TENDER FOR:

TUDAN-MIRI AIRPORT 132kV TRANSMISSION LINE PROJECT

PLS-120095

Instructions to Tenderers

This Section specifies those procedures to be followed by Tenderers in the preparation and submission of their Tender Offer. Information is also provided on the process for the submission and evaluation of tenders and award of contract. These Instructions to Tenderers must read in conjunction with the matters set out in the Tender Particulars contained in Section 1.

Section 2 - Instructions to Tenderers

A. General

1. Scope of Tender Offer

1.1 Tender Offers must be submitted for the whole of the Works as set out and described in the Tender Documents. Tender Offers for only part of the Works will be determined by the Employer as being non-compliant and not be assessed.

2. Tenderers bound

2.1 By agreeing to participate in this tender process, the Tenderer agrees to comply with and be bound by these Instructions to Tenderers. Failure to comply with these Instructions to Tenderers may result in a Tender Offer being rejected.

3. Eligibility to tender

3.1 Only those entities having received written advice from the Employer of having met the Eligibility Requirements specified in the Tender Particulars (and previously conveyed to Tenderers) are permitted to participate in this tender process.

4. Definition and interpretation

4.1 Throughout the Tender Documents:

(a) Unless otherwise defined in these Instructions to Tenderers, all words and expressions must be interpreted in accordance with the matters set out in the Conditions of Contract;

(b) any reference to a ‘Part’ or a ‘Section’ is a reference to a part or a section of the Tender Documents; and

(c) the term “in writing” means communicated in written form (including by electronic means) and delivered against receipt.

4.2 For the purpose of these Instructions to Tenderers:

(a) “Closing Date and Time” means the date and time by which Tender Offers are required to be received by the Employer, as specified in the Tender Particulars;

(b) “Employer” means Sarawak Energy Berhad;

(c) "Employer's Representative" means the person named in the Tender Particulars as being Sarawak Energy Berhad’s nominated representative for the purposes of this tender process;

(d) "Form of Tender" means the document entitled "Form of Tender" required to be completed by the Tenderer and submitted with the Tender Offer;

(e) “Instructions to Tenderers” means this document;

(f) “Pricing Schedule” means the document entitled ‘Pricing Schedule’ forming part of the Tender Schedules;

(g) "Tender Documents" means those documents issued to the Tenderer as part of this tender process, as may be amended pursuant to any addendum issued by the Employer in accordance with these Instructions to Tenderers);

(h) "Tender Offer" means those documents required to be completed by the Tenderer and lodged with the Employer pursuant to these Instructions to Tenderers (including, but not limited to the completed Form of Tender and Tender Schedules);

(i) “Tender Particulars” means the tender particulars set out in Part I, Section 1, of the Tender Documents and setting out those matters particular to these Instructions to Tenderers;

(j) "Tender Price" means the price or amounts set out in the Form of Tender, calculated by reference to the matters set out in the Pricing Schedule and as may be amended in accordance with the matters set out in these Instructions to Tenderers;

(k) “Tender Schedules” means those commercial and technical schedules set out within Parts II and III of the Tender Documents respectively and required to be completed by the Tenderer and submitted as part of their Tender Offer;

(l) "Tender Security" means the form of security required to be submitted by each Tenderer with their Tender Offer as detailed in the Tender Particulars and these Instructions to Tenderers;

(m) "Tender Validity Period" means the period of time during which each Tenderer’s Tender Offer must remain valid and open for acceptance by the Employer; and

(n) "Tenderer" means the entity (or entities, in the case of a Tender Offer submitted by a joint venture or consortium) invited by the Employer to submit a Tender Offer.

5. Employer’s Representative

5.1 The name and contact details of the Employer’s Representative for the purposes of this tender process is set out in the Tender Particulars.

5.2 All correspondence regarding this tender process must be directed to the Employer’s Representative. Failure to adhere to this requirement may result in a Tenderer being disqualified from the tender process or its Tender Offer being rejected.

6. Corrupt practices

6.1 The Employer requires that all Tenderers observe the highest standard of ethical practices during the tendering process and, in the case of the successful Tenderer, during the execution of the Works. Pursuant to this requirement, the Employer:

(a) defines, for the purposes of this Clause, the following terms:

(i) "corrupt practice" means the offering, giving, receiving, or soliciting, either directly or indirectly, anything of value with the intention of improperly influencing the actions of another party;

(ii) "fraudulent practice" means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation;

(iii) "coercive practice" means impairing or harming, or threatening to impair or harm, either directly or indirectly, any party, or the property of a party, with the intention of improperly influencing the actions of another party;

(iv) "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party and/or the process of determining competitive pricing for the Works.

(b) may reject a Tender Offer, or immediately terminate any Contract entered into, if it determines that a Tenderer has, directly or through an agent, engaged in corrupt, fraudulent, coercive, or collusive practices whilst participating in this tender process or during the execution of the Works; and

(c) may impose sanction on a party, at any time, including declaring any such party ineligible, either indefinitely or for a stated period of time, from participating in any tender process conducted by the Employer if it at any time the Employer determines that a Tenderer has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive, or other prohibited practices.

7. Tender Offers from joint ventures or consortiums

7.1 A Tender Offer may be submitted by a joint venture or consortium consisting of two or more partners, provided that all partners have satisfied the Eligibility Requirements.

7.2 In addition to all other requirements set out in the Tender Documents, Tender Offers submitted by a joint venture or consortium must also comply with the following additional requirements:

(a) the Tender Offer, and in case of a successful Tender Offer, the Contract Agreement, must be signed so as to be legally binding on all partners on a joint and several liability basis;

(b) the Tender Offer must nominate a representative having the authority to conduct all business for and on behalf of any and all partners during the tender

process and, in the event that the Tender Offer is accepted, during the course of the Works; and

(c) a certified signed copy of the legally binding agreement entered into between the partners and documenting the nature and extent of the relationship between them, including compliance with the requirements of Clauses 7.2(a) and (b) above, must also be submitted with the Tender Offer.

7.3 In those circumstances where the formal legal arrangements required for the joint venture or consortium are yet to be established, and in place of the requirements specified above, satisfactory evidence of each partner's *intent* to enter into a legally binding relationship must be submitted with the Tender Offer. Such satisfactory evidence must be by way of Letter of Intent or Statutory Declaration, duly signed by all proposed partners and supported by a draft of the relevant agreement proposed to be entered into.

8. Support for local content

8.1 To the extent reasonably practical, each Tender Offer must be prepared on a basis that maximises the opportunity for participation of Malaysian skilled and non-skilled labourers, consultants, contractors, sub-contractors, suppliers and manufacturers ('local content') in the execution of the Works. Wherever possible, Tenderer's must support the use of local content originating from within Sarawak.

8.2 In preparing and submitting its Tender Offer, the Tenderer will be required to demonstrate:

(a) how it is intended to maximise the use of local content in the execution of the Works;

(b) the extent of the Works that will not be carried out using local content (if any); and

(c) where local content is not proposed to be involved in a certain Works activity, that the capability and/or capacity of local content is not available to support the requirements of that activity.

8.3 The Employer may request such further information or evidence from a Tenderer as it may reasonably require to ensure that the principles for supporting and promoting opportunity for local content is satisfied.

9. Conditions of employment

9.1 In carrying out the Works, the successful Tenderer must ensure that they comply with Malaysian employment requirements and must fully comply with all relevant laws, rules and regulations regarding the employment of personnel and must otherwise ensure that all labour engaged in the Works are subject to conditions of employment that are no less favourable than those observed in similar positions of employment available in Sarawak.

9.2 Tender Offers that display a commitment to the establishment and continued improvement of working conditions, promoting the health and safety of personnel, will be viewed favourably by the Employer during the tender evaluation process.

10. Tender Price inclusive of all Taxes

10.1 Unless otherwise specified in the Contract, all Taxes payable by the successful Tenderer under, or in relation to, the Contract (including duties and other levies) must be included in the Tender Price. Compliance with this requirement includes (but is not limited to) the taxes, duties and levies specifically mentioned in the paragraphs below.

11. Compliance with customs regulations

11.1 Tenderers should familiarise themselves with all Customs Regulations and associated Laws applicable in Sarawak and Malaysia. Particular consideration should be had to the importation of Plant and Materials (including equipment) that are otherwise available from within Sarawak or Malaysia. Import permits and customs clearance for such items may not be easily obtained. Unless stated otherwise in the Contract, the Employer will not be liable to make direct payment of import duties or levies, nor assist the successful Tenderer with their importation.

12. Withholding tax

12.1 Tenderers should familiarise themselves with all Laws applicable to the payment of withholding tax within Malaysia, the amount of which is required to be deducted by the Employer from Contract payments due to the successful Tenderer in certain circumstances.

13. CIDB levy

13.1 Tenderers should familiarise themselves with the Lembaga Pembangunan Industri Pembinaan Malaysia (CIDB) Act 1994, which requires contractors and builders undertaking construction works exceeding a certain contract value to pay a levy to the Construction Industry Development Board (CIDB).

B. Tender Documents

14. Contents of Tender Documents

14.1 The Tender Documents consist of Parts I, II, III, IV and V, which include all the Sections indicated below. The Tender Documents must be read in conjunction with any addenda that may be issued in accordance with these Instructions to Tenderers.

PART I Tender Procedures

Section 1 – Tender Particulars

Section 2 – Instructions to Tenderers

PART II Commercial Submission

Section 3 – Form of Tender

Section 4 – Form of Tender Bond

Section 5 – Company's Information & Financial Information

Section 6 – Pricing Schedules

Section 7 – Commercial Deviations Schedule

PART III Technical Submission

Section 8 – Technical Data Sheets

Section 9 – Technical Deviations Schedule

PART IV Employer's Requirements

Section 10 – Information

Section 11 – General Project Requirement

Section 12 – Technical Requirements

- Particular Requirements
  A – Engineering Requirement for Contractor
  B – Quality Assurance & Quality Control Requirements for Contractor

- Technical Specification
  A – Materials and Designs
  B – Construction and Installation

Section 13 – Tender Drawings

Section 14 – Health, Safety and Environment (HSE) Requirements for Contractor

Section 15 – Programme Schedules Specification & Typical Milestone Programme

PART V Conditions of Contract

Section 16 – Form of Contract Agreement

Section 17 – General Conditions of Contract

Section 18 – Particular Conditions of Contract

Section 19 – Appendices to Particular Conditions of Contract

15. Status of information provided by the Employer

15.1 The Employer does not guarantee the correctness of any information, interpretations, deductions or conclusions which are given or made in the Tender Documents or otherwise provided to the Tenderer, or in any reports, maps, drawings, diagrams or other reference information. Such information is provided for the assistance of Tenderer's only and will not form part of the Contract entered into with the successful Tenderer.

15.2 By submitting a Tender Offer, the Tenderer is deemed to have made its own enquiries, deductions and conclusions regarding the extent of work required to complete the Works.

16. Compliance with requirements of the Tender Documents

16.1 The Tenderer is required to examine all instructions, forms, terms, specifications and other requirements set out in the Tender Documents. Failure to furnish all information and/or documentation required by the Tender Documents, including in the format required, may result in a Tender Offer being rejected.

16.2 As part of its Tender Offer, the Tenderer must complete all Tender Schedules in sufficient detail to demonstrate the adequacy of the Tender Offer to meet the Employer's requirements for the Works.

16.3 All documents comprising the Tender Offer must be prepared in accordance with the forms and schedules provided. The Tenderer must not amend any of the Tender Documents except to the extent necessary to complete their Tender Offer. Failure to comply with this requirement may result in a Tender Offer being rejected.

17. Clarification of Tender Documents

17.1 A Tenderer requiring clarification of any matter set out in the Tender Documents must do so by contacting the Employer's Representative.

17.2 The Employer will respond in writing to any request for clarification, provided that such request is received no later than three (3) days prior to the Closing Date and Time.

17.3 As it considers appropriate, the Employer will forward any response to a request for clarification to all Tenderers (without identifying the Tenderer making the inquiry). Any such response will be provided for information purposes only. Should the

Employer deem it necessary to amend the Tender Documents as a result of a request for clarification, it will issue an addendum to all Tenderers.

17.4 For the avoidance of doubt, any clarification of the Tender Documents given verbally by the Employer's Representative is considered to be provided as information only.

18. Issuing of addendum

18.1 At any time prior to the Closing Date and Time, the Employer may amend the Tender Documents by issuing an addendum.

18.2 Any addendum will be issued to all Tenderers and form part of the Tender Documents.

19. Tender briefing

19.1 For the assistance of all Tenderers, the Employer may arrange a tender briefing on such date and time as stated in the Tender Particulars (if any). If so specified, only one tender briefing will be conducted.

19.2 The purpose of the tender briefing will be to provide an overview of the tender process, the Employer's expectations and requirements for the Works, and clarify any questions that may be raised.

19.3 The Tenderer may nominate a maximum of three (3) representatives to attend the tender briefing by written advice to the Employer's Representative to be received not later than two (2) days prior to the tender briefing and advising of the name and designation of such representatives.

19.4 The Tenderer is requested, as far as possible, to submit any requests for clarification in writing to the Employer's Representative not later than two (2) days prior to any scheduled tender briefing.

19.5 Minutes of the tender briefing will be provided to all Tenderers. Any modification to the Tender Documents that may become necessary as a result of the tender briefing will be made by the Employer exclusively through the issuing of an addendum (and not through the minutes of the tender briefing).

19.6 Non-attendance at the tender briefing will not be a cause for disqualification of a Tenderer. However, Tenderer's are strongly encouraged to attend to ensure that they are fully informed as to the Employers expectations and requirements for the tender process and the Works.

20. Site visit

20.1 For the assistance of all Tenderers, the Employer may arrange a visit to the Site on such date and time as stated in the Tender Particulars (if any).

20.2 Where a date and time for a Site visit is not specified in the Tender Particulars, the Tenderer is nevertheless advised to arrange with the Employer's Representative to visit and examine the Site and its surroundings and obtain for itself and on its own responsibility all information that may be necessary for the preparation of a complete Tender Offer.

20.3 The Tenderer may not visit the Site or carry out any examinations or tests without the express approval of the Employer's Representative having first been obtained (with such approval not to be unreasonably withheld).

20.4 All costs associated with visiting the Site will be at the Tenderer's own expense. The Employer will not provide or arrange transport or accommodation for the Tenderer.

20.5 For the purposes of any Site visit, the Tenderer and its personnel or agents will be granted permission by the Employer to enter upon its premises and lands, but only upon the express condition that the Tenderer, its personnel, and agents release and indemnify the Employer, including their personnel and agents, from all liability for death or personal injury, loss of or damage to property, or any other loss, damage, costs, and expenses arising as a result of the Site visit.

C. Preparation of Tender Offer

21. Cost of tendering

21.1 The Tenderer must bear all costs associated with the preparation and submission of its Tender Offer, and the Employer is not responsible or liable for those costs, regardless of the conduct or outcome of the tender process.

22. Language and applicable law

22.1 The Tender Offer and all communications, correspondence and documents relating to the tender process must be in the English language.

22.2 This tender process is governed by the laws of Malaysia, as applicable in the State of Sarawak.

23. Documents comprising the Tender Offer

23.1 The Tenderer's Tender Offer must comprise the following documents:

(a) completed Form of Tender;

(b) completed Tender Schedules;

(c) completed Form of Tender Bond; and

(d) any other documents required by the Tender Documents.

23.2 In addition to the requirements specified above, Tender Offers submitted by a joint venture or consortium must comply with the requirements set out in Item 7 of these Instructions to Tenderers.

24. Alternative Tender Offers

24.1 Alternative Tender Offers will only be permitted if stated in the Tender Particulars.

24.2 If alternative times for completion are explicitly invited, a statement to that effect will be included in the Tender Particulars.

24.3 A Tenderer wishing to offer commercial or technical alternatives to the requirements of the Tender Documents may only do so by completing the relevant details within the relevant Tender Schedules.

24.4 For any alternative offer to be considered by the Employer, the Tenderer must first price the Tender Offer strictly in accordance with the Tender Documents and must provide all information necessary for a complete evaluation of the alternative Tender Offer to be made by the Employer.

24.5 The Employer may or may not, in its absolute discretion, consider any alternative Tender Offer.

25. Tender Price and discounts

25.1 The Tender Price must be stated in the Form of Tender and must be the total price of the Tender Offer, calculated by reference to the matters set out in the Pricing Schedule and include all incidental and contingent expenses, but excluding any discounts offered.

25.2 The Tenderer must fill in rates and prices for all items of the Works described in the Pricing Schedule. Items against which no rate or price is entered by the Tenderer will not be paid for by the Employer when executed and will be deemed to be included elsewhere within the Tender Price.

25.3 The Tender Price must not be subject to adjustment except as specified in the Contract.

25.4 Where the Tender Price is calculated by reference to a bill of quantities, and unless otherwise stated in the Contract, such quantities are provisional only and will be subject to remeasurement in accordance with the Contract.

25.5 Where a discount to the tender price is offered, such offer must accompany the Tender Offer by way of separate letter and be received by the Employer by the Closing Date and Time. Any offer of discount received by the Employer after the Closing Date and Time will not be considered.

26. Currencies and payment

26.1 The Tender Price and all rates and the prices set out in the Pricing Schedule must be quoted by the Tenderer in Malaysian Ringgit (MYR) and not be subject to any foreign exchange risk on the part of the Employer.

26.2 The Employer will make all payments properly due under the Contract in Malaysian Ringgit (MYR).

27. Tender Security

27.1 As part of the Tender Offer, each Tenderer must provide the Employer with Tender Security in accordance with the matters set out and described in the Tender Particulars and below.

27.2 The Tender Security must be, at the Tenderer's option, in any of the following forms:

(a) an unconditional bank guarantee; or

(b) Bank draft or cashier's cheque made payable to the Employer;

and provided from a reputable source acceptable to the Employer, registered and having offices in Malaysia.

27.3 In the case of an unconditional bank guarantee, the Tender Security must be submitted in the Form of Tender Bond provided with the Tender Documents, or such other form confirmed in writing as being acceptable to the Employer.

27.4 In circumstances where the Tender Security includes an expiry date, such expiry date must be not less than 60 days beyond the Tender Validity Period (including any extension of the Tender Validity Period).

27.5 Any Tender Offer not accompanied by a compliant Tender Security may be rejected by the Employer.

27.6 For unsuccessful Tenderer's, the Tender Security will be returned as promptly as possible following contract award to the successful Tenderer.

27.7 In the case of the successful Tenderer, the Tender Security will be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security in accordance with the requirements of the Contract.

27.8 In the Employer's sole discretion, the Tender Security may be forfeited where:

(a) a Tenderer withdraws its Tender Offer during the Tender Validity Period; or

(b) if the successful Tenderer fails to:

(i) sign the Contract in accordance with these Instructions to Tenderers; or

(ii) furnish a Performance Security in accordance with the Contract; or

(iii) accept the arithmetical correction of its Tender Offer in accordance with these Instructions to Tenderers.

27.9 The Tender Security of a joint venture or consortium, including any proposed joint venture or consortium, must be joint and severally binding on all partners.

28. Tender Validity Period

28.1 All Tender Offers must remain open and valid for the period stated in the Tender Particulars.

28.2 In exceptional circumstances and prior to the expiration of the Tender Validity Period, the Employer may request that Tenderers agree to extend the Tender Validity Period. Any such request and each Tenderer's response must be in writing.

28.3 A Tenderer is not bound to agree to any request by the Employer to extend the Tender Validity Period and any such refusal will not cause the Tenderer to forfeit its Tender Security.

28.4 In circumstances where an extension to the Tender Validity Period is agreed by the Tenderer, the Employer's right to retain the Tender Security is similarly extended. Where necessary, the Tenderer may be required to extend the validity of the Tender Security and/or provide a new Tender Security to the Employer.

28.5 A Tenderer agreeing to an extension of the Tender Validity Period is not required or permitted to modify its Tender Offer.

29. Format and signing of Tender Offer

29.1 The Tenderer must prepare one (1) original of the documents comprising its Tender Offer and clearly mark it "ORIGINAL". In addition, the Tenderer must submit one (1) complete copies of the Tender Offer and clearly mark them "COPY."

29.2 The original and all copies of the Tender Offer must be typed or written in indelible ink and be signed by a person duly authorised to sign on behalf of the Tenderer. The Tenderer's company stamp must also be included.

29.3 Any interlineations, erasures, or overwriting within the Tender Offer will be valid only if initialled by the person signing the Form of Tender.

D. Submission and Opening of Tender Offers

30. Closing Date and Time

30.1 Tender Offers must be received by the Employer at the address and by no later than the Closing Date and Time specified in the Tender Particulars.

30.2 The Employer may, at its discretion, extend the Closing Date and Time by issuing an addendum to all Tenderers.

31. Hard copies required

31.1 Tender Offers must be submitted in hard copy. Soft copies of certain Tender Documents may also be required to be submitted in accordance with the matters (if any) set out in the Tender Particulars.

31.2 All Technical Schedules including Technical Deviations Schedules and Commercial Deviations Schedules are mandatory and required to be filled by the Tenderer and submitted with their Tender Offer.

32. Employer to acknowledge receipt (Not Used)

33. Sealing and marking of Tender Offers

33.1 The Tenderer must enclose the original and all copies of its Tender Offer in separate sealed envelopes, duly marking the envelopes as “ORIGINAL”, and “COPY”. The envelopes containing the original and the copies must then be secured as one package.

33.2 The inner envelopes and outer package must:

(a) not include any writing on the outside that would enable the Tenderer to be identified;

(b) be addressed to the Employer’s address for submission of tenders in accordance with the matters set out in the Tender Particulars; and

(c) state the Closing Date and Time.

33.3 Any failure by a Tenderer to seal and mark all envelopes as required may result in its Tender Offer being rejected. The Employer will assume no responsibility for the misplacement of any Tender Offers improperly sealed or marked.

34. Late Tender Offers

34.1 The Employer is not obliged to consider any Tender Offer that is delivered after the Closing Date and Time.

34.2 In its absolute discretion and in only in exceptional extenuating circumstances to be considered by the Employer on a case-by-case basis, the Employer may accept a Tender Offer delivered after the Closing Date and Time provided:

(a) that such late delivery was outside of the Tenderer's reasonable control;

(b) the Tenderer submitting the Tender Offer is considered not to have obtained advantage by reason of such late submission;

(c) no other Tenderer is disadvantaged by reason of such late submission; and

(d) the Tender Offers are yet to be opened.

34.3 The Employer must reject any Tender Offer delivered more than twenty-four (24) hours following the Closing Date and Time.

34.4 Any Tender Offer delivered to the Employer after the Closing Date and Time (and not accepted by the Employer in accordance with the matters set out in this Clause) must be declared late, be rejected by the Employer, and returned unopened to the Tenderer.

35. Withdrawal, substitution, and modification of Tender Offers

35.1 Prior to the Closing Date and Time, a Tenderer may withdraw, substitute, or modify its Tender Offer after it has been submitted by sending a written notice duly signed by the Tenderer's authorised representative and sent to the Employer's address for submission of tenders.

35.2 Any substitution or modification of a Tender Offer must accompany the respective written notice. Any substituted or modified Tender Offer must be prepared and submitted in strict accordance with the requirements for the marking and submission of tenders specified in these Instructions to Tenderers. In addition, the respective envelopes must be clearly marked "SUBSTITUTION" or "MODIFICATION".

35.3 Tender Offers requested to be withdrawn will be returned to the Tenderer unopened.

35.4 No Tender Offer may be withdrawn, substituted, or modified in the interval between the Closing Date and Time and the expiration of the Tender Validity Period.

36. Tender opening

36.1 The Employer will open all Tender Offers in accordance with its internal governance processes.

36.2 Tenderers are not permitted to attend the opening of Tender Offers and the prices submitted by each Tenderer will not be disclosed.

E. Evaluation of Tender Offers

37. Confidentiality

37.1 Information relating to the examination, evaluation, comparison, and qualification of Tender Offers, including recommendation for contract award, will not be disclosed to Tenderers or any other persons not officially concerned with such process.

37.2 Any attempt by a Tenderer to influence the outcome of the evaluation process may result in their Tender Offer being disqualified.

38. Communication with the Employer

38.1 From the Closing Date and Time until the time of Contract award, if any Tenderer wishes to communicate with the Employer on any matter related to the tender process, it should do so in writing sent to the Employer's Representative.

39. Determination of responsiveness

39.1 The Employer will, in its absolute discretion, determine the responsiveness of the Tender Offer based on the contents of the Tender Offer in adherence to the requirements of the Tender Documents.

39.2 The Employer will only proceed to assess those Tender Offers considered to be substantially responsive to the requirements of the Tender Documents.

39.3 A substantially responsive Tender Offer must meet the requirements of the Tender Documents without material deviation, reservation, or omission.

39.4 Any Tender Offer determined by the Employer, in its sole and absolute discretion, to be materially non-conforming to the requirements of the Tender Documents will be rejected and the Tenderer will not be provided with the opportunity to correct any such material non-conformance.

40. Immaterial non-conformities

40.1 Provided that a Tender Offer is substantially responsive to the requirements of the Tender Documents, the Employer may, in its sole and absolute discretion, accept a Tender Offer with immaterial non-conformities that nevertheless do not strictly comply with the requirements of the Tender Documents.

40.2 The Employer may request that the Tenderer attend the Employer's offices for the purposes of correcting any immaterial non-conformities. Any failure by the Tender to comply with such request may result in the rejection of the Tender Offer by the Employer.

41. Correction of arithmetical errors

41.1 Where the Tender Price is prepared on a lump sum basis, if there is a discrepancy between the summation of rates or prices in the Pricing Schedule and the Tender Price set out in the Form of Tender, the Tender Price set out in the Form of Tender

will prevail and, as part of any clarification or post-tender discussion process, the Tenderer will be required to correct their rates or prices accordingly.

41.2 Where the Tender Price is prepared by reference to a bill of quantities or on a rates basis, if there is a discrepancy between the summation of rates or prices in the Pricing Schedule and the Tender Price set out in the Form of Tender, the rates or prices in the Pricing Schedule will prevail and, in which circumstances, the Employer is permitted to correct the Tender Price set out in the Form of Tender.

41.3 Subject to this Clause, where there is any discrepancy between amounts stated in words and figures, the amount in words will prevail.

41.4 If a Tenderer does not accept the correction of arithmetical errors affected by the Employer (acting reasonably) in accordance with this Clause, their Tender Offer may be disqualified and the Tenderer's Tender Security may be forfeited.

42. Evaluation of Tender Offers

42..1 The Employer will evaluate all conforming Tender Offers on the basis of all information submitted by each Tenderer and using pre-determined evaluation criteria with a view to determining that Tender Offer representing Best Value in accordance with the Employer's Requirements.

42.2 Without limiting the Employer's right to consider all information submitted by each Tenderer, in evaluating Tender Offers the Employer will have regard to:

a) Completeness of Tender Offer;

b) Capability, capacity and experience;

c) Proposed Works methodology;

d) Ability to meet Employer's project schedule and programming requirements;

e) Adherence to technical specification;

f) Adherence to all safety, environmental and quality requirements;

g) Tender Price and rates and prices contained in the Pricing Schedule;

h) All other information required to be submitted as part of this tender process; and

i) Such other information as the Employer considers relevant to the evaluation and assessment of each Tender Offer.

43. Clarification of Tender Offers

43.1 To assist in the evaluation, and comparison of Tender Offers, the Employer may require a Tenderer to clarify certain aspects of its Tender Offer. Any such request by the Employer, together with the Tenderer's response, must be in writing.

43.2 If a Tenderer does not provide clarifications of its Tender Offer by the date and time reasonably required by the Employer, the Tender Offer may be disqualified.

44. Post-tender discussions

44.1 The Employer may request to meet with a Tenderer for the purposes of post-tender discussions. Such request may be made by the Employer to all Tenderers, short-listed Tenderers, or the preferred Tenderer.

44.2 As part of any post-tender discussion process, the Employer may require a Tenderer to clarify and confirm certain aspects of its Tender Offer. Such clarifications may include a requirement for the Tenderer to substantiate that the rates or prices included in the completed Pricing Schedule are responsive to the requirements of the Tender Documents and reasonable having regard to known market conditions and all matters set out in the Tenderer's Tender Offer. Where the rates submitted by a Tenderer are established as not being in accordance with known market conditions, the Employer reserves the right to rationalise the rates accordingly (without amending the Tender Price).

44.3 As a result of the post-tender discussion process, a Tenderer may be required to resubmit their Tender Offer incorporating all matters clarified and/or agreed with the Employer.

44.4 Any failure by a Tenderer to comply with the requirements of this Clause may result in their Tender Offer being disqualified.

44.5 The fact that the Employer may request to meet a Tenderer for the purposes of post-tender discussions does not oblige the Employer to accept that Tenderer's Tender Offer and the Employer reserves the right to enter into such post-tender discussions with any Tenderer as it sees fit.

45. Comparison of Tender Offers

45.1 Following the evaluation of each Tender Offer, the Employer will compare all conforming Tender Offers to determine that Tender Offer representing Best Value to the Employer.

45.2 For each tender the evaluated Tender Offer will be determined by the Employer by adjusting the Tender Offer as follows:-

a) making any correction for errors pursuant to this Clause;

b) making an appropriate Engineer's adjustment (weighting in monetary value) to bring the offer to a common desirable level an amount calculates based on the average rates of the Tenderers but disregarding the lowest and the highest offered rates for any material variations and quality assurances and the design deficiencies or deviations from the Specifications

46. Employer's rights

46.1 The Employer is not obliged to award the Contract to that Tenderer submitting the lowest Tender Price and reserves the right to accept, reject or disqualify any Tender Offer, or to cancel the tender process at any time prior to contract award without any obligation or incurring any liability to Tenderers.

F. Award of Contract

47. Contract award

47.1 Prior to the expiration of the Tender Validity Period, the Employer will notify the successful Tender in writing, by issuing a Letter of Acceptance, that their Tender Offer has been accepted and that they are awarded the Contract for the Works on such terms and conditions as specified in the Letter of Acceptance.

47.2 Until a formal Contract is prepared and executed, the Letter of Acceptance will constitute a binding Contract between the Employer and the successful Tenderer.

48. Notification to unsuccessful Tenderers

48.1 Following issuing of the Letter of Acceptance to the successful Tenderer, the Employer will notify all other Tenderer's that their Tender Offer has not been successful. Such notification will include the name of the successful Tenderer; however no other information regarding the successful Tenderer's Tender Offer will be disclosed.

49. Tender debriefing

49.1 Within twenty-one (21) days following receipt of notification that their Tender Offer has not been successful, unsuccessful Tenderer's may request in writing to the Employer for a debriefing meeting to understand the grounds on which their Tender Offer was not selected. The Employer must promptly respond to any such request.

49.2 During any tender debriefing process, the Employer will not disclose any information regarding any other Tender Offer.

50. Signing of Contract

50.1 Following the issuing of the Letter of Acceptance, the Employer must compile all documents comprising the Contract prior to sending to the successful Tenderer for signature.

50.2 Within twenty-eight (28) days of receipt of the Contract, the successful Tenderer must sign, date, and return it to the Employer.

51. Performance Security

51.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Tenderer must furnish the Performance Security in accordance with the Contract and in accordance with the Form of Performance Security included in the appendices to the Particular Conditions of Contract.

52. Failure to sign Contract or provide Performance Security

52.1 Any failure by the successful Tenderer to sign the Contract or provide the Performance Security within the required timeframes will be grounds for termination of the Letter of Acceptance by the Employer and forfeiture of the successful Tenderer's Tender Security.

53. Laws Applicable

53.1 This tender process shall be conducted in accordance with the laws of Malaysia as applicable to the State of Sarawak.