

Tender Reference: BELTS/IT/2024/1

Tender Title: The Supply, Design, Installation, Implementation, Commissioning, Maintenance and Support of IT Systems and Infrastructure Refresh Project

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سولوسي لجوروتراين، لوكيستيك دان لاتيهن بروني  
Brunei Engineering, Logistics and Training Solutions

## SECTION 1

### INSTRUCTIONS TO TENDERERS

#### FOR

#### THE SUPPLY, DESIGN, INSTALLATION, IMPLEMENTATION, COMMISSIONING, MAINTENANCE AND SUPPORT OF IT SYSTEMS AND INFRASTRUCTURE REFRESH PROJECT

TENDER REFERENCE: **BELTS/IT/2024/1**

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## 1. INTRODUCTION

- 1.1 The purpose of this Invitation To Tender is to invite participation of Tenderers to submit their tender proposals for “THE SUPPLY, DESIGN, INSTALLATION, IMPLEMENTATION, COMMISSIONING, MAINTENANCE AND SUPPORT OF IT SYSTEMS AND INFRASTRUCTURE REFRESH PROJECT”.

## 2. INTERPRETATION

- 2.1 As used in these Instructions to Tenderers, the following terms shall have the following meanings, except where the context otherwise requires;
- 2.1.1 **“Contract”** means the agreements to be entered into between BELTS and the successful Tenderer;
- 2.1.2 **“BELTS”** means Brunei Engineering, Logistics and Training Solutions Sdn Bhd;
- 2.1.3 **“BELTS Project Manager”** means the Project Coordinator or such other person as BELTS may time from time determine;
- 2.1.4 **“Hardware”** means all the deliverables set out in this tender document including without limitation to the telecommunications facilities;
- 2.1.5 **“Intellectual Property Rights”** means any rights in respect of or in connection with any confidential information of a proprietary nature including but not limited to copyright, patents, design rights, reports, drawings, specifications, or eligible layout rights and includes any right to apply for registration of such intellectual property rights;
- 2.1.6 **“Invitation to Tender”** means this document, including these Instructions to Tenderers and all of its Sections inviting Tenderers to offer to meet BELTS’s requirements by submitting a Tender in accordance with the requirements of the Invitation to Tender;
- 2.1.7 **“Specification”** means BELTS’s technical specifications and requirements as more particularly described in **Section 2 – Technical Specifications and Requirements** of this Invitation to Tender.
- 2.1.8 **“Statement of Compliance”** means the clause-by-clause commentary on the compliance with the clauses in this tender document as more particularly described and instructed in this Invitation to Tender;
- 2.1.9 **“Software”** means the operating software or other software as required to operate or use of the Hardware described in this Invitation to Tender;
- 2.1.10 **“System”** means the Hardware and Software running together to execute or operate the required business functionalities as specified in this Tender;
- 2.1.11 **“Tender Proposal”** means the Tenderer’s response to this Invitation to Tender;

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- 2.1.12 **“Tender Closing Date”** means the date and time specified for the submission of the Tender;
- 2.1.13 **“Tenderer”** means a person, partnership or any other body (whether corporate or otherwise) who submits a Tender in accordance with this Invitation to Tender;
- 2.1.14 **“The Contractor”** means the successful Tenderer who will be awarded the Contract;
- 2.1.15 **“Validity Period”** means the time period during which BELTS may accept this Tender.
- 2.2 Subject to any inconsistency of subject or context, the following rules of construction shall be used in the interpretation on these Instructions To Tenderers;
- 2.2.1 A cross reference to a clause number is a reference to a clause of this Instruction to Tenderers and includes all of its sub-clauses;
- 2.2.2 Words importing the singular include the plural (and vice versa) and words importing a gender include any other gender;
- 2.2.3 In the event of any inconsistency between these Instructions To Tenderers and the conditions of the Term Sheet as contained in this Invitation to Tender, the latter shall prevail.

### 3. ELIGIBILITY

- 3.1 Any company or business entity that is currently debarred from participating in BELTS tenders is not eligible to participate in this Tender. If a Tender Proposal is submitted without explicitly mentioning that the Tenderer is currently debarred, BELTS shall treat the submission of the Tender Proposal as an express continuing declaration by the Tenderer that the Tenderer is eligible to participate in this Invitation to Tender and, if such a declaration is discovered to be false, BELTS shall be entitled to rescind any tender award or contracts entered into pursuant to such a Tender, without BELTS being liable therefore in damages or compensation or at all;

### 4. CONFIDENTIALITY

- 4.1 This Invitation To Tender constitutes confidential and proprietary information of BELTS and shall not, except with the consent in writing of BELTS, be disclosed in whole or in part to any third party, or to employees of the Tenderer, other than those who have a need to know such information for the purpose of responding to this Invitation To Tender, and shall not be duplicated or used by the Tenderer for any other purpose than to evaluate this Invitation To Tender. The Tenderer agrees and accepts that BELTS reserves the right to enforce its legal proprietary rights including seeking injunctive relief from the courts of Negara Brunei Darussalam.

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- 4.2 BELTS may require any unsuccessful Tenderer to return any specifications, plans, patterns, samples or instructions issued by BELTS at any time.
- 4.3 The Tenderer's attention is also drawn to the Official Secrets Act (Chapter 153), which relates to the safeguarding of the official information.

## 5. FORMS OF CONTRACT

- 5.1 The successful Tenderer shall be required to enter into a contract with BELTS. In the event the Tender Proposal is accepted to be delivered wholly on an outright purchase model, the terms of such a contract shall be agreed between the successful Tenderer and BELTS.
- 5.2 The terms of any contract for any alternative business models are to be agreed between the successful Tenderer and BELTS.
- 5.3 The final decision to appoint a successful Tenderer or not will rest with BELTS in its sole and absolute discretion. BELTS will not be bound to accept the provision of any products and/or services tendered by any Tenderer unless and until the execution of the Contract has been undertaken by the successful Tenderer.

## 6. PRIME CONTRACTOR

- 6.1 BELTS is seeking Tender Proposals from prime contractors. Accordingly, although various organisations may pool or merge their resources in order to comply or enable them to meet the requirements of BELTS pursuant to this Invitation to Tender, it is BELTS's strong preference to only enter into a contract with one organisation.
- 6.2 To assist BELTS in its evaluation of any Tender Proposal, where a Tenderer proposes to sub-contract any of its obligations under the Contract, the Tenderer shall state the name and address of each sub-contractor and the extent of the work to be carried out by the sub-contractor(s). In addition, the Tenderer shall provide information about each sub-contractor as requested in **Schedule 3 – Sub-Contractor Management** of **Section 3 – Tender Schedules**.

## 7. SUBMISSION OF TENDER

- 7.1 The Tender proposal shall be submitted in a form which satisfies the requirements as specified in this **Clause 7**.
- 7.2 The Tenderer shall submit the complete Tender Proposal including the Schedules prescribed in **Section 3 – Tender Schedules** duly completed in **digital copy (soft copy) via email to**

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[tenderbox@belts.com.bn](mailto:tenderbox@belts.com.bn). Any Tender Proposal send and/or copy to other than this specified email address will be considered invalid and will be disqualified.

7.3 The Tenderer shall submit the complete Tender Proposal via email no later than the **Tender Closing Date** specified in **Clause 15** of this **Section 1 – Instructions to Tenderer**.

7.4 The complete Tender Proposal shall be submitted as per submission procedures below:

7.4.1 Email subject line shall have the **Tender Reference: BELTS/IT/2024/1** clearly stated.

7.4.2 The Tenderer to submit Technical Proposal and Commercial Proposal in **two (2) separate zipped folders** labelled **Technical Proposal** and **Commercial Proposal** respectively.

7.4.3 Each zipped folder shall clearly indicate either **BELTS/IT/2024/1– Technical Proposal** or **BELTS/IT/2024/1 – Commercial Proposal**.

7.4.4 Each individual document for Technical Proposal and Commercial Proposal shall be submitted in **PDF format**, and shall be clearly labelled as **BELTS/IT/2024/1- (Part 1 of X) or (Schedule X)**.

7.4.5 File names shall not include the name or address of the Tenderer.

7.4.6 Tenderer may also submit the complete Tender Proposal by providing cloud drive links in their submission email for BELTS to download. However, the links shall not have any restriction such as password protection or permission for access request. This is to ease the opening of the Tender Proposal by BELTS Tender Administration Team.

7.4.7 All pages of the Tender Proposal must be numbered and shall bear the official seal or rubber stamp of the Tenderer and initialed by the Tenderer's authorised representative.

7.4.8 Corrections or cancellations shall not be accepted unless such corrections or cancellations are initialed by the Tenderer. Use of correction fluid on submitted documents is not accepted.

7.5 The zipped file named **Technical Proposal** shall contain the following:

7.5.1 Schedules 1 to 5;

7.5.2 Schedule 6 and Schedule 7, excluding Table 6.1 (a) and Table 7.1 (a); and,

7.5.3 Schedules 8 to 15.

7.6 The zipped folder named **Commercial Proposal** shall contain the following:

7.6.1 Table 6.1 (a) of Schedule 6;

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7.6.2 Table 7.1 (a) of Schedule 7; and,

7.6.3 Schedules 16 to 18.

7.7 The Tender proposal shall be written in the English Language..

7.8 The Tenderer shall state their contact address whereto any notice request, waiver, consent or approval as may be required may be sent by BELTS.

7.9 Tender submission in hard copy shall **not** be accepted or considered by BELTS.

## **8. VALIDITY PERIOD OF TENDER**

8.1 The Tenderer shall maintain a Validity Period of **six (6) months** of its Tender Proposal submission effective from the Tender Closing Date.

8.2 Where BELTS seeks an extension of the Validity Period, a request in writing will be forwarded to the Tenderer. The Tenderer shall be required to respond in writing to extend the Validity Period. Failure to respond will result in the Tender not being considered further.

## **9. AMENDMENTS OR ADDITIONS TO THE INVITATION TO TENDER**

9.1 BELTS reserves the right to issue amendments or additions to this Invitation to Tender at any time before the Tender Closing Date. Any such amendment shall be numbered, dated and issued by BELTS. Where the amendment is significant, BELTS may at its discretion extend the Tender Closing Date.

9.2 BELTS will endeavor to notify all Tenderers in writing of any such amendments or additions by forwarding the same to the Tenderers' address as advised by the Tenderer. It is a condition of this Invitation To Tender that any amendments or additions forwarded by BELTS to the Tenderer in accordance with this clause shall be deemed conclusively to have been duly given if this information is forwarded to such address.

## **10. WITHDRAWAL OF TENDER**

10.1 Tenderers who wish to withdraw themselves after the Tender Closing Date must notify BELTS in writing within **three (3) working days** after the Tender Closing Date.

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**11. TENDER PRICE**

- 11.1 The Tenderer shall quote all prices in Brunei Dollars inclusive of the price of hardware, software, licenses, and services as described in this Invitation to Tender. The purchase price must include freight charges, insurance, installation, and required materials, associated operation systems, manuals, and documentation as needed to operate the system.
- 11.2 The Tenderer shall provide an itemised price list of all deliverables to be quoted in the format specified in **Schedule 17 – Price Summary and Payment Terms of Section 3 – Tender Schedules** attached with this tender. For clarity, the Tenderer may include further breakdown of each item listed. However, the breakdown prices must sum up to the sub-totals of each item.

**12. SUFFICIENCY OF TENDER PRICE**

- 12.1 The Tenderer shall be deemed to have satisfied itself before submitting its Tender as to the correctness and sufficiency of the same, for the supply of hardware, software and services and all matters and things necessary for the proper execution and completion of the design, supply, delivery, installation, implementation, testing, commissioning, training, maintenance and support of hardware and software including duties, customs and excise, licenses, transport and insurance expenses and all other costs and expenses relating to the subject matter of this Tender.
- 12.2 The Tender price shall be deemed to have included all items referred to in the specifications and requirements as specified in **Section 2 – Technical Specifications And Requirements** and **Section 3 – Tender Schedules** of this Invitation to Tender irrespective of whether such items have been listed or priced in the Tender.
- 12.3 No requirements specified in **Section 2 – Technical Specifications And Requirements** and **Section 3 – Tender Schedules** shall be excluded unless explicitly stated by the Tenderer.

**13. CLARIFICATION PRIOR TO TENDER CLOSING DATE**

- 13.1 In order to provide consistent advice and clarifications to all parties at the same time, a “Tender Information Day” will be held to all Tenderers.
- 13.1.1 The date, time and venue of the session is scheduled as follows:

Date	Time	Venue
<b>Monday, 5<sup>th</sup> August 2024</b>	<b>10:00 am – 11:30am</b>	<b>Level 6, BELTS HQ Office, Kiulap</b>

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Should there be any requirement for additional session(s), BELTS will confirm this after receive of all attendance interests from tenderers.

- 13.1.2 Tenderers who wish to attend the Tender Information Day session are required to complete the **Appendix 2 – Tender Information Day Attendance Form** which is attached with this Invitation To Tender document. The completed form is to be submitted via email to [tender@belts.com.bn](mailto:tender@belts.com.bn) no later than **Wednesday, 31<sup>st</sup> July 2024 3:00pm**.
- 13.2 Any request for clarification on the tender document by Tenderers before and after the Tender Information Day shall be addressed to BELTS Tender Administration Team by emailing to [tender@belts.com.bn](mailto:tender@belts.com.bn).
- 13.3 BELTS shall endeavour to respond to any clarification requests as soon as possible. Each and every request for clarification (without any details as to the originator of the request), together with the relevant clarification, shall be distributed to all Tenderers.
- 13.4 All clarification requests must be emailed to BELTS by cut-off date of **Friday, 9<sup>th</sup> August 2024**.

#### **14. OWNERSHIP OF TENDER DOCUMENTS**

- 14.1 By submitting a Tender, a Tenderer:
- 14.1.1 Licenses BELTS to reproduce for the purpose of this project, the whole or any portion of the Tender notwithstanding any copyright or other Intellectual Property Right that may subsist in those documents; and
- 14.1.2 Acknowledges that the Intellectual Property Right in the Tender documentation remains vested in each Tenderer.

#### **15. TENDER CLOSING DATE**

- 15.1 The closing of the Tender shall be **Friday, 16<sup>th</sup> August 2024 at 11:59 pm (Brunei local time)**.
- 15.2 All Tender Proposal shall be submitted on or before the Tender Closing Date in accordance with the Instructions to Tenderers.
- 15.3 Any Tender Proposal submission received by BELTS after the Tender Closing Date shall not be entertained.



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## 16. TENDERERS TO INFORM THEMSELVES

16.1 By responding to this Invitation to Tender, a Tenderer will be deemed to have acknowledged and agreed that it has done so on the basis that it has:

16.1.1 the necessary skills, knowledge and experience to provide hardware, software and all services sought;

16.1.2 in preparing its Tender:

(a) fully examined this Invitation To Tender (including all documents the Invitation To Tenderers refers to) and any other information made available by BELTS to the Tenderers for the purpose of this Invitation To Tender;

(b) made its own reasonable enquiries to fully inform itself of all the risks, contingencies and other circumstances which may impact the Tender and the proper performance of the Tenderer's obligations under the Contract; and,

(c) has not relied upon any warranty or representation (whether oral or in writing or by conduct) made on behalf of BELTS except where such warranty or representation is contained in this Invitation to Tender or made through the processes specified by these Instructions to Tenderers;

16.1.3 satisfied itself as to the accuracy and sufficiency of the Tender (including the tendered prices) to achieve the due and proper performance and completion of the Tenderer's obligations under the Contract.

## 17. SUB-CONTRACTORS

17.1 Tenderers that require the employment of Sub-Contractors for this project shall comply to the requirements described in **Clause 6.2** of this Invitation to Tender.

### 17.2 Prevention of Market Domination/Monopolies

17.2.1 Tenderers are strictly prohibited from "double-dipping" practices in Brunei Darussalam.

17.2.2 Tenderers are required to exercise due diligence on their potential sub-contractor(s) either local or international that may have involved directly or indirectly with other tenderers for this project. In a case of sub-contractor found to adopt monopoly practices, the bidding tenderers are required to declare and

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change the sub-contractor(s) with immediate action before the Tender Closing Date.

- 17.2.3 Tenderers shall not assign any part of its work to a sub-contractor who has the same shareholder(s) with another tenderer(s) that has participated in this tender. BELTS reserves the right to reject the appointment of any sub-contractors who has common shareholder(s).

## 18. ERRORS IN TENDERS

- 18.1 Tenderers are advised to study this Invitation to Tender very carefully before finalising their Tenders for submission. The onus is on the Tenderer to ensure that an accurate and complete Tender is submitted.
- 18.2 BELTS may exclude from consideration, any Tender in which prices are not clearly and legibly stated.
- 18.3 Where the Tender is on a lump sum basis and an error has been made in the priced bill of quantities to arrive at the tendered lump sum, the Tenderer shall without undue delay make all such alterations in and to the priced bill of quantities as BELTS considers necessary for such purpose.
- 18.4 If the Tenderer fails to make the alterations as directed by BELTS and/or fails to do so within the time set by BELTS, the Tender shall be deemed to have been withdrawn by the Tenderer.
- 18.5 Where the prices tendered are in a schedule of rates basis and an error has been made in the calculation or summation of the prices, the Tenderer shall be bound by the rates tendered and the Contract sum/total stated in the Tender shall, subject to the agreement of the Tenderer, be altered by BELTS to reflect the correct calculation or summation of the prices.
- 18.6 If the Tenderer fails or refuses to agree to the alteration of the Contract sum/total, the Tender shall be deemed to have been withdrawn by the Tenderer.
- 18.7 If a Tenderer becomes aware of any discrepancy, error or omission in its Tender not referred to or covered in **Clauses 18.3** and **18.5** above and wish to lodge a correction or additional information, it can only do so if;
- 18.7.1 the correction or additional information is provided to BELTS without undue delay and is done prior to the Tender Closing Date; and,
- 18.7.2 the correction or additional information is provided to BELTS in writing via emailing to [tender@belts.com.bn](mailto:tender@belts.com.bn) and is initialled by the Tenderer.

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- 18.8 In all the above circumstances, any correction or addition shall not be used to alter the Tender in any material particular or so as to change the Tender in a material particular. Any omission or addition which is deemed by BELTS to alter the original Tender in a material particular shall result in the Tender being rejected without any liability whatsoever on the part of BELTS.

## **19. CLARIFICATION OF THE TENDER BY BELTS**

- 19.1 At any stage during the evaluation phase, BELTS may:
- 19.1.1 request clarification of any Tender in respect to specific issues contained in that Tender;
  - 19.1.2 call for interviews with Tenderers;
  - 19.1.3 request Tenderers to provide information in writing and/or email; or,
  - 19.1.4 conduct a site inspection or a presentation of the Tenderer's capabilities to clarify any part of the Tender and to examine such services. The Tenderer shall not unreasonably deny such requests.
- 19.2 Where requested to clarify any matter contained in the Tender or to provide additional information, Tenderers shall provide such clarification and/or information in writing in the manner, and at the time and place stipulated by BELTS. Failure to comply with any such request may result in the Tender being excluded from further consideration.
- 19.3 In the event that any clarification, additional information, presentation or site inspection is requested from a Tenderer by BELTS, the Tenderer shall provide so at no cost to BELTS whatsoever.

## **20. CONDUCT OF TENDERER**

- 20.1 Any Tenderer who attempts or is found to have offered bribe, gratuity, bonus, discount or any sort of enticement to any employee, agent or representative of BELTS or its client shall have their Tender rejected by BELTS.

## **21. CANVASSING**

- 21.1 Canvassing shall render the Tender invalid. In the event of any canvassing being discovered after the acceptance of the Tender, BELTS shall be entitled to rescind any Tender Award or any subsequent Contract.

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## **22. EXPENSE OF TENDERER**

- 22.1 In submitting the Tender, the Tenderer will be deemed to have acknowledged and agreed that it will bear all the expenses it incurs in preparing its Tender or negotiating the Contract and is not entitled to seek any compensation or reimbursement of those costs from BELTS.

## **23. INVALID TENDERS**

- 23.1 Incomplete Tender submission and/or Tender submissions received after the Tender Closing Date shall be invalid.

## **24. COPYRIGHT**

- 24.1 BELTS reserves to itself all copyrights in this Invitation to Tender.

## **25. EVALUATION OF TENDER**

### **25.1 Evaluation Objective**

- 25.1.1 BELTS will endeavour to evaluate the proposals from Tenderers in a fair and proper process. Tenderers must note that BELTS will award the Contract to the Tenderer whose Tender represents the best value for money to BELTS. Price is considered in conjunction with technical conformance.
- 25.1.2 The Tender Proposal will be evaluated based on two (2) separate aspects, namely:
- (a) Technical Evaluation; and,
  - (b) Commercial Evaluation.

### **25.2 Evaluation Process**

- 25.2.1 The assessment of the Tenderer's proposal shall be based collectively on the proposal documents submitted, written request for clarification requests from BELTS and any clarification meetings conducted as part of the evaluation process. The due evaluation process is carried out in an effort to maintain a fair comparison and evaluation of the tender proposals submitted.

### **25.3 Evaluation Criteria**

- 25.3.1 The Technical Proposal will be assessed based on the following evaluation criteria;

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- Solution Compliance
- Project Management
- System Support

25.3.2 The Commercial Proposal will be evaluated based on the following criteria;

- Pricing
- Contract Compliance

#### 25.4 Shortlisting

25.4.1 BELTS reserves the right to shortlist the Tenderers to facilitate evaluation of the Tender proposals.

### 26. NO LIABILITY OF VIRUSES

26.1 In the event this Invitation to Tender is made available in electronic form, Tenderers must note that when reading or downloading such copies of this document (or part thereof) are doing so at their own risk and are accepting the entire risk of virus transmission.

26.2 BELTS has not and will not provide any warranty (whether expressed or implied) in relation to the condition of any electronic versions of this Invitation to Tender or any amendment of or alteration to the same (or part thereof).

26.3 Further, BELTS will not be held responsible for any loss or damage (including inconsequential loss or damage) which may be suffered or incurred directly or indirectly through the use of or downloading of any copy or copies of this Invitation to Tender or any amendment of or alteration thereto (or part thereof) in its electronic form and whether as a result of negligence or otherwise on the part of BELTS or any other party.

### 27. PAYMENT TERMS

27.1 Payments to the awarded contractor shall be made in the currency of Brunei Darussalam.

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## 28. TENDER SCHEDULES

28.1 The Tenderer shall include in its Tender submission the relevant Schedules containing information and details requested in the manner described in **Section 3 – Tender Schedules** of this Invitation to Tender. Such Schedules shall include:

- 28.1.1 Price Summary and Payment Terms, listing item by item list of goods and services the Tenderer proposes to supply indicating for each item a brief Description, Quantity and Unit Price;
- 28.1.2 Statement of Compliance, a clause-by-clause commentary on the compliance to the relevant parts of **Section 2 – Technical Specifications And Requirements** of this Invitation To Tender;
- 28.1.3 Contract Compliance, a commentary on the compliance to the principal terms of the Proposed Agreement, as summarised in **Section 4 – Draft Contract**.
- 28.1.4 Tenderer's Background, containing background information about the Tenderer including;
  - (a) a brief history, scope of operations, staff size and distribution, and financial standing of the Tenderer; and
  - (b) certified copies of the Tenderer's certificate of incorporation or registration issued by the Registrar of Companies of Brunei Darussalam,
- 28.1.5 Tenderer's employees and their duties, which shall contain a list of the Tenderer's key personnel intended by the Tenderer to be assigned full-time in charge for the complete roll-out of the goods and services including the operations and management; and,
- 28.1.6 Tenderer's Track Record, which shall contain a list of reference sites which have been supplied with the goods and services which are the subject of this tender document.
- 28.1.7 Sub-Contractor Management, which shall contain information on the Sub-Contractors under the employment of the Prime Contractor, and their respective roles and responsibilities related to the delivery of the proposed solution.
- 28.1.8 Technical Schedules, such as the relevant management plans, list of hardware and software, design documents, and the list of documentation and deliverables, which shall determine the quality and capability of the proposed solution and the Contractor towards delivering a solution that meets the requirements of BELTS.

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- 28.2 The Tenderer shall also provide details of any special conditions applicable to its Tender which have not been specified in the Statement of Compliance, and any other information required by this Invitation to Tender.

## 29. TENDERER'S DECLARATION

- 29.1 Bid rigging is prohibited under the applicable provisions of the Competition Order 2015.
- 29.2 Tenderers are required to make a declaration in the form of the Tenderer's Declaration as required in **Schedule 18 – Tenderer's Declaration** of **Section 3 – Tender Schedules**. The purpose of the declaration is to prevent incidences of collusion among potential tenderers to this Invitation to Tender.
- 29.3 In the event any Tenderer is found to have colluded with another Tenderer(s) in this Invitation to Tender, BELTS reserves the right to disqualify any or all Tenderers involved in such collusion which decision shall be at BELTS's absolute discretion and shall be final and not be the subject of any challenge.