Guardian Property & Construction

Tender Commercial Checklist

CONTRACT DETAILS			
Quote No	[redacted]	Award Date	
Client	[redacted] and [redacted] [redacted] [redacted]	Submission due date	
Contract Name		Review Date	
Client Tender ID		On site duration	
Location / Site		[redacted] Department	
EPCM		Estimator	
Tender Value		Contract Type	
Total direct hours		Project type	
Scope Of Work			

Checks	Client Position	Clause	Agree or Depart [redacted] Position	TCR Item
1. Limitation of liability	Capped at Subcontract Sum being a default position given the absence of any nominated amounts in Annexure A.	GC 33.9 Annex. A	Agree	
2. Consequential losses	Mutual Exclusion for consequential losses with detailed definition of the term Consequential Loss	GC 32.13 GC 1.1	Agree	
3. Liquidated damages	LD's are applicable for failure to complete the Works by the completion dates, referencing Annexure A where no nominated amounts have been provided. Clause 12.5 purports to apply LD's for Key Personnel. However, this clause is questionable as there is no separate rate for the loss of an operative. There is no direct link between a key operative and the progress of the works. Further the clause has no application if that person leaves as a direct result of death, injury, illness, family or personal reasons beyond the control of [redacted] There is also reference to Milestone Dates damages where no amounts have been provided.	GC 12.5 GC 20.19 Annex. A	**Depart** Request for LD's to be capped in the aggregate to [redacted]% of the Subcontract Sum and only be applicable for PC	
4. Insurance	There appear to be standard suite of insurances required, as follows: • Works Insurance =$ N/A	GC 28 Annex. A	Agree	

Checks	Client Position	Clause	Agree or Depart [redacted] Position	TCR Item
	• Public Liability = $[redacted]m • Motor Vehicle = $[redacted]m • PI Insurance = $[redacted]m • Plant = $[redacted]m			
5. Indemnity obligations	Standard indemnity obligations including for loss, damage, injury, death and illness. Indemnities will be reduced proportionately to the extent the loss is caused.	GC 32	Agree	
6. Defects liability	12 months	GC 29 Annex. A	Agree	
7. Security and retention	2 x unconditional undertakings (retention or bank guarantees) each for the value of [redacted]% [redacted]% total)	GC 24 Annex. A	Agree	
8. Payment terms	The Payment Claim process is as follows: • 26th day each calendar month to submit Progress Claim • 10 Business Days (if not a Complex Claim [less than $[redacted]k]) or 15 Business Days (if a Complex Claim [more than $[redacted]k]) of the Progress Claim being submitted, client shall provide its determination. • Payment within 37 Business Days of the end of the end of the month in which the claim relates.	GC 23 Annex. A	Agree	
9. Rights and liabilities upon termination	Force Majeure – either party may terminate the Subcontract if an FM Event continues for a period of 6 months from event commencement. If terminated for this reason, [redacted] is entitled to payment for: • The portion of the Subcontract Sum due to [redacted] • Reasonable demob costs	GC 212 GC 33	Agree	

Checks	Client Position	Clause	Agree or Depart [redacted] Position	TCR Item
	Convenience – 5 Business Days' notice to be provided. If terminated for convenience, [redacted] is entitled to payment for: • The work carried out prior to the date of termination • Reasonable costs of goods • Reasonable demob costs			
10. Variations	The obligation on [redacted] regarding Variation are: a) Within 2 Business Days of Direction, notify the Principal in what respect it considers the direction involves a Variation, or is likely to prevent it from fulfilling its obligations. b) Within 5 Business Days of Direction, submit to the Principal a detailed statement of either the cost of the Variation or as-to why [redacted] is unable to state the cost of the Variation within the required time period. In which case, the detailed cost must be provided as soon as possible thereafter. **Pass-through Provision** Clause 22.13 prevents [redacted] from making any Claim or recovery of any loss in respect of a Variation being restricted under the Head Contract. This will need to be qualified. **On-Account Payment** Similarly with many other contracts, payment is on account until the final payment claim. **Residual Claims** There is also a residual claim clause.	GC 22	**Depart** Request extension from 2 and 5 Business Days to 3 and 7 Business Days respectively. Request deletion or amendment to clause 22.13 (pass through provision).	

Checks	Client Position	Clause	Agree or Depart [redacted] Position	TCR Item
11. Design responsibility	[redacted] is responsible for design. [redacted] can mitigate this by engaging a consultant.	GC 11.2	Agree	
12. Subcontractors and suppliers	[redacted] must seek prior written approval for any subcontractors, additionally, terms must be back to back and capable of novation or assignment if required.	GC 14	Agree	
13. Milestone / Key dates and durations	TBC			
14. Dispute resolution	If a dispute arises: - Notice - 5 Business Days, representatives who have authority to bind the parties shall confer - If a resolution or method of resolution has not been agreed within 15 Business Days of the Dispute Notice, the GM (or respective equivalent) shall confer - Arbitration may commence in respect of a dispute that is not resolved within 35 Business Days of the Dispute Notice. In summary, a detailed stepped process is provided.	GC 34	Clause 37.1 is an agreement to agree and therefore not enforceable due to this inherent uncertainty. Include the following after at the end of clause 34.3 *"and adopt the procedure as nominated by the Chairman of the WA chapter of the Resolution Institute."*	
15. Documents / drawings available, defective or missing	TBC			
16. Delay Time Bars	The requisite periods for notices of delay are: a) Time for providing notice following the occurrence of the event of delay is 2 Business Days b) Within 4 Business Days, [redacted] shall convene and attend a meeting to discuss the delay If [redacted] considers that it is entitled to an EOT for an Excusable Delay, it shall:	GC 20	Agree, however but extend notice period to 5 business days (so a updated notice can be issued weekly) & prior to commencing works develop a template for the PM to follow in the event of a delay.	

Checks	Client Position	Clause	Agree or Depart [redacted] Position	TCR Item
	a) Within 2 Business Days notify the Principal that an Excusable Delay has occurred, the cause of the delay, the length of the delay or the anticipated length of delay and steps taken as part of delay mitigation. b) In the case of an ongoing delay, provide the Principal with update notices every 7 Business Days until delay cessation. c) Within 7 Business Days of the occurrence of Excusable Delay notify the Principal: o Details of delay o Impact of delay (including an impacted program demonstrating, status of works, contingency and float allowances utilised by [redacted] to mitigate delay, change to critical path, change to dates etc. o EOT claimed o Whether Excusable Delay has ceased			

Commercial/Risk Observations and Recommendations (please note I have reviewed the Subcontract terms and conditions only):

1. Referencing errors within agreement (i.e. clause 3.5(a))
2. Suggest for a cap on liquidated damages along with liquidated damages to be clients sole remedy for delay
3. Clause 9.6 prevents [redacted] from making any claim arising out of any delay or disruption of the work under the Subcontract by any Separate Contractor. Request amendment or deletion.
4. Clause 19.8 permits the client with directing a deviation to the program and prevents [redacted] from making any claim.

5. There is pass-through provision within the contract (will be qualified as part of [redacted] commercial clarifications).
6. Variation notice requirements are very tight and will need to be administered tightly on site.

Contracts Department Signoff		
Senior Contracts Specialist Name	**Senior Contracts Specialist Signature**	**Date**
CT		