

ICT Project

Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

May 2018



MINISTRY OF COMMUNICATIONS, WORKS & LABOUR

P O BOX 344, BRADES, MONTSERRAT, W I

◆ Tel: (664) 491-2521/2522 ◆ Fax: (664) 491-6659 ◆ E-mail: mew@gov.ms

24th May, 2018

Dear Sir/Madam,

Re: Tender for Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

You are invited to submit a Tender for the above named project. Tender documents can be accessed by visiting the two websites below;

- **Electronic tender documents can be downloaded and submitted via the Mytenders Portal at <https://www.mytenders.co.uk/>**
- **Copies can be downloaded from the Government of Montserrat website at <http://www.gov.ms/tenders/>**

The tender dossier consists of the following documents;

1. Instruction to Bidders
2. Invitation to Tender
3. Terms of Reference – Service Requirements
4. Evaluation Criteria
5. Form of Tender
6. Form of Agreement
7. Anti-Collusion Statement
8. Document Check List

Please read Instructions to Tenderers before completing and submitting tenders, failure to do so may result in tenders being deemed non-compliant and rejected.

Any queries clarifications relating to the tender should be made to; Miss Loni Howe, ICT Coordinator, at howel@gov.ms or via the electronic portal <https://www.mytenders.co.uk/> no later than 12:00pm on **1 June 2018**.

Tenders are to be received no later than 12:00 noon (EST) on 6th June 2018.

Tender Opening will be at 2.00pm (14.00) (EST) on Wednesday 6th June 2018.

Yours Sincerely,

.....
Beverley Mendes
Permanent Secretary
Ministry of Communications, Works and Labour

Instructions to Tenderers

Submitting a Tender (Bid)

There are two options for submitting a tender

- **Electronic tender submissions can be uploaded via the Mytenders Portal at <https://www.mytenders.co.uk/>**
If you are intending to make an electronic submission to this tender, please register your interest on mytenders at the earliest opportunity. Please ensure that you allow sufficient time to upload your documents.
- **Hard copies can be submitted by hand – Please follow the instructions set out below;**

Submitting a hard copy of your tender

You will need two plain envelopes for the Tender submission

You must follow these instructions, failure to do so may result in the bid being non-compliant and not considered any further.

Envelope 1.

Follow the steps written below:

1. Write the name of the bidder (Tenderer, Supplier) on this envelope
2. Write the name of the project and the address on the envelope as written below;

Supplier Name (Your Company Name)

Tender for Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

Chairperson, Public Procurement board

Ministry of Finance and Economic Management

P.O. Box 292, Brades, Montserrat, MSR1110

3. Now put this envelope into another plain envelope (Envelope 2.)

Envelope 2

Continue following the steps below:

4. Envelope 1 should now be inside this envelope (Envelope 2), seal the envelope and then write the Project Title and address for Tender return.;

Tender for Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

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***NB: Envelope 2 must not have the Bidders name on it or any other markings.**

Tenders are to be delivered to the address above tenderers will be given a receipt:

Guidance Notes Bidders

1. The **Montserrat General Contract Conditions for Consultancy** in Appendix II will be adopted for this contract.
2. Tenderers must submit the **Bid Document Checklist** at Appendix III along with the documents listed within the Bid Document Checklist. Failure to fully complete these documents will lead to their bid becoming non-compliant and rejected.
3. The bidder must submit a Tax Compliance Certificate from Inland Revenue along with the bidding documents. In the case of a sole trader, the tax compliance certificate should be issued in that individual's name. However, where the sole trader is trading using a business name, the tax compliance certificate should be issued in the business name. In the case of a company, the tax compliance certificate should be issued in the name of the Company". It is therefore incumbent on the bidder to ensure that the tax compliance certificate is issued in the correct name. Diligent checks will be made with the Inland Revenue Department and the Financial Services Commission to verify the accuracy of certificates. Tenders received with improper tax compliance certificates would be rejected. (This is only applicable for persons and/or companies locally based.)
4. **Tax-** All works undertaken will be the subject of taxation in accordance with the current legislation. Except in cases where there is an exemption from tax, of which proof must be provided; residents of Montserrat for tax purposes are subject to tax on the profits from this project while non-residents are liable to a **20% Withholding Tax deduction from the gross amount**. Please take into consideration your tax obligations and liabilities to the Government of Montserrat. For further information please contact Montserrat Customs & Revenue Service (MCRS) via email at irev@gov.ms.
5. Tenderers are to provide all documents or information requested as part of the Tender Evaluation.
6. All bids will be arithmetically checked; any errors will be brought to the bidder's attention. The fee rates supplied would be the basis for the arithmetic correction and would be the determining factor for any queries about the corrected price.
7. Tenderers are not allowed to submit alternative tenders.
8. The Employer is not bound to accept the lowest Bidder and has the right to accept and reject any bid offers.
9. Tenderers should refer to Appendix I Terms of Reference to guide their submissions.

INVITATION TO TENDER

Notice Type: Public Procurement Board Tender

1. Contracting Authority's Details

1.1 Name and Address

| | |
|---|---|
| Official Name: Ministry of Communication, Works & Labour | |
| Postal Address: P.O. Box 344, Brades, Montserrat, W1 | |
| For the attention of: Miss Loni Howe, ICT Coordinator. | Tel. No.: 1 664 4912521/2522 Fax No: 1 664 4916659 |
| E-Mail: howel@gov.ms | |
| | |

1.2 Address from where the Tender documentation can be obtained

Government of Montserrat website follow link below;

<http://www.gov.ms/tenders>

Electronic tender documents can be downloaded and submitted via the Mytenders

Portal at <https://www.mytenders.co.uk/>

1.3 Address to where hard copy Tenders must be sent

For the Attention of;

Chairperson

Public Procurement Board

Ministry of Finance and Economic Management

P.O. Box 292, Brades, Montserrat, MSR1110

2. Contract Details

2.1 Title: Tender for Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

3. Tender Timetable

The timetable may be subject to change and any changes will be notified to bidders as soon as it practicable.

| Action | Dates |
|--|---|
| Issue Invitation to Tender Notice | 24 May 2018 |
| Submissions of clarification Questions | 1 June 2018 no later than 12.00 noon (EST) |
| Submission of Tenders | 6 th June no later than 12.00 noon (EST) |
| Estimated Contract Award Date | June 2018 |
| Estimated project commencement date | July 2018 |

NB: All questions/clarifications must be sent in writing by email to;

Miss Loni Howe: **Email;** howel@gov.ms

Please note that all questions and answers will be issued to all tenderers that register their interest.

TERMS OF REFERENCE – Service Requirements

LEGAL CONSULTANT TO REVIEW AND UPDATE MONTSERRAT’S ICT LEGISLATIVE FRAMEWORK

Background

In 2011/2012, the Ministry of Communications, Works and Labour sought the technical expertise of the Commonwealth Telecommunications Union and the Caribbean Telecommunication Union to work on the ICT Policy Strategy and Implementation Plan for Montserrat. Cabinet approved the first ICT Policy Strategy and Implementation Plan in 2012 and subsequently approved an updated plan in 2017. Several discussions within the National Information Communication Technology Council have highlighted the need to update legislation governing ICT in Montserrat and the need to raise awareness among the general populous. Updating the legislative framework for ICT will form a part of the priorities of the Ministry of Communications, Works and Labour for the 2018/2019 financial year.

Objective

The development of the ICT sector is a key priority in the National Growth Plan for Montserrat. The goals and objectives as outlined in Montserrat’s Sustainable Development Plan speaks to promoting innovative and sustainable initiatives that would enhance economic growth and development. The thrust is to equip Montserrat with the necessary Human Resource Capacity to enable the island to survive in an ever changing technological era and to ensure that Montserrat is “green, connected and thriving”. This would ensure the productive and sustainable use of natural resources and the employment of smart, energy efficient solutions to reduce the environmental footprint. It is envisioned that the use of robust on-island ICT infrastructure will enable seamless access to commercial, cultural, educational and health services opportunities anywhere in the world. Coupled with such global access is the anticipated augmentation of limitless possibilities, including the promotion of economic regeneration, an enterprising population, expanding markets and flourishing sectors to foster a healthy and wholesome Montserrat.

The legislation governing ICTs and data in Montserrat is either non-existent or obsolete, which gives rise to the need to review and update the legal framework that addresses all aspects of ICT.

While the Attorney General Chambers is responsible for the preparation of legislation, due to resource constraints, external expertise is required. In addition, the nature of ICT legislation requires certain degree of experience which is not readily available.

Recipient

The main recipient of the support services is the Government of Montserrat (GoM). The Ministry of Finance, the Ministry of Communications, Works, Energy and Labour and the Attorney General Chambers are interested parties.

Purpose of the Services

In light of the foregoing, GoM seeks the services of a consultant to develop a robust legal and regulatory framework, one that builds public trust and confidence in ICT and encourages enterprise and business development.

Scope of the Services

The Consultant will work with the Ministry of Communications, Works and Labour and the Attorney General Chambers to undertake, at a minimum, the following **tasks** and all related activities necessary to ensure the cost effective and timely completion of the envisaged review and update of the legislation governing ICT in Montserrat:

- Analyse relevant background material relating to Montserrat, including the Sustainable Development Plan, the National Information Communication Policy, Strategy and Implementation Plan 2017-21,
- Refer to relevant regional legislation which shall include the Organisation of Eastern Caribbean States 'Electronic Government for Regional Integration Project' Draft Bills
- Refer to similar legislation of the United Kingdom and European Union, especially the General Data Protection Regulation.
- Engage in consultations, including stakeholder consultations, whether face to face or via technological means, to gather input on ICT;
- Obtain inputs from GoM-nominated stakeholders and update the legislation
- Educate stakeholders and end users on the proposed legislation.
- Prepare and present a gap analysis of ICT legislation and Inception Report
- Revise the existing ICT legislation and draft new ICT legislation where necessary, ensuring that the same is future-proofed
- Review the report on the Harmonization of ICT Policies, Legislation and Regulatory Procedures -HIPCAR Project.
- Review any other documentation deem relevant and necessary to draft legislation required

It is expected that the proposed legislation will cover, at a minimum, the following subject areas:

- Data protection and privacy
- Information security
- Intellectual Property
- Electronic signatures
- Electronic Transaction
- E-commerce
- Dispute resolution and management
- Cybersecurity/Cybercrime

Outputs

The Consultant shall deliver:

- The ICT legislation **gap analysis**
- An **Inception report** detailing the different pieces of legislation and subject areas to be covered relevant to ICT. This will be finalised in consultation between the Consultant and the GoM.
- Updated/developed **draft legislation and the required regulations** for comments by GoM
- **Final legislative drafts and regulations**

Timeframe

This draft legislation should be completed within 6 months from the commencement of contract. The overall 6 month assignment will include a period of time for consideration of the draft by the Attorney General and other stakeholders, before submission of final draft legislation and regulations.

Required Qualifications and Experience

The Consultant should have the following:

- a Law Degree and a Legal Education Certificate from a recognised Institution;
- a Diploma or Masters in Legislative Drafting;
- at least 5 years' experience as a legislative drafter;
- Strong presentation, communication and report writing skills
- Fluency in written and spoken English.

Following are the desired requirements of the successful bidder:

- experience in drafting ICT related legislation and/or ICT Policies
- knowledge of the operations of Governments

Reporting Mechanisms

The Consultant will report to the Permanent Secretary, the Ministry of Communications, Works and Labour and will be based in the Ministry of Communications, Works and Labour when face-to-face representation is required.

The Consultant will work closely with ICT Coordinator, the Attorney General, and other GoM Ministries/Department and Stakeholders.

EVALUATION OF TENDER

Evaluation Criteria

The following evaluation criteria will be used to evaluate tenders received in response to this Invitation to Tender. The Administrative Compliance would be applied before the remaining criteria and is either pass or fail with failure meaning that bids would be deemed Non-compliant. The contract will be awarded on the criteria weighted 50% cost and 50% quality.

Administrative Compliance (Pass/Fail)

The **Bid Document Checklist** provides a list of requirements which need to be completed and submitted with the tender submission. All tenderers shall submit **all** the documents requested. If any of the items stated in the Tender Checklist are not submitted, then the tender would be deemed non-compliant and rejected.

Cost (50% of Total Evaluation)

The tender price is a significant factor and the Government of Montserrat will seek to ensure that the consultancy would be undertaken for the most economically advantageous price. Government of Montserrat is not bound to accept the lowest or any tender. The percentage for this criterion will be calculated proportionately in comparison to other price submissions from tenderers.

Quality (50% of Total Evaluation)

The **Quality** score will be determined as follows.

| Criteria Description | Weight(%) |
|----------------------|------------|
| Experience | 40 |
| Knowledge and Skills | 40 |
| Delivery | 5 |
| Approach | 15 |
| Total | 100 |

Scores will be allocated based on the submission set out in 'Appendix to Form of Tender'. Tenderers are required to provide two References which may be contacted for further verification at any point in time.

Experience (40%)

The preferred tenderer should have a minimum of five (5) years' experience as a legislative drafter and credit will be given to tenderers who have proven experience in the review and analysis of ICT Legislative Frameworks.

Prospective tenderers need to provide details of at least 2 previous contracts completed within the past 10 years of a similar nature to the scope of works of this bid with a minimum value EC\$80,000. These details should include but are not limited to the following; the entity or person for which the work was completed, contact information for the entity or person, the value of the works, the location of the works. In addition, the prospective bidder can submit award letters for works in lieu of the above mentioned information.

Knowledge and Skills (40%)

Tenderers are required to submit a profile and details of all their Qualifications. The consultant should possess;

- a Law Degree and a Legal Education Certificate from a recognised Institution;
- a Diploma or Masters in Legislative Drafting;

Credit will be given to tenderers who are fluent in written and spoken English, possess strong presentation, communication and report writing skills.

Approach to the Consultancy (15%)

This score will be derived from the One page (A4) statement that bidders are required to submit. This should set out the overall approach in delivering the key tasks and deliverables under the **Scope of the Services mentioned above**, and should include resources to be used and how they will be utilised.

Delivery (5%)

The delivery score relates to the project management arrangements and the arrangements for engaging with stakeholders, both in the development of the proposed legislation and the raising of awareness of the new requirements.

Quality Evaluation

Quality will be measured upon evaluation of Bidders' responses to the Quality Questionnaire shown in the 'Appendix to Form of Tender'. Each question in the Quality Questionnaire is marked using the following scores:

| Scoring - Quality Criteria | |
|---|--------------|
| Rating of Response | Score |
| Very Good or Fully Compliant Submission which meets all requirements and is fully explained in comprehensive detail. Clearly includes all the information requested and instils full confidence that the Tenderer has the ability to fully meet the requirements of the Contract. | 9 – 10 |
| Good or Fully Compliant Submission which meets all the requirements and is explained in reasonable detail. Includes all the information requested and instils reasonable confidence that the Tenderer has the ability to fully meet the requirements of the Contract. | 7 – 8 |
| Satisfactory or Compliant Submission which meets the essential requirements and is explained in adequate detail. Although brief or lacking some detail, all the information requested has been supplied and the Council is relatively confident that the Tenderer has the ability to meet the requirements of the Contract. | 5 – 6 |
| Weak or Partially Compliant (Minor issues) Submission which in some areas falls short of requirements and is poorly explained. Not all of the information requested has been supplied and The Council has minor concerns regarding the Tenderers ability to meet the requirements of the Contract. | 3 – 4 |
| Un acceptable or Non-Compliant (Major issues) Submission which clearly fails to meet requirements and is not explained. Key information requested has not been supplied and the Council has major concerns regarding the Tenderers ability to meet the requirements of the Contract. | 1 – 2 |
| An answer to the question has not been provided or the Tenderer has not understood the requirements of the question and therefore the answer provided does not address the question. | 0 |

Weighted quality scores will be calculated by multiplying the score for each quality question by its individual weighting. The weighted scores will be totalled for each bid.

GOVERNMENT OF MONTSERRAT (GOM)

GENERAL CONTRACT CONDITIONS FOR CONSULTANCY

This Agreement is made the..... day of..... **2018** between the **GOVERNMENT OF MONTSERRAT** having its headquarters at Government Headquarters, Brades, Montserrat acting herein and represented by the Permanent Secretary, Ministry of Communications, Works and Labour (hereinafter referred to as "**GoM**") of the one part and (*supplier's company*)....., whose address is acting herein and represented by (*name of representative*)(hereinafter referred to as "**the Consultant**") of the other part.

1. INTERPRETATION

1.1. In these conditions:-

The Contract means the agreement concluded between the GoM (MCWL) of the Government of Montserrat and the Supplier including all specifications and other documents which may be incorporated or referred to herein;

The Purchaser means the Government of Montserrat (**GoM**).

The Consultant means the company/ companies/ individual/s that are responsible for carrying out the service.

The Administrator or Contract Administrator (CA) means the duly authorised representative of **GoM** for the administration of this Agreement who has care and control of this Contract and whose name will be provided to the Supplier. The Administrator shall have final authority for acceptance of the **Supplier's** performance, and if satisfactory, shall initiate the process for approval of payment to **the Supplier**. No payment shall be made without such approval.

The Contract Price means the gross price to be paid by GoM and the method of Payment of the Contract Price shall be agreed between the parties and inserted as part of the signed contract.

The Goods, or where referred to in the Specification as "items" means all materials or articles which the Supplier is required to supply under the Contract.

The Specification means the GoM's requirements for the undertaking of works as stated within the document.

2 VARIATIONS OF CONDITIONS

The deliverables shall be supplied in accordance with these Conditions and Specification and no amendment or variation either to the terms and conditions or to the Specification shall be made unless agreed in writing between the parties and incorporated into this agreement.

3 NON-DELIVERY

Without prejudice to any other right or remedy, should the Supplier not deliver the Deliverables or any portion thereof within the time or times specified in the Contract except in cases of force majeure and subject always to the receipt of written notice within 5 days of the force majeure event relied on then:

- 3.1 The GoM shall be at liberty to determine the Contract and to purchase other goods of the same or similar description from another Supplier to make good such default; and,
- 3.2 The GOM shall recover from the Supplier any sum or sums paid to the Supplier in respect of the Deliverables. Also the GOM shall be able to recover from the supplier any increased costs resulting from obtaining the service from an alternative supplier.

4 PAYMENT

- 4.1 As full consideration for the services performed by the Supplier under the terms of this Agreement, the **GoM** will pay the fees as outlined within 30 days of receipt of an invoice, payable against original invoices delivered to the **GoM** by the Supplier, provided that **GoM** may give notice of its intention not to pay such fee where:
 - a. The Supplier has failed to carry out services, or has defectively carried out services required by this Agreement and has not remedied such failure or defect within a reasonable time;
 - b. The Supplier, by act or omission, has caused damage to personnel or property of the **GoM** or any third party;
 - c. there is a breach of any other provision of this Agreement; and upon giving such notice the **GoM** may withhold payment accordingly.
- 4.2 Whenever under the Contract, any sum of money that shall be recoverable from or payable by the Supplier, the same amount may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Contract as a debt.
- 4.3 If any fee or portion thereof payable under this Agreement shall be unpaid **40 days** after receipt of an original invoice in respect of such fee, the Supplier may give notice to the **GoM** requiring the **GoM** to pay such fee or part thereof and if the **GoM** shall fail to comply with such notice the Supplier may terminate this Agreement immediately. Nothing stated in this provision shall operate to impair the right of the Supplier to recover any such fee in any other manner.

5 ASSIGNMENT

5.1 The GoM shall be entitled to assign the benefit of this Contract or any part thereof and shall give written notice of any assignment to the Supplier.

5.2 The Supplier shall not:-

5.2.1 Assign the Contract or any part thereof or the benefit or interest of the Contract without the prior written consent of the GoM; or

5.2.1 Subcontract any provision of the Goods or any part thereof to any person without the previous written consent of the GoM which, if given, shall not relieve the Supplier from any liability or obligation under the Contract and the Supplier shall be responsible for the acts, defaults or neglect of any sub-Supplier or his agents or employees in all respects as if it were the acts, defaults or neglect of the Supplier or its agents or employees.

6 CONFIDENTIALITY

6.1 All information, drawings, specifications documents and other data which the GOM may have imparted and may from time to time impart to the Supplier relating to its business, employees, customers, prices, requirements, or any computer system (including hardware and software or maintenance thereof) and including any technical specifications is proprietary and confidential.

6.2 The Supplier hereby agrees that it shall use such confidential information and all other data solely for the purposes of this Contract and that it shall not at any time during or any time after the completion, expiry or termination of this Contract, disclose the same whether directly or indirectly to any third party without the GOM's prior written consent.

7 GRATUITIES

The Supplier shall not, whether by himself or by any person employed by him to supply the Goods, solicit any gratuity or tip or any other form of money or take any reward or collection or charge for any of the Goods other than bona fide charges approved by the GoM.

8 BRIBERY AND CORRUPTION

The GoM shall be entitled to determine the Contract and to recover from the Supplier the amount of any loss resulting from such action if:-

8.1 The Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the Contract or any other contract with GoM;

or

8.2 The like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier);

or

8.3 In relation to any contract with the GOM, the Supplier or person employed by it

or

acting on its behalf shall:-

8.3.1 have committed an offence under the Integrity in Public Office Act No. 2 of 2010.

or

8.3.2 have given any fee or reward, the receipt of which is an offence under the relevant laws

8.4 In the performance of their obligations under or in connection with this Contract the parties, their agents and employees shall comply with all applicable laws, rules and regulations including and not limited to the Bribery Act 2010 and where appropriate, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

9 TERMINATION

9.1 The GoM may terminate this Contract in any of the circumstances set out in 9.2 below by giving to the Supplier notice in writing where the Supplier:-

9.1.1 Commits a breach of any of its obligations under this Contract;

9.1.2 Becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company or partnership for the voluntary arrangement for the composition of debts or scheme or arrangement approved in accordance with the Companies Act or the Bankruptcy Act;

9.1.3 Has a winding-up order made or (except for the purposes of amalgamation or Reconstruction) a resolution for voluntary winding-up passed;

9.1.4 Has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;

9.1.5 Has an administrative receiver appointed;

9.1.6 Has possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating greater than US\$25,000.00

9.1.7 Is in circumstances which entitle a court or creditor to appoint or have appointed a receiver, a manager or administrative receiver or which entitle a court to make a winding-up order; then in any such circumstances the GoM may without prejudice to any accrued rights or remedies under this Contract terminate the Contract by giving notice in writing.

9.2 If the Contract is terminated as provided in this condition then the GoM shall:-

9.2.1 Cease to be under any obligation to make further payment until the costs or loss resulting from or arising out of the termination of this Contract shall have been calculated, and shall make such payment only in accordance with a court order or pursuant to the applicable law;

9.2.2 Be entitled to repossess any of its Equipment (if any) in the possession of the Supplier;

9.2.3 Be entitled to deduct any losses to the GoM resulting from or arising out of the termination of this Contract (from any sum or sums which would but for the termination of the contract as aforesaid have been due from the GoM to the Supplier as a debt). Such loss shall include the reasonable cost to the GoM of the time spent by them in terminating of the Contract as aforesaid have been due to the Supplier.

10. WAIVER

10.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement. No waiver of any default or non-performance by any party shall be considered a waiver of any subsequent default or non-performance.

11 COMPLETE AGREEMENT

11.1 This Agreement supersedes any prior Agreement between the parties whether written or oral relating to the subject matter hereof, but without prejudice to any rights which have already accrued to either of the parties.

12 GOVERNING LAW

12.1 This Agreement shall be governed by the laws of Montserrat in every particular and shall be deemed to be made in Montserrat.

13 FORCE MAJEURE

13.1 Both parties shall be released from their respective obligations in the event of national emergency, natural disaster, war, prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of this Agreement impossible whereupon all money due under this Agreement shall be paid immediately.

14. NOTICES

14.1 Any notice required to be served under this Agreement shall be in writing and may be served by electronic mail to the correct address, facsimile transmission to the correct number, post or hand delivery to the last known business address of the party upon whom it is being served. Notice shall be deemed to have been effected within 24 hours of the date of sending of the notice when sent by electronic mail or facsimile transmission, within 72 hours of the date of posting of the notice when sent by post and upon delivery when hand delivered.

14.2 A notice shall be delivered as follows:

A. if to the Supplier, to:

Name
Designation
ADDRESS

Tel: (...)
Fax: (...)
Email:

B. if to the GOM, to:

Beverley Mendes
Permanent Secretary
Ministry of Communications, Works and Labour
Brades
Montserrat

Tel: (664) 491-2521 or 22
Fax: (664) 491-6659
Email: mcw@gov.ms
Email: mendesb@gov.ms

19. CONFIDENTIALITY

19.1 The Supplier shall not at any time during or after the term of this Agreement divulge or allow to be divulged to any person any information which comes into its possession by virtue of its performance of this Agreement, which relates to the business and affairs of the **GoM** except upon authorization by the **GoM**. The Supplier shall not seek to acquire any such information outside of the performance of its duties under this Agreement.

20. MEDITATION AND ARBITRATION

20.1 If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Montserrat. The parties shall share any costs and fees other than attorney fees associated with the mediation equally.

21. SIGNATURES

21.1 Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by terms hereof.

Insert names etc.

A. SUPPLIER

Name.....

Designation.....

Signature.....

Witness Name.....

Designation.....

Signature.....

B. GOM

Name.....

Designation.....

Signature.....

Witness Name.....

Designation.....

Signature.....

Bid Document Checklist

Project Title: ***Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework***

Date scheme advertised: ***Thursday 24th May 2018***

Tender Deadline Date: ***Wednesday 6th June 2018***

Tender Deadline Time: ***12:00 Noon (EST)***

Below are the following documents that should be provided for a contractor's bid to be valid. Bidders are asked to supply and tick off the following information. Failure to provide any of the stated documents may result in the bid being considered non-compliant and rejected.

The below documents should be presented with their bid to ensure that their bid is valid.

- Completed and Signed Form of Tender
(Including time for completion & notice period)

- Appendix To Form of Tender

- Documentation of Qualifications/Knowledge/Skills (Provide Evidence)

- Tax Compliance Certificate (*See Guidance Notes to Bidders #3*)

- Signed Anti-Collusion Statement

- Documentation of Experience

- Details of at least 2 previous contracts completed within the past 5 years of a similar nature to the scope of works of this bid

- Cost Breakdown as dictated in Schedule A and Schedule B

- 'Approach' to Consultancy (*See Evaluation Criteria*)

- 'Delivery' (*See Evaluation Criteria*)

.....
Signed on behalf of Consultant

.....
Date

FORM OF TENDER

The Chairperson
Public Procurement Board
Ministry of Finance and Economic Management
Brades
Montserrat

Dear Sir/Madam;

Re: Provision of Legal Consultant to Review and Update Montserrat’s ICT Legislative Framework

I/We the undersigned undertake to complete the above Works in accordance with the terms of reference for the sum of:

EC\$including all expenses.

.....
(words).....
.....

The daily rate will be.....

Number of consultancy days provided will be.....

Details of my/our response to the tender evaluation questions is included in the Appendix To Form of Tender.

If my/our bid is accepted, I/We undertake to commence the consultancy within _____ calendar **days** from the date of receipt by me/us of the official order and complete the works within _____ calendar **days** from the date of receipt by me/us of the official order.

I/We understand I/We shall not be reimbursed for any cost that may have been incurred in compiling this tender. I/We confirm this bid shall remain valid for a period of 90 calendar days from the date of submission of this tender.

Name.....

Signed.....

Name of firm (If Applicable)

Address.....

.....

Tel. nr..... Fax nr

Email Address Date.....

Appendix To Form of Tender

Response to Evaluation Questions

Project Title: Tender for Provision of Legal Consultant to Review and Update Montserrat's ICT Legislative Framework

- Tenderer's Responses should address each of the questions.
- Weighting of points available are shown in brackets.
- Tenderer's total Responses to the Quality questions should be **no more than 14 pages. Anything submitted beyond 14 pages will not be scored.**
- Where information is provided that addresses more than one question Tenderer's should cross referencing their answers.
- Tenderers responses can be provided in the spaces below or Tenderers can create their own responses on separate sheets.

Please refer to the scoring grid set out in the Evaluation of Tender section of the Instructions to Tenderers. Each question is scored out of 10 and a weighting applied to each category as set out.

| Quality Questions |
|--|
| EXPERIENCE (40%) |
| 1. Provide details of at least 2 previous contracts completed within the past 10 years of a similar nature to the scope of works of this bid, with a minimum value EC\$80,000. These details should include but are not limited to the following; the entity or person for which the work was completed, contact information for the entity or person, the value of the works, the location of the works. (The prospective bidder can submit award letters for works in lieu of the above mentioned information.) |
| Bidders Response |
| 2. Provide details of your experience as a legislative drafter and any experience in reviewing and analysing ICT Legislative Frameworks. |
| Bidders Response |

KNOWLEDGE AND SKILLS (40%)

3. What knowledge do you have of the following issues:

- **Data protection and privacy**
- **Information security**
- **Intellectual Property**
- **Electronic signatures**
- **Electronic Transaction**
- **E-commerce**
- **Dispute resolution and management**
- **Cybersecurity/Cybercrime**

Bidders response

4. Please outline your profile and details of your Qualifications.

Bidders response

5. Describe your skills in the following:

- **Strong presentation, communication and report writing skills**
- **Fluency in written and spoken English.**

Bidders response

6. Outline your knowledge and skill in drafting ICT related legislation

Bidders response

7. Outline your knowledge and skill in formulating legislation gap analysis

Bidders response

DELIVERY (5%)

8. Please outline your arrangements for project management in delivering this consultancy? (include the key tools you would adopt)

Bidders Response

9. How will you ensure effective presentations and engagement with all interested stakeholders?

Bidders response

10. How will you educate stakeholders and end users on the proposed legislation?

Bidders Response

APPROACH (15%)

11. Please describe your overall approach in delivering the key tasks and deliverables set out below. This should include resources to be used and how they will be utilised.

- Analyse relevant background material relating to Montserrat, including the Sustainable Development Plan, the National Information Communication Policy, Strategy and Implementation Plan 2017-20,
- Refer to relevant regional legislation which shall include the Organisation of Eastern Caribbean States 'Electronic *Government for Regional Integration Project*' Draft Bills
- Refer to similar legislation of the United Kingdom and European Union, especially the General Data Protection Regulation.
- Engage in consultations, including stakeholder consultations, whether face to face or via technological means, to gather input on ICT;
- prepare and present a gap analysis of ICT legislation.
- revise the existing ICT legislation and draft new ICT legislation where necessary, ensuring that the same is future-proofed
- Obtain inputs from GoM-nominated stakeholders and update the legislation
- Educate stakeholders and end users on the proposed legislation.
- Review the report on the Harmonization of ICT Policies, Legislation and Regulatory Procedures -HIPCAR Project.

Bidders Response

GOVERNMENT OF MONTSERRAT
TENDER SUBMISSION ANTI-COLLUSION CERTIFICATE

I/WE CERTIFY THAT THIS TENDER IS MADE IN GOOD FAITH, AND THAT WE HAVE NOT FIXED OR ADJUSTED THE AMOUNT OF THE TENDER BY OR UNDER OR IN ACCORDANCE WITH ANY AGREEMENT OR ARRANGEMENT WITH ANY OTHER PERSON. I/WE ALSO CERTIFY THAT WE HAVE NOT AND I/WE UNDERTAKE THAT WE WILL NOT BEFORE THE AWARD OF ANY CONTRACT FOR THE WORK:

DISCLOSE THE TENDER PRICE OR ANY OTHER FIGURES OR OTHER INFORMATION IN CONNECTION WITH THE TENDER TO ANY OTHER PARTY (INCLUDING ANY OTHER COMPANY OR PART OF A COMPANY FORMING PART OF A GROUP OF COMPANIES OF WHICH I AM/WE ARE A PART OF) NOR TO ANY SUB-CONTRACTOR (WHETHER NOMINATED OR DOMESTIC) NOR SUPPLIER (WHETHER NOMINATED OR DOMESTIC) OR ANY OTHER PERSON TO WHOM SUCH DISCLOSURE COULD HAVE THE EFFECT OF PREVENTING OR RESTRICTING FULL COMPETITION IN THIS TENDERING EXERCISE.

ENTER INTO ANY AGREEMENT OR ARRANGEMENT WITH ANY PERSON THAT THEY SHALL REFRAIN FROM TENDERING, THAT THEY SHALL WITHDRAW ANY TENDER ONCE OFFERED OR VARY THE AMOUNT OF ANY TENDER TO BE SUBMITTED OR OTHERWISE COLLUDE WITH ANY PERSON WITH THE INTENT OF PREVENTING OR RESTRICTING FULL COMPETITION.

PAY, GIVE OR OFFER PAY OR GIVE ANY SUM OF MONEY OR OTHER VALUABLE CONSIDERATION DIRECTLY OR INDIRECTLY TO ANY PERSON FOR DOING OR HAVING DONE OR CAUSING OR HAVING CAUSED TO BE DONE IN RELATION TO ANOTHER TENDER OR PROPOSED TENDER FOR THE WORK ANY ACT OR THING OF THE SORT DESCRIBED AT I), II) OR III) ABOVE.

I/WE FURTHER DECLARE THAT I/WE HAVE NO KNOWLEDGE EITHER OF ANY SUM QUOTED OR OF ANY OTHER PARTICULARS OF ANY OTHER TENDER FOR THIS CONTRACT BY ANY OTHER PARTY.

I/WE FURTHER CERTIFY THAT THE PRINCIPLES DESCRIBED ABOVE HAVE BEEN, OR WILL BE, BROUGHT TO THE ATTENTION OF ALL SUB-CONTRACTORS, SUPPLIERS AND ASSOCIATED COMPANIES PROVIDING SERVICES OR MATERIALS CONNECTED WITH THE TENDER AND ANY CONTRACT ENTERED INTO WITH SUCH SUB-CONTRACTORS, SUPPLIERS OR ASSOCIATED COMPANIES WILL BE MADE ON THE BASIS OF COMPLIANCE WITH THE ABOVE PRINCIPLES BY ALL PARTIES.

I/WE ACKNOWLEDGE THAT ANY BREACH OF THE FOREGOING PROVISIONS SHALL LEAD AUTOMATICALLY TO THIS TENDER BEING DISQUALIFIED AND MAY LEAD TO CRIMINAL OR CIVIL PROCEEDINGS. THE GOVERNMENT OF MONTSERRAT SHALL TREAT ANY TENDER RECEIVED IN CONFIDENCE BUT RESERVES THE RIGHT TO MAKE THE SAME AVAILABLE TO ANY OTHER FUNDING ORGANISATION OR STATUTORY REGULATORY AUTHORITY EITHER HAVING JURISDICTION OVER THE WORKS OR WHO MAY NOW OR AT ANY TIME IN THE FUTURE HAVE STATUTORY POWER TO REQUIRE DISCLOSURE OF THIS TENDER.

IN THIS CERTIFICATE, THE WORD 'PERSON' INCLUDES ANY PERSONS AND ANY BODY OR ASSOCIATION, INCORPORATED OR UNINCORPORATED; ANY AGREEMENT OR ARRANGEMENT INCLUDES ANY TRANSACTIONS, FORMAL OR INFORMAL AND WHETHER LEGALLY BINDING OR NOT; AND 'THE WORK' MEANS THE WORK IN RELATION TO WHICH THIS TENDER IS MADE.

SIGNATURE..... IN CAPACITY OF

DATE.....2018

DULY AUTHORISED TO SIGN TENDERS AND ACKNOWLEDGE THE CONTENTS OF THE ANTI-COLLUSION CERTIFICATE FOR AND ON BEHALF OF:

NAME OF FIRM.....

FULL POSTAL ADDRESS.....

Telephone No..... Fax No

Schedule A - Key Deliverables

Please complete fully and return with Tender submission

Failure to provide the information in your tender submission may lead to your tender being disqualified.

The Consultant shall deliver the outputs specified below and indicate timelines for each output. Remuneration will be provided on the completion of each Deliverable. The project is to be completed within six (6) months, from inception to completion.

| Deliverables | Day Rate | No. of Consultant Days | Cost/ Remuneration | Completion Date |
|--|-----------------|-------------------------------|---------------------------|------------------------|
| 1.The ICT legislation gap analysis | | | | |
| 2. Inception report identifying the different pieces of legislation and subject areas to be covered relevant to ICT. This will be finalised in consultation between the Consultant and the GoM | | | | |
| 3.Updated/developed draft legislation and the required regulations for comments by GoM | | | | |
| 4.Final legislative drafts | | | | |
| Total Deliverables Fees | | | | |

Schedule B - Service cost Proposal

Please complete fully and return with Tender submission
Failure to provide the information in your tender submission may lead to your tender being disqualified

| Services | Proposed cost |
|--|----------------------|
| Total Deliverables Fees per Schedule A | |
| Airfare/s | |
| Ground Transport | |
| Accommodation | |
| Subsistence | |
| Other Costs <i>(please break down)</i> | |
| Total cost of Proposal | |