

Date : 28/06/2022

Ref. No.: PIC-MLT-01890-22-E

To: **Mr. Roh See Hyun – Project Manager**

Hyundai E&C - Ghella JV

Address: Ngoc Khanh Parking Area, Kim Ma Street, Ngoc Khanh Ward, Ba Dinh, Hanoi

Tel: 84-24 32 37 34 61 Fax: 84-24-32 37 34 62

Cc: **Mr. Nguyen Cao Minh – General Director**

Hanoi Metropolitan Railway Management Board (MRB)

Address: CC2 building, Dong Tau Urban Area, Hoang Mai, Hanoi

Tel: 84-24-39 43 51 27 Fax: 84-24-39 43 51 26

Subject: CP03 - Response to Interim Claim for Additional Payment due to Extension of Time for Completion (Contractor's Claim No 3-1b)

References:

- a. HGU-MLT-00104-22-E, dated 11/05/2022
- b. HGU-MLT-00097-22-E, dated 29/04/2022
- c. Memorandum of Understanding dated 25/01/2017
- d. PIC-MLT-00315-17-E, dated 02/02/2017

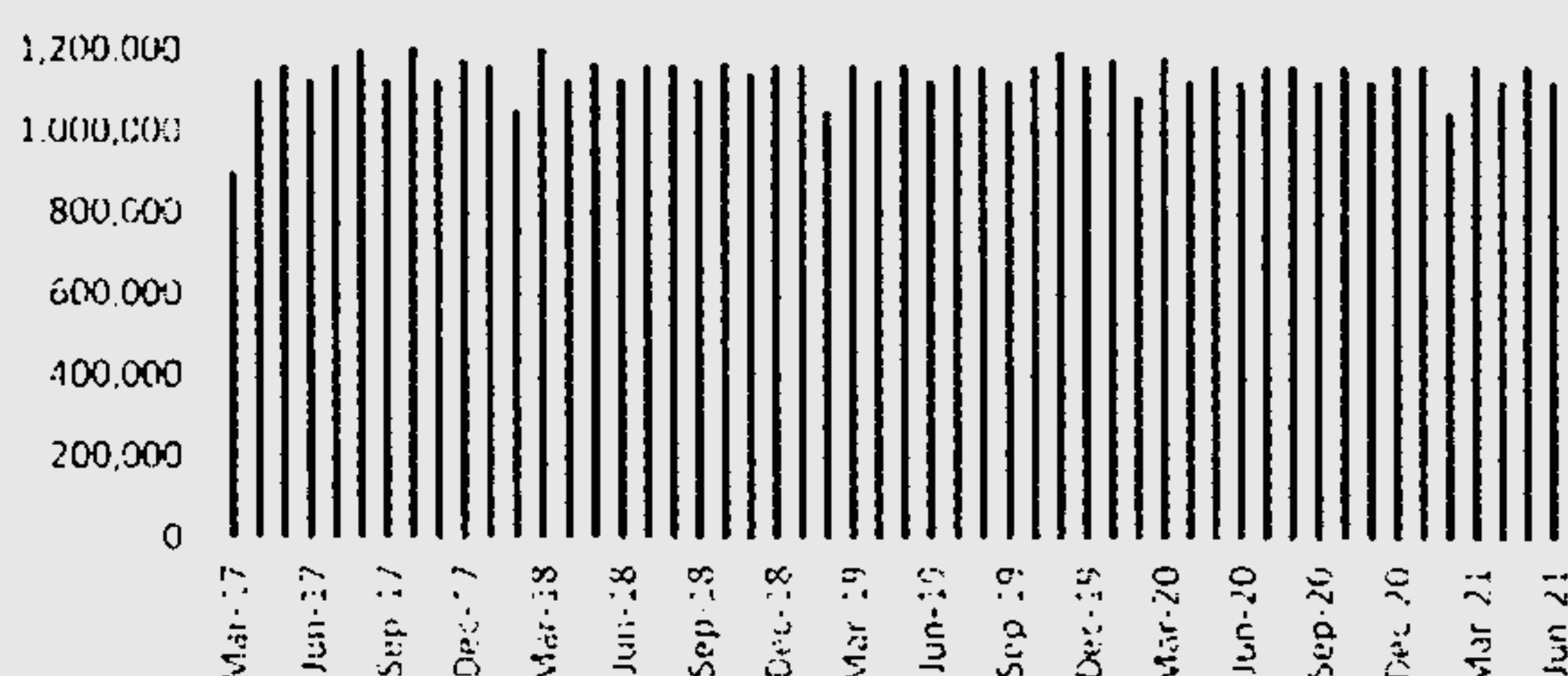
Dear Sir,

This is in reference to the Contractor's Claim No 3-1b of additional payment due to extension of Time for Completion (EoT), letter referenced [a].

We have following comments on the Contractor's claim 3-1b:

- 1 The Contractor has received a cumulative amount of 32% of Accepted Contract Amount, against 32% of Works progress achieved, which shall compensate a part of Contractor's indirect costs, other costs, overheads, and profit. The Contractor has not made any reduction of the afore-mentioned from his additional payment claim 3-1b, it is therefore requested to clarify.
- 2 The below graph reflects that the Contractor is claiming almost a uniform monthly expense (average is 1.132 million USD per month).

CP03 Claim#3-1b
Monthly Additional Cost(USD)
[8 Mar 2017 to 30 July 2021]



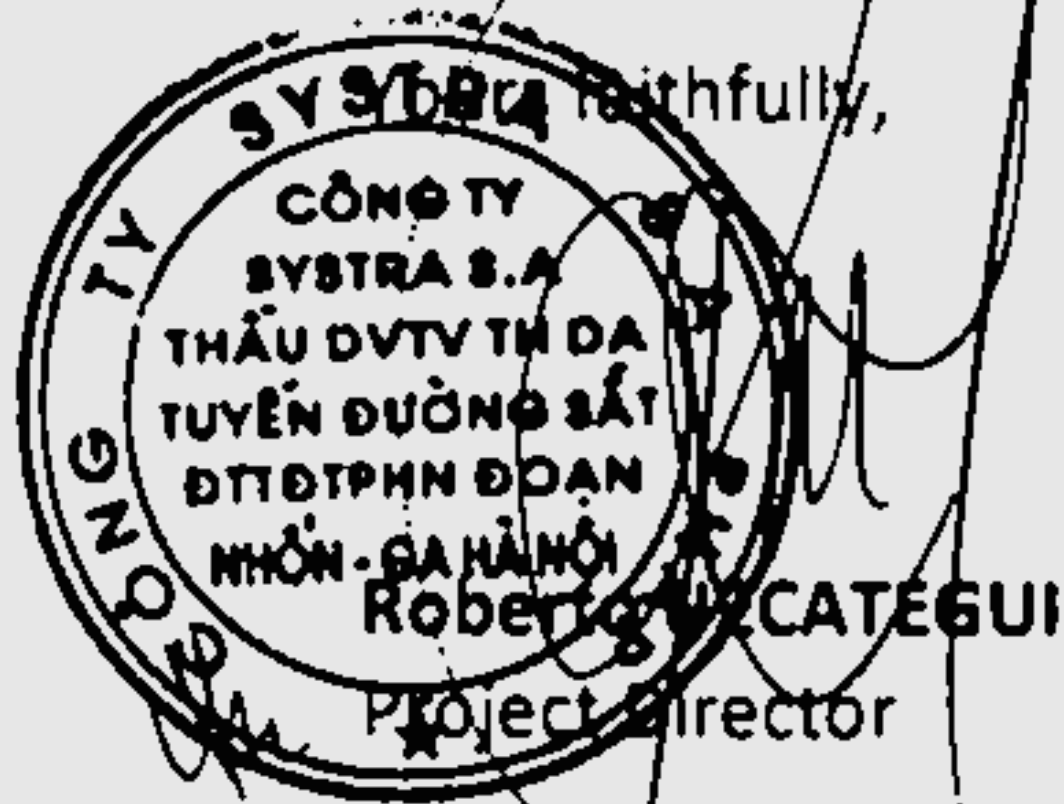
- 2.1 The Contractor is claiming prolongation cost in a flat line whilst it should be in a bell-shaped curve (gradual increase and then gradual decrease). The Contractor is requested to provide justification.
- 2.2 Therefore, it is necessary to clarify as to what mitigation/optimization measures were taken and why the Contractor kept the same indirect resources for almost 5 years.
- 2.3 During the low activity period, as a mitigation measure, the Contractor should demobilize the resources and only keep required resources as per work fronts availability.
- 2.4 The Contractor has to demonstrate that the costs being claimed were unavoidable.
- 3 The Contractor is required to submit monthly interim claims (including its monthly assessment of any extension of time and/or additional payment) in case if the delay is having a continuing effect.¹ The Contractor is requested to clarify as to why monthly interim claims were not provided to the Engineer for review.
- 3.1 In the absence of updated monthly interim claims:
 - 3.1.1 The Engineer proposes to conduct assessment of claim heads in parts.
 - 3.1.2 The Engineer would also require additional time/efforts to review the Contractor's claim. Therefore, the Contractor is requested to confirm an extension of one month review period at least.
- 3.2 The Engineer also reminds the Contractor to submit monthly interim claims in future as per the requirements of Sub-Clause 20.1.
- 4 The Contractor's compliance with the Key Dates of Sub-Clause 8.7 is necessary. The Contractor is reminded to submit analysis with supporting particulars justifying his compliance with the Key Date(s).
- 5 For your entitlement to interest (Financing Charges) on delayed payment of claim heads, we would like to inform you that you should have first submitted a fully substantiated claim which had proven your entitlement (After the Engineer's approval/determination), then only you may claim such financing charges. Contrary to afore mentioned, you had not submitted a fully substantiated claim, the Engineer had neither approved nor determined your entitlement to any additional payment. Therefore, you are requested to clarify your Contractual grounds to claim interest/financial charges.
- 5.1 Moreover, subject to our comment in Section 5 above, in accordance with Sub-Clause 14.8 of Contract's Condition, the Contractor can claim financing charges of three (3) decimal points above the discount rate of central bank in the country of currency of payment. Contrary to afore said, the Contractor's claim of 9% interest rate on total claim from 08/03/2017 to 06/05/2022 is also not in compatibility with Sub-Clause 14.8.²

¹ Sub-Clause 20.1

² The Contractor may refer to IPC No 19 & 20 for financing charges percentage and calculations

- 6 Regarding the head office overheads, the Contractor's use of Emden's is not understandable because the Joint Venture is locally established.³
- 7 Our further comments are included in a table attached to this letter (**Attachment 1**).
- 8 We have made our assessment on the item-E (Bank Guarantee) and item-F (Project Insurance). The Parties (the Contractor and the Employer) are requested to provide their feedback on the attached assessment (**Attachment 2**).

The Contractor is requested to provide his feedback at the soonest in order to complete the review of this claim.



Attachments:

- 1- CP03 - Comments on the particulars provided for EOT Claim 3b-1
- 2- PIC Initial Evaluation [Item E and F]

³ The Dispute Board has given similar decision on the Contractor's Claim No 1 with similar justification of rejection.

No.	CP03 - Comments on the particulars provided for EOT Claim 3b-1
A1.2	Local Staffs employed by the Contractor:
	The Contractor to supplement the particulars with "Personal Income Tax Withholding Declaration", "Certificate of personal income tax payment to the state budget" made by HGU, "Notice the results of payment of social insurance, unemployment insurance, health insurance" by Social Insurance Agency in order to confirm the amount of actual cost incurred by the Contractor with Employees.
A1.3	Foreign Staffs employed by the Contractor:
A1.3.1	Salary
	<ul style="list-style-type: none"> - HGU to supplement the particulars with "Personal Income Tax Withholding Declaration", "Certificate of personal income tax payment to the state budget" made by HGU, "Notice the results of payment of social insurance, unemployment insurance, health insurance" by Social Insurance Agency in order to confirm the amount of actual cost incurred by the Contractor with Employees. - It is necessary to supplement: Passport, VISA, Work Permit (if any) ... as provided for Foreign Staffs A1.1
A1.3.2	Foreign Staffs Accommodation Fees
	<ul style="list-style-type: none"> - There is no mention in employees' labour contract that is the employer responsibility to pay rental fee for the employee. - In the House Lease Contract doesn't mention the name of the Foreign Staff that the house was rented for. - HGU to supplement the particulars with the document "Declare Temporary Resident for Foreign" (document requested by the authorities to issue the VISA, work permit, residency card) that mentions the place and period in accordance with the House Lease Contract. - HGU to supplement evidence for all people in the list, for example missing evidence for Mr. Escalante Colminar Erwin (QC Manager).
B	General Project Running Costs
	<ul style="list-style-type: none"> - HGU has not provided any supporting documents to justify the amount claimed. the Contractor is requested to add the evidence proving the amounts claimed under this item. <p>As an example, in the running cost there is "KOREAN/STAFF SALARY", "FOREIGN/INDIRECT LABOUR WAGE/ALLOWANCE", "VISA FEE, RESIDENT CARD" as "Claimable" but this should be already included on "A1. Foreigner Staff Fees" heads and cannot be double charged.</p>
C	Subcontractors Costs
C1	Monitoring & Survey