Business Days from submission of a payment claim.	OPEN

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20.	Qualifying causes of delay, causes of delay for which EOTs will be granted **Clause 34.3**	15/02/21	Tenderer	The Tenderer requests the insertion of the following new events under clause 34.3, Item 34 of Annexure Part A xii. *Force Majeure events meaning war, civil war, armed conflict or terrorism, nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the conduct of the Affected Party or its Personnel, riot, commotion, epidemic, disorder, strike or lockout by persons other than the Affected Party or its Personnel, natural catastrophes such as a cyclone, earthquake, hurricane, fires, typhoon or volcanic activity, storm, floods etc);* xiii. *Latent condition events; and* *Delays caused by inclement weather.*	OPEN
21.	Defects **Clause 35**	15/02/21	Tenderer	The Tenderer requests deletion of Item 39 part (C) *"The Main Contractor's defect liability period for the project expires"* Reason: The Main Contractor's DLP is beyond the Tenderers control.	OPEN

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22.	Main Contractor's notice to show cause **Clause 39.3**	15/02/21	Tenderer	The Tenderer requests the insertion of *"7 Business Days"* in lieu of *"2 Business Day"* under clause 39.3(d). Reason: The proposed 7 Business Days to remedy a breach is considered fair and reasonable.	OPEN
23.	Communication of Claims **Clause 41.1**	15/02/21	Tenderer	The Tenderer requests the insertion of *"within 10 Business Days"* in lieu of *"within 5 Business Day"* under clause 41.1(a). Reason: The proposed 10 Business Day to communicate a claim is considered fair and reasonable.	OPEN
24.					