

**SUPPLY AND INSTALLATION OF SURVEILLANCE SYSTEMS WORKS FOR
SELIRIK AND ULU SUNGAI MERAH 33/11kV SUBSTATION**

SARAWAK ENERGY BERHAD

TENDER DOCUMENTS – CONTRACT REF. NO.: DPE/SSW-SLR/USM

PART I – TENDER PROCEDURES

SECTION 3 – INSTRUCTIONS TO TENDERER

This Section specifies those procedures to be followed by the Tenderer in the preparation and submission of the Tender Offer. Information is also provided on the process for the submission and evaluation of the Tender Offers and award of the Contract. These Instructions to Tenderer should also be read in conjunction with the requirements set out in the Tender Particulars contained in Section 2 of Part I of the Tender Documents.

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A. GENERAL

1. Definition and Interpretation

1.1 For the purpose of these Instructions to Tenderers:

- (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 (and, for the purposes of these Instructions to Tenderer, the terms "holding company" and "subsidiary" shall have the meaning given to such terms under the Companies Act (and, for the avoidance of doubt, such meanings shall apply regardless of the jurisdiction of incorporation of the relevant company));
- (b) **"Alternative Tender Offer"** has the meaning given in Clause **Error! Reference source not found.**;
- (c) **"Authorised Signatory"** means the person (or persons) authorised by the Tenderer to exercise the rights and powers and perform the functions set out in Clause 24 [*Corporate Authorisation*];
- (d) **"Closing Date and Time"** means the date and time by which Tender Offers are required to be received by Sarawak Energy, as set out in the Tender Particulars;
- (e) **"Company"** means the Sarawak Energy or its affiliate;
- (f) **"Companies Act"** means the Companies Act 2016 (ACT 777);
- (g) **"Consortium Tenderer"** means a Tenderer formed by way of an unincorporated joint venture or consortium between two or more members;
- (h) **"Contract"** means the contract to be entered into between Sarawak Energy and the successful Tenderer, as selected by Sarawak Energy in accordance with this tender process, as set out in the Form of Contract;
- (i) **"Corporate Authorisation"** means with respect to a Tenderer (or member of a Consortium Tenderer):
 - (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 Tenderer's Authorised Signatory in accordance with the requirements of Clause 24 [*Corporate Authorisation*];

- (j) "**Discount**" means a discount to the Tender Price, offered by the Tenderer by way of a separate letter;
- (k) "**Documents Comprising the Tender Offer**" has the meaning given in Clause 20;
- (l) "**Eligibility Requirements**" means the eligibility requirements for each Tenderer (or members of a Consortium Tenderer), as set out in the Tender Particulars;
- (m) "**Form of Contract**" means the documents listed under the heading "Form of Contract" in Part III of the Tender Documents;
- (n) "**Form of Tender**" means the document entitled "Form of Tender" set out in Part II, Section 1 of the Tender Documents, which is required to be completed by the Tenderers and submitted with their Tender Offer;
- (o) "**Instructions to Tenderers**" means this document;
- (p) "**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;
- (q) "**Letter of Award**" means the letter of award issued by Sarawak Energy to the successful Tenderer for the Works;
- (r) "**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;

- (s) **"Pricing Appendix"** means the document entitled "Tender Appendix B – Tender Price" set out in Tender Appendices which sets out the manner in which the Tender Price shall be calculated;
- (t) **"Project Owner"** means the entity on whose behalf the Employer has agreed to develop, design, engineer, finance, procure, construct, complete, test and/or commission (as the case maybe) and otherwise complete the Project for such entity.
- (u) **"Related Party"** means:
 - (i) with respect to a non-Consortium Tenderer, director, partner or an officer of such Tenderer; and
 - (ii) with respect to a Consortium Tenderer, a director, partner or an officer of any of the members of such Consortium Tenderer;
- (v) **"Sarawak Energy"** means Sarawak Energy Berhad (company number 007199-D);
- (w) **"Sarawak Energy Director"** means any director of Sarawak Energy, or any director of an Affiliate of Sarawak Energy;
- (x) **"Sarawak Energy's Representative"** means the person named in the Tender Particulars as its main point of contact with the Tenderer and / or the Tenderer's Representative for the purposes of this tender process;
- (y) **"SEPRO"** means Sarawak Energy's e-Procurement System.
- (z) **"SST"** means sales and services tax payable in accordance with the Sales Tax 2018 and the Services Tax Act 2018 respectively.
- (aa) **"Subcontractor"** shall mean any person other than the Contractor and including his legal representatives, successors and permitted assigns named in the Contract for any part of the Works or any person to whom any part of the Contract has been sub-contract with the consent in writing of the Company.
- (bb) **"Taxes"** means all direct and indirect taxes imposed in any jurisdiction by any governmental entity or semi-governmental entity (including any government authority), including income taxes, corporate taxes, withholding taxes, goods 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.

- (cc) "**Tender Appendices**" means the appendices set out in Part II, Section 2 of the Tender Documents and required to be completed by the Tenderer and submitted with their Tender Offer;
- (dd) "**Tender Documents**" means those documents issued to the Tenderer as part of this tender process, as may be amended in accordance with any addendum issued by Sarawak Energy in accordance with these Instructions to Tenderers;
- (ee) "**Tender Offer**" means those documents comprising the formal offer for the performance of the Works required to be completed by the Tenderer which is to be submitted to Sarawak Energy by the Closing Date and Time in accordance with these Instructions to Tenderers;
- (ff) "**Tender Particulars**" means the tender particulars set out in Part I, Section 2 of the Tender Documents, setting out those matters particular to this tender process;
- (gg) "**Tender 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 Tenderers;
- (hh) "**Tender Security**" means the security required to be submitted by each Tenderer with their Tender Offer;
- (ii) "**Tender Validity Period**" means the period of time during which each Tenderer's Tender Offer shall remain valid and open for acceptance by Sarawak Energy as set out in the Tender Particulars (as may be extended from time to time in accordance with these Instructions to Tenderers);
- (jj) "**Tenderer**" means any entity or group of entities (in the case of a Consortium Tenderer) issued with a copy of the Tender Documents or otherwise invited by Sarawak Energy to submit a Tender Offer;
- (kk) "**Tenderer's Representative**" means the person (or persons) authorised by the Tenderer to act as its main point of contact with Sarawak Energy and / or Sarawak Energy's Representative for the purposes of this tender process;
- (ll) "**UPKJ**" means Unit Pendaftaran Kontraktor dan Juruperunding;
- (mm) "**Variation**" means any variation to the execution of the Works, including to increase, decrease, substitute or omit any part of the Works or the method, sequence or timing of the Works and the Contractor shall comply with any such direction; and

- (nn) "**Works**" means all the work and design (if any) to be executed by the Contractor including temporary work and any Variation.

1.2 Throughout the Tender Documents:

- (a) unless the context otherwise requires, all:
- (i) words and expressions used in these Instructions to Tenderers shall be interpreted in accordance with the matters set out in the Form of Contract; and
 - (ii) capitalised terms used in these Instructions to Tenderers shall, unless otherwise defined in these Instructions to Tenderers, have the meaning assigned to them in the Form of Contract;
- (b) all capitalised terms used in the Tender Documents shall, unless otherwise specified, have the meaning assigned to them in these Instructions to Tenderers (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 Tender 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 Tender 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 40, Clause 41.4 and any other, additional clauses of these Instructions to Tenderers which, by their nature, are intended to survive the cancellation, conclusion or termination of the tender process, shall survive the cancellation, conclusion or termination of the tender process.

B. TENDER DOCUMENTS AND TENDER 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 Tenderer during the tender process, which is provided to Tenderers 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 Tenderer.

2.2 Each Tenderer should conduct their own investigations and analyses of the information set out in the Tender Documents and by submitting a Tender Offer, the Tenderer 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 perform the Works.

3. Compliance with Requirements of the Tender Documents

3.1 Failure by the Tenderer to furnish all information and documentation required by the Tender Documents, including in the format required, may result in its Tender Offer being rejected.

3.2 The Tenderer is deemed to have examined, understood and agreed to the Form of Contract. The Tenderer is not entitled to propose any deviation to the Form of Contract.

4. Tender Offers from Consortium Tenderers

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

4.2 If a Consortium Tenderer is selected as the successful Tenderer, 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 Tenderer to enter into the Contract together with the Tenderer on a joint and several basis and the Tenderer shall (and shall procure that each of its members shall) contract on such a basis.

4.3 Tender Offers submitted by a Consortium Tenderer shall also comply with the following additional requirements:

- (a) the Tender Offer (and the Tender Offer shall include an undertaking that in case of a successful Tender Offer, 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 Tenderer shall provide a Corporate Authorisation in accordance with Clause 24.3; and
- (c) the Tender Offer shall include all information and documentation specified as applicable for Consortium Tenderers in the Tender Documents.

4.4 Each Consortium Tenderer shall at all times comply with any legal requirements applicable to Consortium Tenderers in Sarawak.

5. Tender Briefing

5.1 For the assistance of all Tenderers, Sarawak Energy may arrange a tender briefing on such date(s) and time(s), and at such location(s), as set out in the Tender Particulars. Attendance at a tender briefing is mandatory.

5.2 Not later than two (2) days prior to a tender briefing, the Tenderer shall inform Sarawak Energy's Representative of the persons that will be attending the tender briefing on its behalf (limited to a maximum of three (3) persons).

6. Site Visit

6.1 For the assistance of all Tenderers, Sarawak Energy may arrange a site visit on such date(s) and time(s), and commencing from such meeting point, as set out in the Tender Particulars. Attendance at a site visit is mandatory.

6.2 Where a date and time for a site visit is not set out in the Tender Particulars, the Tenderer is nevertheless advised to arrange with Sarawak Energy's Representative to visit and examine the site and its surroundings and obtain for itself all information that may be necessary for the preparation of a complete Tender Offer.

6.3 Not later than two (2) days prior to a site visit, the Tenderer shall inform Sarawak Energy's Representative of the persons that will be attending the site visit on its behalf.

6.4 The Tenderer may not carry out any site visit, examinations or tests without the prior written consent of Sarawak Energy's Representative.

6.5 In participating in any site visit, the Tenderer and its personnel or agents agree to release and indemnify Sarawak Energy (and its officers, directors, employees 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 or in connection with the site visit.

7. Clarification of Tender Documents

- 7.1 Any Tenderer requiring clarification of any matter set out in the Tender 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 Tender Documents by issuing an addendum in writing.

9. Sarawak Energy's Representative

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

10. Subcontracting

- 10.1 The Tenderer agrees, if it is selected as the successful Tenderer by Sarawak Energy, that it shall not, under any circumstances, subcontract the whole of the Works.
- 10.2 Without in any way limiting Clause 10.1, if a Tenderer is selected as the successful Tenderer by Sarawak Energy, it shall not, under any circumstances, subcontract any part of the Works 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 Tenderers acknowledge that they shall be required, during the performance of the Works, 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 Works 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 Tender Offers shall demonstrate the Tenderers' ability and commitment to meet the health, safety and environment requirements and Tenderers shall incorporate, as part of their Tender Price, all costs and expenses required to comply with their health and safety management obligations in connection with the performance of the Works.
- 11.3 Tenderers may, prior to the Closing Date and Time, obtain a copy of Sarawak Energy's policies on health, safety and environment from Sarawak Energy's Representative.

D. INFORMATION SECURITY MANAGEMENT SYSTEM

12. Information Security Management System

In carrying out the Works, the successful Tenderer may be required to comply with Sarawak Energy's information security management system ("**ISMS**") requirements as may be notified by Sarawak Energy to the successful Tenderer 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 successful Tenderer 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 Tender Offer shall be prepared on a basis that seeks to maximise the opportunity for the participation of Local Participation in connection with the performance of the Works and promotes the opportunity for knowledge transfer.
- 13.2 In preparing and submitting its Tender Offer, the Tenderer shall be required to identify and demonstrate how it intends to maximise the participation of Local Participation in connection with the performance of the Works.

13.3 Sarawak Energy reserves the right to 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 the participation of Local Participation in the performance of the Works are complied with.

13.4 The successful Tenderer's commitments relating to the levels of participation of Local Participation shall constitute an enforceable contractual obligation under the Contract and the successful Tenderer shall be required to report such levels of participation and Sarawak Energy shall be entitled to continually monitor such activities during the performance of the Works.

13.5 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 Works that is purportedly to be provided through the use of Local Participation but is subsequently further subcontracted to entities that do not constitute Local Participation,

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

F. CORPORATE SOCIAL RESPONSIBILITY

14. Corporate Social Responsibility Initiatives

14.1 Tender Offers 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 TENDERERS

15. Scope of Tender Offer

Tender Offers shall be submitted for the whole of the Works as set out in the Tender Documents.

16. Eligibility to Tender

Only those Tenderers meeting the Eligibility Requirements are permitted to participate in this tender process.

17. Confidentiality Obligations

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

17.2 The Tenderer 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 Tenderer shall destroy or return to Sarawak Energy all such information.

18. Personal Data

In submitting a Tender Offer, each Tenderer:

- (a) shall be deemed to provide explicit consent to Sarawak Energy to process any of the Tenderer's personal data for the purposes of, or related to, the request for quotation;
- (b) warrants that any personal data received from Sarawak Energy shall be processed; and
- (c) warrants that all personal data submitted by the Tenderer 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 Tenderers observe the highest standard of ethical practices throughout the tender process and, in the case of the successful Tenderer, during the performance of the Works.

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

- (a) reject a Tender Offer or, in the case of the successful Tenderer, immediately terminate any Contract; and
- (b) impose sanctions on a party (including a Tenderer, the successful Tenderer, 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 tender process conducted by Sarawak Energy,

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

H. PREPARATION OF TENDER OFFER

20. Documents comprising the Tender Offer

The Tenderer must complete and include the following documents as part of its Tender Offer:

- (a) Form of Tender;
- (b) Form of Tender Security;
- (c) Each of the Tender Appendices; and
- (d) Corporate Authorisation.

21. Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of its Tender Offer, 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 tender process.

22. Language

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

23. Governing law and jurisdiction

23.1 The Tender Documents and this tender 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 Tender Documents and the tender process.

24. Corporate Authorisation

24.1 Each Tenderer 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 Tenderer's participation in the tender process, signing the Tender Offer and signing the Contract.

24.2 The Tenderer and / or the Authorised Signatory may delegate any of its rights, powers and functions (other than signing the Tender Offer and signing the Contract) of the Authorised Signatory to the Tenderer's Representative.

24.3 If a Tenderer is a Consortium Tenderer, each member of the Tenderer 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. Tender Price

25.1 The Tender Price shall be clearly stated in the Form of Tender and shall be calculated by reference to, and in accordance with, the pricing method set out in the Tender Particulars.

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

25.3 The Tender Price excludes any stamp duty payable in relation to the Works within Malaysia, and the Employer shall be liable to arrange and pay for all such duty.

25.4 Where the SST is applicable to the Works, or any part of the Works, the Contractor shall:

- (a) fully comply with the requirements of the Sales Tax Act 2018 and the Service Tax Act 2018 (including the requirements for the issuing of a valid invoice); and
 - (b) provide the Employer with suitable evidence of its registration with the relevant Government Authority in accordance with the requirements of the SST.
- 25.5 The Tenderer acknowledges that it may be required to pay a levy to the Construction Industry Development Board in accordance with the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 and the Construction Industry (Levy Collection) Regulations 1996, and, if requested by the Employer, shall provide evidence of the payment of such amounts.
- 25.6 A Discount may be offered by the Tenderer, provided that:
- (a) any such offer of a Discount shall:
 - (i) be received by the Employer prior to the Closing Date and Time; and
 - (ii) not be withdrawn or modified on and from the Closing Date and Time; and
 - (b) the Employer may, in its absolute discretion, take into account the Discount offered by the Tenderer in its evaluation of the Tender Offer and shall be entitled to treat the final Tender Price of such Tender Offer to be the price read with the Discount.
- 25.7 On and from the Closing Date and Time, the Tenderer shall under no circumstances be permitted to amend its Tender Price (including by way of an offer of a Discount), regardless of:
- (a) any change in applicable laws (including the introduction of any new Taxes);
 - (b) any fluctuation in foreign exchange rates;
 - (c) any fluctuations in the cost of materials and/or labour; or
 - (d) any other occurrence.

26. Currencies and Cost Fluctuations

- 26.1 The Tender Price and all rates and the prices set out in the Pricing Appendix shall be quoted by the Tenderer in Ringgit. However, Tenderers based outside of Malaysia may submit their Tender Offer in foreign currencies. Notwithstanding this, all payments shall be made in Ringgit and shall be calculated based on the official exchange rate published by Bank Negara Malaysia as of the date of the Letter of Award.
- 26.2 On and from the Closing Date and Time, the Tenderer shall under no circumstances be permitted to amend its Tender Price and the Pricing Appendix, regardless of:
- (a) any change in any applicable Laws (including the introduction of any new Taxes);
 - (b) any fluctuation in the foreign exchange rate;
 - (c) any fluctuations in the cost of materials and / or labour; or
 - (d) any other occurrence.

27. Tender Validity Period

- 27.1 A Tender Offer shall expressly specify that it shall remain open and valid for the Tender Validity Period.
- 27.2 Notwithstanding that any Tenderer has been notified that it is not a successful Tenderer, each Tenderer's Tender Offer shall remain valid for the Tender Validity Period.

28. Conflict of Interest

- 28.1 Each Tender Offer shall include a declaration (in the prescribed form set out in Part II, Section 2 of the Tender Documents) of the nature and extent of, any conflict of interest that may exist or arise in relation to this tender process and the Tenderer shall submit, as part of its Tender Offer, proposals for avoiding any such conflicts of interest.
- 28.2 A failure by a Tenderer to adhere to the requirements of this Clause 28 may, in Sarawak Energy's sole and absolute discretion, result in a Tenderer being disqualified from the tender process or its Tender Offer being rejected.

29. Tender Security

- 29.1 A Tender Offer shall be accompanied by a Tender Security (also known as a bid bond or a bid security) issued to Sarawak Energy on the date the Tender Offer is submitted if required by the Tender Particulars. Failure by a Tenderer to include the Tender

Security may, in Sarawak Energy's sole and absolute discretion, result in a Tenderer being disqualified from the tender process or its Tender Offer being rejected.

29.2 The Tender Security may be provided, at the Tenderer'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 Tenderers, 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 Tender Security may be forfeited, if:

- (a) the Tenderer withdraws its Tender Offer during the Tender Validity Period;
- (b) the successful Tenderer fails:
 - (i) to sign the Contract in accordance with Clause 42; or
 - (ii) furnish any required performance security in accordance with the Contract; or
 - (iii) in Sarawak Energy's reasonable opinion, the Tenderer has in any other way breached a material aspect of this tender process.

29.4 Where the Tender 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 Tender Validity Period.

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

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

- (a) Tender Security of any Tenderer who refuses to grant such extension shall be returned; and

- (b) Tenderer shall be deemed to have waived the right to further participate in the tender process.

30. **Securities and Guarantees**

The successful Tenderer shall, within twenty-eight (28) days after the date of the Letter of Award, obtain (at its cost) and deliver the performance bond, and where required by the Contract Agreement, the parent company guarantee and director personal guarantee(s), to Sarawak Energy in accordance with requirements set out in the Form of Contract.

31. **Insurance Policies**

31.1 The Employer shall procure and maintain Owner Controlled Insurance Program (“OCIP”), at its own cost and expense, from reliable and reputable insurers which are licensed to underwrite such risks in Malaysia, which shall be in accordance with standard practise, terms, and conditions available in the market. Any extensions, sub-limits deductibles under OCIP referred herein shall be subject to the applicable prevailing market conditions as of the Contract agreement’s Commencement Date.

31.1.1 For the avoidance of doubt, OCIP is designed to cover the following liability (depending on the scope/nature of works required) primarily:

- i. Construction / Erection All Risks Policy;
- ii. Third party Liability;
- iii. Marine Cargo/Transportation All Risks (if applicable); and
- iv. Workmen Compensation (**for local workers only**).

(b) The Employer on behalf of the insurer shall provide the Certificate of insurances (OCIP) to the successful tenderer for compliance.

31.1.3 The Employer and successful Tenderer mutually agrees to:-

provide each other with all assistance and disclose all information required for the setting up of the insurance underwritten in relation to the Works or Project; and to comply strictly with all term and conditions, warranties, and procedures of the relevant policies under each respective insurance.

31.2 The successful Tenderer shall provide to the Employer:

the relevant insurance policies required to be obtained under the applicable Laws in addition to the OCIP, has been effected and is in place within twenty (28) days after the date of the Letter of Award.

I. SUBMISSION AND OPENING OF TENDER OFFERS

32. Format of Tender Offer

- 32.1 Tender Offer shall be submitted in via SEPRO.
- 32.2 The relevant attachments, where applicable, are to be in an editable format capable of being read using Microsoft® Office applications without further conversion.

33. Preparation of Tender Offers

The Tenderer shall prepare and submit the Tender Offer in accordance with the requirements set out in the Event Contents via SEPRO.

34. Closing Date and Time

- 34.1 Tender Offers shall be received by Sarawak Energy at the address set out in the Tender Particulars and by no later than the Closing Date and Time.
- 34.2 Any Tender Offer received by Sarawak Energy after the Closing Date and Time may be declared late, rejected by Sarawak Energy and returned unopened to the Tenderer.

35. Alternative Tender Offers

- 35.1 In addition to its Tender Offer, the Tenderer may include any alternative Tender Offers ("Alternative Tender Offer").
- 35.2 When submitting any Alternative Tender Offer, the Tenderer shall:
- (a) submit a separate set of completed Tender Documents, including a cover letter, describing the reasons for proposing the Alternative Tender Offer and the advantages and/or disadvantages to Sarawak Energy; and
 - (b) include the set of completed Tender Documents in a separate envelope, marked as "Alternative Tender Offer".
- 35.3 Sarawak Energy may or may not, in its sole and absolute discretion, consider any Alternative Tender Offer.
- 35.4 The Tender Offer and any Alternative Tender Offer submitted shall be binding on the relevant Tenderer and be treated as if each were individually a "Tender Offer" within the meaning of these Instructions to Tenderers.

J. EVALUATION OF TENDER OFFERS

36. Evaluation of Tender Offers

- (a) Sarawak Energy's evaluation of the Tender Offers 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 Tender Offer;
 - (ii) the Tender 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 Tenderer's Tender Offer.
- (b) Following the evaluation of each Tender Offer, Sarawak Energy will compare all substantially responsive Tender Offers to determine the Tender Offer that represents the best value to Sarawak Energy.

37. Tender Price Prevails

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

38. Clarification of Tender Offers

To assist in the evaluation, and comparison of Tender Offers, Sarawak Energy may (but is in no way obliged to) request a Tenderer to clarify certain aspects of its Tender Offer.

39. Withdrawal and Modification of Tender Offers

39.1 Modification of Tender Offer prior to Closing Date and Time.

The Tenderer may modify their Tender Offer by clicking "Revise Response" and resubmitting prior to the tender Closing Date and Time.

39.2 Withdrawal of Tender Offer prior to Closing Date and Time.

The tenderer may withdraw their Tender Offer prior to the tender Closing Date and Time by clicking "Compose Message" in Event Contents and attaching a withdrawal notice duly signed by Tenderer's Representative with email subject "WITHDRAWN". No subsequent Tender Offer is permitted following this withdrawal.

39.3 Modification and Withdrawal of Tender Offer after Closing Date and Time.

During the Tender Validity Period, a Tender Offer may not be withdrawn except:

- (a) with the prior written consent of the Employer. In such circumstances, the Tenderer notes that notwithstanding any such consent provided, the Employer may impose sanctions in accordance with its rights under Clause 40; or
- (b) upon the instructions of the Employer.

39.4 Any attempt by the Tenderer to withdraw or modify its Tender Offer during the Tender Validity Period without the Employer's prior written consent or instruction may result in the Tenderer being disqualified, its Tender Offer being rejected and/or its Tender Security being forfeited.

The Tenderer may not be eligible to participate in any tender or RFP issued by the Company as follows:

- i. for a period of one (1) year for the first time.
- ii. for a period of three (3) years, for the second time.
- iii. de-registered and disqualified for the third time.

40. Sarawak Energy's Rights

40.1 Sarawak Energy is not obliged to:

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

and reserves the right to reject or disqualify any Tender Offer, or to cancel the tender process at any time without any obligation or incurring any liability to any Tenderer.

40.2 Sarawak Energy's rights in accordance with Clause 40.1 shall apply at any and all times during the tender process, notwithstanding that any Tenderer(s) may have been notified as a successful or preferred Tenderer.

40.3 Sarawak Energy in its sole and absolute discretion may (but is not obliged to) permit any non-compliance by any Tenderer with any aspect of this tender process without any obligation or incurring any liability to any Tenderer.

- 40.4 Notwithstanding any other provision of these Instructions to Tenderers 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 Tenderer 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 Tenderer, as a result of or in connection with this tender process.
- 40.5 Sarawak Energy may, in its absolute discretion, impose sanctions against a Tenderer for any failure to comply with any of the requirements of this tender process (including as set out in these Instructions to Tenderers), including the:
- (a) imposition of a penalty or handicap against such Tenderer in relation to this tender process and / or any future procurement exercises of Sarawak Energy; and
 - (b) disqualification of such Tenderer from participation in this tender process and / or any future procurement exercises of Sarawak Energy.

K. AWARD OF CONTRACT

41. Contract Award

- 41.1 Prior to the expiration of the Tender Validity Period, Sarawak Energy may issue a Letter of Award to the successful Tenderer, which shall specify the terms and conditions on which the successful Tenderer is awarded the Contract for the Works. Sarawak Energy may, in its sole discretion, issue a Letter of Award to more than one Tenderer.
- 41.2 Within seven (7) days (or such later date as Sarawak Energy may in its reasonable discretion require) of receipt of a Letter of Award, the successful Tenderer shall duly execute and sign the acknowledgment to the Letter of Award, and return it to Sarawak Energy.
- 41.3 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 Tenderer for the Works on the terms and conditions set out in such Letter of Award.

41.4 Failure to execute and sign the acknowledgment of its agreement to the terms and conditions set out in the Letter of Award or the Contract within the timeline set out in these Instructions to Tenderers may result in the Tenderer's disqualification from the tender process (and its pre-existing status as the successful Tenderer being null and void), its Tender Offer being rejected and the Letter of Award being null and void and Sarawak Energy reserves the right to award the tender to alternative Tenderers (including those that Sarawak Energy has notified that their Tender Offer has not been successful), in which case this Clause 41 and Clause 42 shall apply to that Tenderer.

42. Signing of Contract

42.1 Following the issuance of the Letter of Award, Sarawak Energy will compile all documents comprising the Contract prior to sending these documents to the successful Tenderer for signature.

42.2 Within seven (7) days of receipt of the finalised Contract (or such later date as may be required by Sarawak Energy), the successful Tenderer shall duly execute and sign the Contract and return it to Sarawak Energy.