

**CONSULTANCY SERVICES OF ENVIRONMENTAL COMPLIANCE AUDIT
(ECA) FOR
BALEH HYDROELECTRIC PROJECT
SARAWAK ENERGY REF. NO. BALEH/HSSE/2021-001/AA**

PART I – RFP PROCEDURES

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PART I – RFP PROCEDURES

SECTION 3 – INSTRUCTIONS TO PROPONENTS

These Instructions to Proponents specify those procedures to be followed by Proponents in the preparation and submission of their Proposals. Information is also provided on the process for the submission and evaluation of Proposals and award of contract. These Instructions to Proponents shall be read in conjunction with the matters set out in the RFP Particulars set out in Part I, Section 2 of the RFP Documents.

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A. GENERAL

1. Definition and interpretation

1.1 For the purpose of these Instructions to Proponents:

- (a) **"Affiliate"** means, in relation to any person or entity, a subsidiary of that person or entity or a holding company of that person or entity or any other subsidiary of that holding company;
- (b) **"Authorised Signatory"** means the person (or persons) authorised by the Proponents to exercise the rights and powers and perform the functions set out in Clause 24.1;
- (c) **"Closing Date and Time"** means the date and time by which Proposals are required to be received by Sarawak Energy, as set out in the RFP Particulars;
- (d) **"Companies Act"** means the Companies Act 2016
- (e) **"Consortium Proponent"** means a Proponent formed by way of an unincorporated joint venture or consortium between two or more members;
- (f) **"Contract"** means the contract to be entered into between Sarawak Energy and the successful Proponent, as selected by Sarawak Energy in accordance with this RFP process, as set out in the Form of Contract;
- (g) **"Corporate Authorisation"** means with respect to a Proponent (or member of a Consortium Proponent):
 - (i) a properly executed board or shareholder resolution;
 - (ii) a power of attorney; and / or
 - (iii) such other evidence of authority,

in each case satisfactory to Sarawak Energy and which authorises such Proponent's Authorised Signatory in accordance with the requirements of Clause 24;
- (h) **"Eligibility Requirements"** means the eligibility requirements for each Proponent (or members of a Consortium Proponent), as set out in the RFP Particulars;
- (i) **"Form of Contract"** means the documents listed under the heading "Form of Contract" in Part I, Section 4 of the RFP Documents;

- (j) **"Form of Proposal"** means the document entitled "Form of Proposal" set out in Part II, Section 1 of the RFP Documents, which is required to be completed by the Proponents and submitted with their Proposal;
- (k) **"Instructions to Proponents"** means this document;
- (l) **"Key Employee"** means any employee of Sarawak Energy or an Affiliate of Sarawak Energy that is responsible for the management or administration of budgetary or procurement decisions;
- (m) **"Notification of Award"** means the notification of award issued by Sarawak Energy to the successful Proponent for the Services;
- (n) **"Local Participation"** means (in descending order of preference):
 - (i) business entities registered with the UPKJ as having Bumiputera status within Sarawak (or, where such UPKJ certification is not possible, certification by another suitable authority acceptable to Sarawak Energy);
 - (ii) Sarawak-based business entities registered with the UPKJ;
 - (iii) other business entities registered and incorporated in Sarawak and majority owned and controlled by Sarawakians; and
 - (iv) any other business entities registered and incorporated in any State of Malaysia and majority owned and controlled by Malaysians;
- (o) **"Pricing Appendix"** means the document entitled "Proposal Appendix B – Price and Payment" set out in Proposal Appendices which sets out the manner in which the Proposal Price shall be calculated;
- (p) **"Proponent"** means any entity or group of entities (in the case of a Consortium Proponent) issued with a copy of the RFP Documents or otherwise invited by Sarawak Energy to submit a Proposal;
- (q) **"Proponent's Representative"** means the person (or persons) authorised by the Proponent to act as its main point of contact with Sarawak Energy and / or Sarawak Energy's Representative for the purposes of this RFP process; and
- (r) **"Proposal"** means those documents comprising the formal offer for the provision of the Services required to be completed by the Proponent which is to be submitted to Sarawak Energy by the Closing Date and Time in accordance with these Instructions to Proponents;

- (s) **"Proposal Appendices"** means the appendices set out in Part II, Section 2 of the RFP Documents and required to be completed by the Proponent and submitted with their Proposal;
- (t) **"Proposal Price"** means the price or amounts calculated by reference to the matters set out in the Pricing Appendix and as may be amended in accordance with the matters set out in these Instructions to Proponents;
- (u) **"Proposal Security"** means the security required to be submitted by each Proponent with their Proposal;
- (v) **"Proposal Validity Period"** means the period of time during which each Proponent's Proposal shall remain valid and open for acceptance by Sarawak Energy as set out in the RFP Particulars (as may be extended from time to time in accordance with these Instructions to Proponents);
- (w) **"Related Party"** means:
 - (i) with respect to a non-Consortium Proponent, director, partner or an officer of such Proponent; and
 - (ii) with respect to a Consortium Proponent, a director, partner or an officer of any of the members of such Consortium Proponent;
- (x) **"RFP"** means request for proposal;
- (y) **"RFP Documents"** means those documents issued to the Proponent as part of this RFP process, as may be amended in accordance with any addendum issued by Sarawak Energy in accordance with these Instructions to Proponents;
- (z) **"RFP Particulars"** means the RFP particulars set out in Part I, Section 2 of the RFP Documents, setting out those matters particular to this RFP process;
- (aa) **"Sarawak Energy"** means SEB Power Sdn Bhd (1154615-U) a subsidiary of Sarawak Energy Berhad (007199-D) in which Sarawak Energy Berhad reserves its rights to transfer or assign any obligations and / or rights it has to any subsidiary or affiliate of Sarawak Energy;
- (bb) **"Sarawak Energy Director"** means any director of Sarawak Energy, or any director of an Affiliate of Sarawak Energy;
- (cc) **"Sarawak Energy's Representative"** means the person named in the RFP Particulars as its main point of contact with the Proponent and / or the Proponent's Representative for the purposes of this RFP process;
- (dd) **"SEPRO"** means Sarawak Energy's e-Procurement System

- (ee) **"Services"** means the services to be provided by the successful Proponent under the Contract;
- (ff) **"SST"** means sales and services tax payable in accordance with the Sales Tax Act 2018 and the Service Tax Act 2018 respectively.
- (gg) **"Taxes"** means all direct and indirect taxes imposed in any jurisdiction by any governmental entity or semi-governmental entity (including any government authority), including but not limited to income taxes, corporate taxes, withholding taxes, sales tax and services taxes (or any other similar value added taxes), customs duties, fees, levies, imposts, charges, royalties (including quarry royalties), dues or assessment of any nature;
- (hh) **"UPKJ"** means Unit Pendaftaran Kontraktor dan Juruperunding.

1.2 Throughout the RFP Documents:

- (a) unless the context otherwise requires, all:
 - (i) words and expressions used in these Instructions to Proponents shall be interpreted in accordance with the matters set out in the Form of Contract; and
 - (ii) capitalised terms used in these Instructions to Proponents shall, unless otherwise defined in these Instructions to Proponents, have the meaning assigned to them in the Form of Contract;
- (b) all capitalised terms used in the RFP Documents shall, unless otherwise specified, have the meaning assigned to them in these Instructions to Proponents (and, to the extent that Clause 1.2(a)(ii) applies, in the Form of Contract);
- (c) any reference to a "Clause", a "Part" or a "Section" is a reference to a clause, a part or a section of the RFP Documents; and
- (d) where both words and alphanumeric figures are used to express the same number, and they are inconsistent, the words shall prevail.

1.3 Wherever the RFP Documents provide for the giving or issuing of approvals, certificates, consents, instructions, permissions, determinations, notices and requests, these communications shall be in writing and shall be delivered by hand, sent by mail, electronic means or courier, to the other Party's Representative, as may be updated by either Party from time to time, by notice to the other Party. Sarawak Energy shall not be bound by any verbal communication made by any of its officers, directors, employees or agents.

- 1.4 Clause 2, Clause 17, Clause 18, Clause 28, Clause 29, Clause 38, Clause 39.4 and any other additional clauses of these Instructions to Proponents which, by their nature, are intended to survive the cancellation, conclusion or termination of the RFP process, shall survive the cancellation, conclusion or termination of the RFP process.

B. RFP DOCUMENTS AND RFP PROCESS

2. Status of information provided by Sarawak Energy

- 2.1 Sarawak Energy does not warrant the accuracy and completeness of the information provided or conveyed to each Proponent during the RFP process, which is provided to Proponents for their assistance only and, unless expressly included in the Form of Contract, such information shall not form part of the Contract to be entered into with the successful Proponent.
- 2.2 Each Proponent should conduct their own investigations and analyses of the information set out in the RFP Documents and by submitting a Proposal, the Proponent shall be deemed to have made its own enquiries, deductions and conclusions regarding the extent of work required (and the cost to be incurred) to complete the Services.

3. Compliance with requirements of the RFP Documents

- 3.1 Failure by the Proponent to furnish all information and documentation required by the RFP Documents, including in the format required, may result in its Proposal being rejected.
- 3.2 Proponents proposing any deviation to the Form of Contract or its preferred form of contract shall do so in accordance with the forms set out in Proposal Appendix D [*Proposed Minor Deviations to the Form of Contract*].
- 3.3 Each Proponent shall be deemed to have accepted all documents set out in the Form of Contract to the extent it has not proposed any deviation or preferred form in accordance with the forms set out in Proposal Appendix D [*Proposed Minor Deviations to the Form of Contract*].
- 3.4 All documents comprising the Proposal shall be prepared in accordance with the forms and appendices provided as part of the RFP Documents in sufficient detail to demonstrate the Proponent's ability to meet Sarawak Energy's requirements for the Services.

4. Proposals from Consortium Proponents

- 4.1 No changes to the composition of any Consortium Proponent shall be permitted after the Closing Date and Time without the prior written consent of Sarawak Energy.

- 4.2 If a Consortium Proponent is selected as the successful Proponent, Sarawak Energy reserves the right, in its sole and absolute discretion, to opt to include each member (or the ultimate parent companies of such members) of such Proponent to enter into the Contract together with the Proponent on a joint and several basis and the Proponent shall (and shall procure that each of its members shall) contract on such a basis.
- 4.3 Proposals submitted by a Consortium Proponent shall also comply with the following additional requirements:
- (a) the Proposal (and the Proposal shall include an undertaking that in case of a successful Proposal, the Contract) shall be signed so as to be legally binding on all members on a joint and several basis;
 - (b) each member of the Consortium Proponent shall provide a Corporate Authorisation in accordance with Clause 24.3; and
 - (c) the Proposal shall include all information and documentation specified as applicable for Consortium Proponents in the RFP Documents.
- 4.4 Each Consortium Proponent shall at all times comply with any legal requirements applicable to Consortium Proponents in Sarawak.
- 5. RFP briefing**
- 5.1 For the assistance of all Proponents, Sarawak Energy may arrange a RFP briefing on such date(s) and time(s), and at such location(s), as set out in the RFP Particulars. Attendance at a RFP briefing is mandatory.
- 5.2 Not later than two (2) days prior to a RFP briefing, the Proponent shall inform Sarawak Energy's Representative of the persons that will be attending the RFP briefing on its behalf (limited to a maximum of three (3) persons).
- 6. Virtual Site visit**
- 6.1 For the assistance of all Proponents, Sarawak Energy shall arrange a virtual site visit on such date(s) and time(s) by way of Microsoft Teams, to provide the Proponents with the aerial view of the site projects and its surrounding through pictures for Proponent's preparation of a complete Proposal. Attendance at the Virtual site visit is mandatory.
- 7. Clarification of RFP Documents**
- 7.1 Any Proponent requiring clarification of any matter set out in the RFP Documents shall notify Sarawak Energy's Representative in writing not later than the date falling seven (7) days prior to the Closing Date and Time.

- 7.2 Sarawak Energy may, but is under no obligation to, respond to any request for clarification which it receives (and any such response shall be provided for information purposes only).

8. Issuing of addendum

At any time on or prior to the Closing Date and Time, Sarawak Energy may delete, remove or amend any part of the RFP Documents by issuing an addendum in writing.

9. Sarawak Energy's Representative

All correspondence and communications regarding this RFP process, both prior to the Closing Date and Time and during the Proposal Validity Period, shall be directed to Sarawak Energy's Representative (and any failure by the Proponent to comply with this Clause 9 may result in a Proponent being disqualified from this RFP process or its Proposal being rejected).

10. Subcontracting

- 10.1 The Proponent agrees, if it is selected as the successful Proponent by Sarawak Energy, that it shall not, under any circumstances, subcontract the whole of the Services.
- 10.2 Without in any way limiting Clause 10.1, if a Proponent is selected as the successful Proponent by Sarawak Energy, it shall not, under any circumstances, subcontract any part of the Services without the prior written consent of Sarawak Energy (which may be withheld in its absolute discretion).

C. HEALTH, SAFETY AND ENVIRONMENT

11. Health, Safety and Environment

- 11.1 Proponents acknowledge that they shall be required, during the provision of the Services, to:
- (a) establish and maintain the highest levels of health and safety consistent with best industry practice and to at all times take all reasonable precautions to maintain the health and safety of all of its personnel, other personnel involved in the Services and members of the public; and
 - (b) take all necessary steps and reasonable precautions to protect the environment and to limit damage and nuisance to people and property resulting from pollution, noise and other results of its operations,

in compliance with all legislative requirements, the requirements of Government Authorities and the requirements of Sarawak Energy.

- 11.2 Proposals shall demonstrate the Proponent's ability and commitment to meet the health, safety and environment requirements and Proponents shall incorporate, as part of their Proposal, all costs and expenses required to comply with their health and safety management obligations in the provision of the Services.

D. INFORMATION SECURITY MANAGEMENT SYSTEM

12. Information Security Management System

In carrying out the Works, the Contractor shall be required to comply with Sarawak Energy's information security management system ("ISMS") requirements as may be notified by Sarawak Energy to the Contractor from time to time. Such requirements may include the vetting of those personnel required to work within identified restricted access zones across Sarawak Energy's generation, transmission and distribution assets, including any related IT networks and services. Subject to Sarawak Energy's specific ISMS requirements, the Contractor may also be required to establish its own procedures and protocol with respect to the security of any third party software required to be installed within Sarawak Energy's network.

E. LOCAL PARTICIPATION

13. Support for Local Participation

- 13.1 Each Proposal shall be prepared on a basis that seeks to maximise the opportunity for the participation of Local Participation in the provision of the Services and promotes the opportunity for knowledge transfer.
- 13.2 In preparing and submitting its Proposal, the Proponent shall be required to identify and demonstrate how it intends to maximise the participation of Local Participation in the provision of the Services.
- 13.3 Sarawak Energy reserves the right to request such further information or evidence from a Proponent as it may reasonably require to ensure that the principles for supporting and promoting opportunity for the participation of Local Participation in the provision of the Services are complied with.
- 13.4 For the purposes of this Clause 13:
- (a) the value of any goods, materials (including raw materials), labour, plant and equipment not originating from sources from within Malaysia; and
 - (b) any portion of the Services that are purportedly to be provided through the use of Local Participation but are subsequently further subcontracted to entities that do not constitute Local Participation,

shall not be recognised or attributed by Sarawak Energy towards fulfilling the participation of Local Participation.

F. CORPORATE SOCIAL RESPONSIBILITY

14. Corporate social responsibility initiatives

14.1 Proposals that display a commitment to corporate social responsibility, through good corporate citizenship, will be viewed favourably by Sarawak Energy.

14.2 Examples of initiatives encouraged by Sarawak Energy include sponsorships, charitable initiatives or general community services, which promote the following principles:

- (a) creation of economic opportunities for Sarawakians;
- (b) investment in local communities;
- (c) sustainability; and
- (d) transparency and community engagement.

G. REQUIREMENTS OF PROPOSALS

15. Scope of Proposal

Proposals shall be submitted for the whole of the Services as set out in the RFP Documents.

16. Eligibility to participate in the RFP process

Only those Proponents meeting the Eligibility Requirements are permitted to participate in this RFP process.

17. Confidentiality obligations

17.1 Except as required by any applicable Laws, all RFP Documents, the RFP process, the Proposal and any other information provided to the Proponent by Sarawak Energy and any information regarding Sarawak Energy acquired by the Proponent during the RFP process shall be treated as confidential information, only to be used for the sole purposes of participating in this RFP process and not disclosed to any third party.

17.2 The Proponent shall ensure the safe and secure storage, management and handling of such information in order to protect against theft, damage, loss and unauthorised use, storage, copying or disclosure of such information and shall notify Sarawak Energy immediately if it suspects, or becomes aware of, any theft, damage, loss or unauthorised use, storage, copying or disclosure of such information.

17.3 Upon any request by Sarawak Energy, the Proponent shall destroy or return to Sarawak Energy all such information.

18. **Personal data**

In submitting a Proposal, each Proponent:

- (a) shall be deemed to provide explicit consent to Sarawak Energy to process any of the Proponent's personal data for the purposes of, or related to, the RFP process;
- (b) warrants that any personal data received from Sarawak Energy shall be processed; and
- (c) warrants that all personal data submitted by the Proponent to Sarawak Energy has been obtained,

in accordance with the requirements of the Personal Data Protection Act 2010.

19. **Corrupt practices**

19.1 Sarawak Energy requires that all Proponents observe the highest standard of ethical practices throughout the RFP process and, in the case of the successful Proponent, during the provision of the Services.

19.2 Sarawak Energy may, in its sole and absolute discretion:

- (a) reject a Proposal or, in the case of the successful Proponent, immediately terminate any Contract; and
- (b) impose sanctions on a party (including a Proponent, the successful Proponent, or any other party), at any time, including declaring any such party ineligible, either indefinitely or for a stated period of time, from participating in any RFP process conducted by Sarawak Energy,

if at any time Sarawak Energy determines that a Proponent has, directly or indirectly through another party, engaged in corrupt, fraudulent, collusive, coercive or other prohibited practices.

H. **PREPARATION OF PROPOSAL**

20. **Documents comprising the Proposal**

The Proponent must complete and include the following documents as part of its Proposal:

- (a) Form of Proposal;

- (b) Form of Proposal Security (Not Applicable);
- (c) Each of the Proposal Appendices; and
- (d) Corporate Authorisation.

21. Cost of participating in the RFP process

The Proponent shall bear all costs associated with the preparation and submission of its Proposal, including requests for clarifications and the finalisation and execution of the Contract and Sarawak Energy shall in no case be responsible or liable for such costs, regardless of the conduct or the outcome of the RFP process.

22. Language

All correspondence and communications given under or in connection with the RFP Documents and the RFP process shall be in English.

23. Governing law and jurisdiction

- 23.1 The RFP Documents and this RFP process are governed by the laws of Malaysia, as applicable in Sarawak.
- 23.2 The Courts of Sarawak shall have non-exclusive jurisdiction to settle any dispute arising out of or in connection with RFP Documents and the RFP process.

24. Corporate Authorisation

- 24.1 Each Proponent shall provide an appropriate Corporate Authorisation identifying and authorising the Authorised Signatory to do all other acts and things and sign or execute (under hand or under seal) and deliver any and all other documents and give any and all notices which may be required or which the Authorised Signatory, in its discretion, considers necessary in connection with the Proponent's participation in the RFP process, signing the Proposal and signing the Contract.
- 24.2 The Proponent and / or the Authorised Signatory may delegate any of its rights, powers and functions (other than signing the Proposal and signing the Contract) of the Authorised Signatory to the Proponent's Representative.
- 24.3 If a Proponent is a Consortium Proponent, each member of the Proponent shall provide an appropriate Corporate Authorisation providing for the authorisation of the Authorised Signatory in respect of the matters referred to in Clause 24.1.

25. Proposal Price

- 25.1 The pricing method for the Proposal Price (or each portion of the Proposal Price) is as set out in the RFP Particulars.

25.2 Except as otherwise stated in this Clause 25, the Proposal Price shall be inclusive of all Taxes which may be applicable to the Services as set out in the Pricing Appendix and include any Disbursements (if any).

26. Currencies and cost fluctuations

26.1 The Proposal Price and all rates and the prices set out in the Pricing Appendix shall be quoted by the Proponent in Ringgit. The payment shall be made in Ringgit.

26.2 On and from the Closing Date and Time, the Proponent shall under no circumstances be permitted to amend its Proposal Price and the Pricing Appendix, regardless of:

- (a) any change in any applicable Laws (including the introduction of any new Taxes);
- (b) any fluctuations in the cost of materials and / or labour; or
- (c) any other occurrence.

27. Proposal Validity Period

27.1 A Proposal shall expressly specify that it shall remain open and valid for the Proposal Validity Period.

27.2 Notwithstanding that any Proponent has been notified that it is not a successful Proponent, each Proponent's Proposal shall remain valid for the Proposal Validity Period.

28. Conflict of interest

28.1 Each Proposal shall include a declaration (in the prescribed form set out in Part II, Section 2 of the RFP Documents) of the nature and extent of, any conflict of interest that may exist or arise in relation to this RFP process and the Proponent shall submit, as part of its Proposal, proposals for avoiding any such conflicts of interest.

28.2 A failure by a Proponent to adhere to the requirements of this Clause 28 may, in Sarawak Energy's sole and absolute discretion, result in a Proponent being disqualified from the RFP process or its Proposal being rejected.

29. Proposal Security (Not Applicable)

29.1 A Proposal shall be accompanied by a Proposal Security (also known as a bid bond or a bid security) issued to Sarawak Energy on the date the Proposal is submitted if required by the RFP Particulars. Failure by a Proponent to include the Proposal Security may, in Sarawak Energy's sole and absolute discretion, result in a Proponent being disqualified from the RFP process or its Proposal being rejected.

29.2 The Proposal Security may be provided, at the Proponent's option, in any of the following forms:

- (a) an unconditional bank guarantee in the form set out in the Appendix to these Instructions to Proponents, or such other form confirmed in writing as being acceptable to Sarawak Energy;
- (b) an irrevocable letter of credit; or
- (c) cash, bank draft, cashier's cheque or certified cheque made payable to Sarawak Energy,

and shall be issued by a bank which is registered, and which has offices, in Malaysia (and which is otherwise acceptable to Sarawak Energy).

29.3 The Proposal Security may be forfeited, if:

- (a) the Proponent withdraws its Proposal during the Proposal Validity Period;
- (b) the successful Proponent fails:
 - (i) to sign the Contract in accordance with Clause 40;
 - (ii) furnish any required performance security in accordance with the Contract; or
 - (iii) in Sarawak Energy's reasonable opinion, the Proponent has in any other way breached a material aspect of this RFP process.

29.4 Where the Proposal Security includes an expiry date, such expiry date shall be not earlier than one hundred and eight (180) days after the date of expiry of the Proposal Validity Period.

29.5 If it becomes necessary to extend the Proposal Validity Period and / or the validity period of the Proposal Security, Sarawak Energy may request (in writing) the Proponent for extension of such validity period before the expiry date.

29.6 The Proponent shall have the right to refuse to grant an extension, in accordance with Clause 29.5, without forfeiting the Proposal Security and the:

- (a) Proposal Security of any Proponent who refuses to grant such extension shall be returned; and
- (b) Proponent shall be deemed to have waived the right to further participate in the RFP process.

30. Insurance policies

The successful Proponent shall provide to Sarawak Energy:

- (a) cover notes for all insurance policies required under the Form of Contract within seven (7) days after the date of the Notification of Award; and
- (b) copies of all such insurance policies within twenty-eight (28) days after the date of the Notification of Award.

I. SUBMISSION AND OPENING OF PROPOSALS

31. Format and signing of Proposal

- 31.1 Proposal shall be submitted in via SEPRO. The relevant attachments, where applicable, are to be in an editable format capable of being read using MS[®] Office applications without further conversion.

32. Sealing and marking of Proposal

- 32.1 The Proponent shall prepare and submit the Proposal in accordance with the requirements set out in the Event Contents via SEPRO.

33. Closing Date and Time

- 33.1 Proponent to complete the Event Contents by clicking "Submit Entire Response" by the Proposal Closing Date and Time.
- 33.2 Any Proposal received by Sarawak Energy after the Closing Date and Time may be declared late, rejected by Sarawak Energy and returned unopened to the Proponent.

34. Alternative Proposals (Not Applicable)

- 34.1 In addition to its Proposal, the Proponent may include any alternative Proposals ("Alternative Proposals").
- 34.2 When submitting any Alternative Proposal, the Proponent shall:
 - (a) submit a separate set of completed RFP Documents, including a cover letter, describing the reasons for proposing the Alternative Proposal and the advantages and/or disadvantages to Sarawak Energy; and
 - (b) include the set of completed RFP Documents in a separate envelope, marked as "Alternative Proposal".
- 34.3 Sarawak Energy may or may not, in its sole and absolute discretion, consider any Alternative Proposal.

- 34.4 The Proposal and any Alternative Proposal submitted shall be binding on the relevant Proponent and be treated as if each were individually a "Proposal" within the meaning of these Instructions to Proponents.

J. EVALUATION OF PROPOSALS

35. Evaluation of Proposals

- (a) Sarawak Energy's evaluation of the Proposals shall be carried out in accordance with Sarawak Energy's internal policy and requirements having regard to, among other things:
 - (i) the completeness and responsiveness of the Proposal;
 - (ii) the Proposal Price and the rates and prices set out in the Pricing Appendix; and
 - (iii) such other information as Sarawak Energy considers relevant to the evaluation and assessment of each Proponent's Proposal.
- (b) Following the evaluation of each Proposal, Sarawak Energy will compare all substantially responsive Proposals to determine the Proposal that represents the best value to Sarawak Energy.

36. Proposal Price prevails

The Proposal Price as stated in the Form of Proposal shall prevail, notwithstanding any discrepancy or arithmetical error in any other parts of the Proposal. In case of any discrepancy between amounts stated in words and figures, the amount in words will prevail.

37. Clarification of Proposals

To assist in the evaluation, and comparison of Proposals, Sarawak Energy may (but is in no way obliged to) request a Proponent to clarify certain aspects of its Proposal.

38. Sarawak Energy's rights

38.1 Sarawak Energy is not obliged to:

- (a) consider or evaluate any Proposal;
- (b) award the Contract to the Proponent submitting the lowest Proposal Price; or
- (c) accept any Proposal,

and reserves the right to reject or disqualify any Proposal, or to cancel the RFP process at any time without any obligation or incurring any liability to any Proponent.

- 38.2 Sarawak Energy's rights in accordance with Clause 38.1 shall apply at any and all times during the RFP process, notwithstanding that any Proponent(s) may have been notified as a successful or preferred Proponent.
- 38.3 Sarawak Energy in its sole and absolute discretion may (but is not obliged to) permit any non-compliance by any Proponent with any aspect of this RFP process without any obligation or incurring any liability to any Proponent.
- 38.4 Notwithstanding any other provision of these Instructions to Proponents to the contrary, Sarawak Energy (and its officers, directors, employees and agents) shall not, under any circumstances, whether as a result of breach of contract, indemnity, tort (including negligence), strict liability or otherwise, be liable to any Proponent for any loss of profit, loss of revenues, loss of use of equipment, loss of chance or opportunity, loss of contract, cost of capital or for any indirect or consequential loss or damage which may be suffered by the Proponent, as a result of or in connection with this RFP process.
- 38.5 Sarawak Energy may, in its absolute discretion, impose sanctions against a Proponent for any failure to comply with any of the requirements of this RFP process (including as set out in these Instructions to Proponents), including the:
- (a) imposition of a penalty or handicap against such Proponent in relation to this RFP process and / or any future procurement exercises of Sarawak Energy; and
 - (b) disqualification of such Proponent from participation in this RFP process and / or any future procurement exercises of Sarawak Energy.

K. AWARD OF CONTRACT

39. Contract award

- 39.1 Prior to the expiration of the Proposal Validity Period, Sarawak Energy may issue a Notification of Award to the successful Proponent, which shall specify the terms and conditions on which the successful Proponent is awarded the Contract for the Services. Sarawak Energy may, in its sole discretion, issue a Notification of Award to more than one Proponent.

- 39.2 Within ten (10) working days (or such later date as Sarawak Energy may in its reasonable discretion require) of receipt of a Notification of Award, the successful Proponent shall duly execute and sign the acknowledgment to the Notification of Award, and return it to Sarawak Energy.
- 39.3 Until such time as a formal Contract is prepared and executed, the Notification of Award shall constitute a binding contract between Sarawak Energy and the successful Proponent for the Services on the terms and conditions set out in such Notification of Award.
- 39.4 Failure to execute and sign the acknowledgment of its agreement to the terms and conditions set out in the Notification of Award or the Contract within the timeline set out in these Instructions to Proponents may result in the Proponent's disqualification from the RFP process (and its pre-existing status as the successful Proponent being null and void), its Proposal being rejected and the Notification of Award being null and void and Sarawak Energy reserves the right to award the Contract to alternative Proponents (including those that Sarawak Energy has notified that their Proposal has not been successful), in which case this Clause 39 and Clause 40 shall apply to that Proponent.
- 40. Signing of Contract**
- 40.1 Following the issuance of the Notification of Award, Sarawak Energy will compile all documents comprising the Contract prior to sending these documents to the successful Proponent for signature.
- 40.2 Within twenty-eight (28) calendar days of receipt of the finalised Contract (or such later date as may be required by Sarawak Energy), the successful Proponent shall duly execute and sign the Contract and return it to Sarawak Energy.

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