



387-2025 ADDENDUM 2

SEWPCC & WEWPCC SLUDGE HOLDING TANKS REFURBISHMENT

URGENT

**PLEASE FORWARD THIS DOCUMENT TO
WHOEVER IS IN POSSESSION OF THE
BID/PROPOSAL**

ISSUED: 2025-07-07
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**THIS ADDENDUM SHALL BE INCORPORATED
INTO THE BID/PROPOSAL AND SHALL FORM
A PART OF THE CONTRACT DOCUMENTS**

Template Version: Add 2024-02-01

Please note the following and attached changes, corrections, additions, deletions, information and/or instructions in connection with the Bid/Proposal, and be governed accordingly. Failure to acknowledge receipt of this Addendum in Paragraph 10 of Form A: Bid/Proposal may render your Bid/Proposal non-responsive.

PART D – SUPPLEMENTAL CONDITIONS

Revise: D25.2 to read:

The amounts specified for liquidated damages in D25.1 are based on a genuine pre-estimate of the City's losses in the event that the Contractor does not achieve critical stages, Substantial Performance or Total Performance by the days fixed herein for same, but shall be subject overall to a maximum limit of 10% of the Contract Price. Without diminishing that Contractor's obligations or the City's powers anywhere else in this Contract, the Liquidated Damages represent the City's sole financial remedy for delays in the Contractor's achievement of Substantial Performance or Total Performance under this Contract

Revise: D35 to read: The entirety of D35 is struck and replaced with "**Not Used**".

Add: **D37. TERMINATION FOR NON-PAYMENT**

D37.1 The Contractor may suspend or terminate this Contract by notice to the City only if the City has failed to pay any amount due to the Contractor under this Contract, which amount or amounts, either singly or in the aggregate, exceed(s) \$5,000 (except to the extent that such amount is disputed in good faith through the Dispute Resolution Procedure contained in this Contract or which has been disputed by the City pursuant to the relevant provisions in the BLA allowing for an owner to dispute an invoice) and the City does not remedy such failure within 30 Calendar Days of the Contractor providing the City with notice to do so.

Add: **D38. LIMITATION OF LIABILITY AND WAIVER OF CONSEQUENTIAL DAMAGES**

D38.1 Notwithstanding C17, the indemnities under this Contract shall not apply and there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that the loss claimed by either Party is:

- a) For punitive, exemplary, or aggravated damages; or
- b) For loss of profit (but does not include the parties' rights to payment expressly provided for in this contract), loss of use, loss of production, loss of business, claims of customers or loss of business opportunity; or

c) Is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either party, (collectively, "indirect losses").

- D38.2 Subject to D38.3, the maximum aggregate liability of:
- a) Contractor in respect of all claims under or in connection with the Contract shall not exceed the sum of 50% of the Contract Price;
 - b) The City, in respect of all claims under or in connection with the Contract (except for the obligation to make payment to the Contractor for Work performed pursuant to the Contract) shall not exceed the sum of 50% of the Contract Price.
- D38.3 The limits set out in D38.2 shall be exclusive of any insurance proceeds received or which will be received pursuant to policies maintained in accordance with this Contract, or which would have been received if the Contractor had complied with its obligation to insure under this Contract or the terms of any policy of insurance required under this Contract each in the "not less than" value as set out in the Contract; and shall not apply in cases of gross negligence or willful misconduct.
- D38.4 The Contractor's obligation to indemnify the City pursuant to C17.1 shall only be triggered in the event that said costs, damages or expenses arising from actions, claims, demands and proceedings, by whomsoever brought, made or taken are brought as a result of negligent acts or omissions of the Contractor, their Subcontractors, employees or agents in the performance or purported performance of the Work; or from breach of this Contract by same; or from willful misconduct by same, and provided that the City has, before settling any such claim pursuant to C17.2, given the Contractor reasonable notice of same.
- D38.5 For the avoidance of doubt, the above limitations shall not apply to any obligations of the Contractor to indemnify third parties as required by applicable funding agreements pursuant to D35.

QUESTIONS AND ANSWERS

- Q1: Request the following revision that have been previously accepted by the City on another project:
- Revise D25.2 to add to the end "...but shall be subject overall to a maximum limit of 10% of the Contract Price. Without diminishing that Contractor's obligations or the City's powers anywhere else in this Contract, the Liquidated Damages represent the City's sole financial remedy for delays in the Contractor's achievement of Substantial Performance or Total Performance under this Contract.
- A1: See modification to D25.2 above.
- Q2: Request the following addition be included:
- Add new D37 Termination for Non-Payment
- D37.1 The Contractor may suspend or terminate this Contract by notice to the City only:
- (a) If the City has failed to pay any amount due to the Contractor under this Contract, which amount or amounts, either singly or in the aggregate, exceed(s) \$5,000 (except to the extent that such amount is disputed in good faith through the Dispute Resolution Procedure) and the City does not remedy such failure within 30 Calendar Days of the Contractor providing the City with notice to do so.
- (Contractor is seeking to be able to reasonably terminate the contract if not being paid by the City)
- A2: See the addition made above.
- Q3: Request the following addition that has been previously issued via addendum by the City on another project:
- A. Add new D38 Limitation of Liability and Waiver of Consequential Damages

D38.1 Notwithstanding C17, the indemnities under this Contract shall not apply and there shall be no right to claim damages for breach of this Contract, in tort or on any other basis whatsoever, to the extent that the loss claimed by either Party is:

- a) For punitive, exemplary, or aggravated damages; or
- b) For loss of profit (but does not include the parties' rights to payment expressly provided for in this contract), loss of use, loss of production, loss of business, claims of customers or loss of business opportunity; or
- c) Is a claim for consequential loss or for indirect loss of any nature suffered or allegedly suffered by either party, (collectively, "indirect losses").

B. There is a limitation of liability in D34.2 of twice the contract price, we are requesting the amendment/addition of an aggregate limitation of liability be added as it has been previously issued via addendum by the City on another project, which could be added to D34, this is how it was written on a previous project:

D38.2 Subject to D38.3, the maximum aggregate liability of:

- a) Contractor in respect of all claims under or in connection with the Contract shall not exceed the sum of 50% of the Contract Price;
- b) The City, in respect of all claims under or in connection with the Contract (except for the obligation to make payment to the Contractor for Work performed pursuant to the Contract) shall not exceed the sum of 50% of the Contract Price.

A3: See modification above.

Q4: Request that "no less than" wording be removed from the insurance requirements and that the insurance requirements listed are the required amounts.

A4: The "no less than" wording occurs in D35, which are insurance terms the City is required to flow through to third party subcontractors by applicable funding agreements. However, the City has confirmed these requirements as a whole do not apply; as such see modification above.