



**Invitation to Tender  
for  
Architectural Services  
and Construction Oversight  
for the  
Construction of Temporary Classrooms  
at the  
Montserrat Secondary School**

**August 2019**

## Procurement Details

Project Details	Deliverable
<b>Invitation to Tender for Architectural and Construction Oversight Services at Montserrat Secondary School (MSS).</b>	Date Published on Government of Montserrat Website <b>Thursday 8<sup>th</sup> August 2019</b>
<b>Access to the ITT Suite of Documents</b>	Hard copies can be downloaded from the Government of Montserrat website at <a href="http://www.gov.ms/tenders/">http://www.gov.ms/tenders/</a> .  Electronic tender packs can be downloaded, completed and submitted via the myTenders Portal at <a href="https://www.mytenders.co.uk/">https://www.mytenders.co.uk/</a> . 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.
<b>Clarification deadline and contact details</b>	Monday 19th August 2019
<b>ITT submission deadline</b>	Friday 23 <sup>rd</sup> August 2019 no later than 12.00 midday
<b>Tender Submission address</b>	The Chairperson Departmental Tenders Committee, Ministry of Finance and Economic Management, Brades, Montserrat.
<b>Contract Commencement – this is an indicative date and maybe subject to change.</b>	September 2019

## **1. Invitation to Tender**

Potential Bidders are invited to tender for Architectural and Construction Oversight Services at Montserrat Secondary School (MSS).

Tenders are invited from Architects to provide architectural and construction oversight services for temporary wooden structures to be built at the Montserrat Secondary School.

Included in this tender dossier are the following documents:

- 1) Invitation to Tender
- 2) Instructions to Tenderers
- 3) Terms of Reference Scope of Work
- 4) Evaluation Criteria
- 5) Respondent's Identification/Details
- 6) Relevant Experience
- 7) Form of Tender
- 8) General Conditions of Contract
- 9) Anti-Collusion Statement
- 10) Tender Document Checklist

Tender submission deadline is **12:00 mid-day** Eastern Caribbean time on **Friday 23<sup>rd</sup> August 2019**.

The opening of the tenders will be at 2:00pm Eastern Caribbean Time on Wednesday 14<sup>th</sup> August 2019.

Please read instructions to bidders before completing your submission. Failure to follow instructions may result in your bid being deemed non-compliant and being rejected.

If you require any clarification please write to MS Harjinder Jutle, Head of Procurement at [Jutleh@gov.ms](mailto:Jutleh@gov.ms) no later than Monday 12<sup>th</sup> August 2019.

## **2. Instructions to Tenderers**

1. The Architectural Service Agreement will be adopted for this contract.
2. Tenderers must complete the Form of Tender, Document Check List, Anti-collusion statement and Bill of Quantities for the works. Failure to fully complete these documents will lead to their bid becoming non-compliant and rejected.
3. The tenderer 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.
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](mailto:irev@gov.ms).
5. All works undertaken will be the subject of taxation in accordance with the current legislation. Tenderers must submit a current Tax Compliance Certificate with their bid ***if locally based***.
6. The tenderer will be deemed to have inspected the site and be familiar with the environment and working conditions on the site.
7. All works undertaken will be the subject of taxation in accordance with the current legislation.
8. The successful tenderer will be asked to provide details of their current insurance sufficient to satisfy the requirements for insurance given in the Conditions of the Contract and the Specification. The insurance shall indemnify the professional. **This will be requested before the signing of the contract.**
9. Tenders must be returned in line with the instructions for submitting a Tender. **Late submissions will not be considered.**
10. Tenderers are to provide all document or information requested as part of their tender submission.
11. All tenders will be arithmetically checked; any errors will be brought to the tenderers attention. The rates supplied would be the basis for the arithmetic correction and would be the determining factor for any queries about the corrected price.
12. Tenderers are not permitted to submit alternative tenders.

13. The Government of Montserrat is not bound to accept the lowest tenderer and has the right to accept and reject any tender offers.

### **Submitting a Bid/Tender**

There is one option for submitting a tender:

- 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 proposal 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*)

**Invitation to Tender for Architectural and Construction Oversight Services at MSS  
The Chairperson, Departmental Tenders Committee  
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.; |

**Invitation to Tender for Architectural and Construction Oversight Services at MSS  
The Chairperson, Departmental Tenders Committee  
Ministry of Finance and Economic Management  
P.O. Box 292, Brades, Montserrat, MSR1110**

*\*NB: Envelope 2 must not have the Bidders name on it or any other markings. Failure to comply with this requirement will lead to your submission being deemed non-compliant and not considered any further.*

Tenders are to be delivered to the address above. Tenderers will be given a receipt.

### **3. Terms of Reference**

## **ARCHITECTURAL SERVICES FOR THE CONSTRUCTION OF TEMPORARY CLASSROOMS FOR THE MONTSERRAT SECONDARY SCHOOL**

### **Background**

Montserrat's Sustainable Development Plan (SDP) for the period 2008-2020 has outlined this country's strategic goals intended to guide the long-term sustainable development of the Island. Embedded in the *Human Development Medium-Term Objective 2* of the SDP: *'Increase access to and improve quality of formal and informal education'* is the strategic action 2.2.1 which states: *'Improve education infrastructure to respond to growing student population, changes to curriculum, and developmental needs'*. This objective places specific emphasis on securing adequate accommodation for Ministry of Education (MoE) staff and developing appropriate facilities for the effective delivery of education-related services. This action will both enhance the existing facilities to be suitable for occupation, as well as develop additional building assets to relocate classrooms still in temporary accommodation.

With the support of the UK Department for International Development (DfID), the Government of Montserrat (GoM) is planning and implementing a number of priority infrastructure projects that are key to the re-development of this volcano devastated Island. This work is progressing under the umbrella of the Capital Investment for Economic Growth (CIPREG) Programme. This terms of reference relates to a specific project to address urgent capacity issues within the Montserrat Secondary School. The construction of two new temporary classroom structures will provide four new classroom spaces for continued educational delivery at MSS. Due to the immediate requirement for these new structures, the project will utilize existing designs and information from previous constructions of temporary classroom structures on the site to inform and accelerate this work.

### **Objectives**

The overriding objective for this terms of reference is to provide design, project cost estimation, construction bill of quantities and construction oversight for the construction of two temporary wooden structures at the Montserrat Secondary School to be used as classrooms.

These buildings must be designed to ensure appropriate access for disabled persons, in line with international building standards. The Government of Montserrat has existing designs to be used as the basis of the new design but which will require modification to incorporate disabled access, whilst responding to the specific requirements of the identified site.

The project is schedule driven, and therefore timely completion of the design and project planning work is of high importance. The timescales associated with this project reflects this requirement. With that in mind, GoM will provide existing designs in editable format for modification, and other supporting information to assist with limiting the overall schedule. These designs are copyrighted by the Government of Montserrat, and will remain the property of the Government. The successful Architect would be required to meet with the Head of the Project Manager Unit, within the Ministry of Finance, as part of his/her discovery before embarking on the assignment.

To ensure the implementation of the project is in accordance with best practices, as well as to manage project related risks, the Architect role would include:-

1. Ensuring all relevant government objectives, legislation, codes and national policies which are necessary to promote positive outcomes are adhered to including; procurement, land take and contract regulations.
2. Ensure that the Architectural works are executed in a timely manner.

### **Scope of Works**

The scope of works for the Architect will include, but not be limited to the following:

#### **Design and Planning**

- Provide all the required preliminary and final architectural/structural designs and plans for the two temporary wooden classroom buildings
- Provide site layout design taking into account the features of the designated location and access requirements.
- Provide measurements and dimension information to support project execution.
- Provide a completed Scope of Works for the construction of the two temporary wooden classroom buildings.
- Provide a completed Bill of Quantities for the complete construction scope associated with the temporary wooden classroom buildings.
- Provide a cost estimate for the construction of the two structures (including material and labour)
- Provide an indicative schedule and implementation plan with milestones for the construction
- Facilitate the timely completion of all contractual agreements for the assigned project including the specifications.

All designs and drawings must incorporate disabled access requirements for the two structures, in line with international standards. This is a mandatory requirement.

#### **Execution**

- The Architect will have the responsibility of ensuring the contractor carries out the work as planned, designed and in accordance with architectural standards and practices.
- The Architect will provide construction management oversight throughout the duration of the project, and report to the Project Manager
- Carry out measurement of works completed and agreed by foreman in accordance with the contract
- Supporting the payment certification process through the timely provision of information relating to works completed, when required by the project.
- Monitor and ensure that the project is being implemented in accordance with the plans, on schedule and budget.
- Report any concerns relating to health and safety during the execution of the project

## Deliverables and Milestones

Unless otherwise stated, the appointed Architect will report to the Head of PMO and Project team (Ministry of Finance) throughout the lifecycle of the project, including providing relevant updates where required. The key deliverables are outlined below:

- Completed architectural and structural drawings and associated materials for the two temporary wooden classroom buildings.
- Site layout drawings
- Production of Scope of Works for all construction works, with associated measurements and dimensions
- Bill of quantities for the works
- Cost estimate and indicative construction schedule/Gantt chart for all construction works
- Ensure that construction progresses within agreed plan and adheres to quality requirements for material and workmanship, and to report to the Project with timely updates.
- Provide technical/architectural support throughout the duration of the project
- Ensure that all works are carried out in safe and secure manner in accordance to the Health and Safety plans, and the OECS Building Code 2015.

## Timeframe

This project is working to an accelerated schedule, noting the urgent requirement for capacity at the Montserrat Secondary School. The preliminary design work, associated drawings, measurements, scope of works, bill of quantities, cost estimate, and indicative schedule should be completed within two (2) weeks.

The scope associated with the construction management oversight and final design should be completed over the duration of the construction project (currently envisaged to be approximately **6 (six) weeks** in duration, once the construction contractor is mobilized via separate contract).

## Reporting requirements

The Architect shall prepare and submit weekly progress reports to the Head of PMO, which will be prepared in an agreed format and will address delivery against the above deliverables.

Upon completion of the construction activities, the Architect shall provide a brief breakdown of a record of the design, construction and erection of the works accomplished including:-

- A brief description of changes or modifications to the design;
- Problems encountered and solutions adopted (Lessons learned);
- Final construction quantities and costs;

All drawings and designs must be provided in DWG and PDF format that are compatible with GoM's current software.

The Architect will be working closely with staff from the Project Management Office, in the Ministry of Finance and the Ministry of Education, with oversight from PWD).

### **Required Profile and Qualifications**

- The ideal Architect will have at least a Bachelor of Arts degree in Architectural Studies or equivalent. A professional qualification in Architecture (or similar discipline) would be an asset
- A minimum of 3-5 years' experience in Architecture including Project Architecture/management skills and vast knowledge in Architectural design and implementation.
- The candidate should have relevant experience in the area of contract and construction management
- Knowledge of, but not limited to:
  - Design and construction of public and commercial buildings,
  - OECS Building Code 2015 and international design standards,
  - Designing for disability access
  - Project management and planning
- Have the ability to work with local contractors to develop workmanship and quality control,
- Be computer literate in MS Office, AutoCAD, MS Projects and relevant specialist software
- Understanding of reporting requirements

#### 4. 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. **Tenders must achieve a minimum score of 65% to be considered for award of contract.**

Criteria Description	Weight (%)
Administrative Compliance	Pass/Fail
Expertise and Experience	40
Cost Proposal	30
Delivery	30

Tenderers that fail to meet the above qualifying score will be rejected and not considered for award of contract.

##### Administrative Compliance (Pass/Fail)

Tenderers must submit all the documents requested in the tender document. The tender checklist provides a list of requirements which need to be fulfilled. All Tenderers are required to fully complete the Form of Tender including the commencement time and the proposed completion time which are highlighted. In addition they need to fully complete the Bill of Quantities provided. A valid Tax Compliance Certificate need to be submitted with their submission. Tenderers should sign and date the Anti-Collusion statement. Similarly details of previous experience must be submitted in accordance with the Technical Compliance below. This is a pass/fail criteria. If **all** the above requirements are fulfilled then the tenderer would move onto the other evaluation criteria. If any of the above mentioned items are not submitted then the tender would be deemed non-compliant and rejected.

##### Expertise and Experience (40%)

Obtaining an appropriately qualified Architect to deliver on this Terms of Reference is germane to timely and successful delivery of this project. Experience being given the highest score reflects the importance that the project team has allocated to achieving the right quality for this service. Section 7.0 Required Profile and Qualifications would be the main area of evaluation when assessing this element. Respondents, therefore are required to address areas of qualifications and experience in completing his/her bid.

##### Cost Proposal (30%)

It is important that this project delivers value for money. The project team seeks to implement this project element on budget thus yielding value for money for the benefit of the people of Montserrat. Price is therefore a critical component of the evaluation criteria. A total of 30 percent out of 100

percent will be allocated to each bidder's price when it is compared to price-to-value submitted by other bids.

#### Delivery Time (30%)

A higher than normal weighting has been given to delivery schedule, so that preference can be given to the proposal that can deliver the service at the earliest time. The percentage for this criterion will be calculated proportionately to the time submissions from other tenders.

**Quality Evaluation Methodology**

Quality will be measured upon evaluation of Bidders’ responses to the Technical Questionnaire. Each question in the Technical Questionnaire is marked using the following scores:

<b>Scoring - Quality Criteria</b>	
<b>Rating of Response</b>	<b>Score</b>
<b>Very Good or Fully Compliant</b> 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
<b>Good or Fully Compliant</b> 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
<b>Satisfactory or Compliant</b> 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
<b>Weak or Partially Compliant</b> (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
<b>Unacceptable or Non-Compliant</b> (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

## Technical Questionnaire

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.

**Question 1: (30%)**

Please describe your experience in carrying out similar Architectural works required for this project.

***Bidders response:***

**Question 2: (20%)**

Please describe below the process of how you will deliver the scope of works described in Terms of Reference.

***Bidders response:***

**Question 3 (20%)**

Please describe your approach to managing construction projects of this nature, from conception to completion.

Please outline the critical steps you will undertake to ensure successful project delivery.

Please include the following in your response:

- Knowledge of, but not limited to:
  - a. Design and construction of public and commercial buildings,
  - b. OECS Building Code 2015 and international design standards,
  - c. Designing for disability access
  - d. Project management and planning

**Bidders response:**

**Question 4: (15%)**

Please outline your strategy for ensuring Health and Safety standards are upheld.

**Bidders response:**

**Question 5 (10%)**

Please outline your approach to ensuring that key outputs and deliverables are met within the required timescales.

**Bidders Response:**

**Question 6 (5%)**

How will you incorporate and meet the needs of people with varying abilities such as sensory, physical and psychological challenges

**Bidders Response:**

**Question 7 (5%)**

Please outline your experience in the area of contract and construction management.

***Bidders Response:***

**Question 8 (5%)**

Please outline your approach to working with local contractors to develop workmanship and quality control

***Bidders Response:***

**Question 9 (5%)**

What resources will you dedicate to the completion of this project?

Please include your availability, on site and off site, working days and hours.

***Bidders Response:***

**5. Respondent's Identification Details**

A	PERSONAL INFORMATION
<p>COMPANY NAME----- REGISTRATION NUMBER -----          COMPANY ADDRESS-----          -----          CONTACT PERSON----- POSITION-----          TELEPHONE NUMBER- ----- FAX NUMBER----- WEBSITE-----          EMAIL ADDRESS:-----</p>	

B	QUESTIONNAIRE		
1	Your entity operates as which one of the following?		Sole Proprietorship
			Partnership
			Limited Liability
			Others
2	How many years has your entity been in operation?		(0-1)
			(1-3)
			(3-5)
			(5-10)
			(10 & Over
3	Number of Employees within your entity?		(1-5)
			(6-10)
			(11-15)
			(16 & Over)
4	How many similar contracts has your entity successfully completed in the last 2 years?		(1-3)
			(4-6)
			(7-9)
			(10 & Over)

6	What is the highest sum of any of the contracts completed in the last 2 years?	(50-100)K
		(101-200)K
		(201-400)K
		Over 400K
7	Has your entity failed to complete a contract for a public or private entity?	YES
		NO

**(TICK WHERE APPLICABLE ABOVE)**

C	SIGNATURE
<p>I hereby certify that the information outlined in this document is true and accurate to the best of my knowledge and belief. I understand false statement may result in denial of a contract and possible debarment from future prospects.</p> <p>-----</p> <p>Signature of Company Representative                      Company Name/Stamp</p> <p>-----</p> <p><i>Date</i></p>	

**6. Relevant Experience**

<b>Start Date or Date of Award</b>	<b>Description of Works</b>	<b>Name of Client</b>	<b>Price of Contract</b>	<b>Date Completed</b>

**7. Price and Time Breakdown**

<b>Services Element</b>	<b>Price</b>	<b>Time Schedule</b>
Architectural services		
Site Layout, scope of works, BoQ and Construction Cost Estimates		
Construction Oversight/Supervision		

**8. Form of Tender**

The Chairperson  
Departmental Tender Committee  
Ministry of Education, Youth Affairs and Sports  
E Karney Osborne Building  
Little Bay  
Montserrat

Dear Sir/Madam;

**Re: Tender for Architectural Services and Construction Oversight for Temporary Wooden Classroom Building at MSS**

I/We the undersigned undertake to construct and complete the above Works in accordance with the General Conditions of Contract, Specifications and Drawings for the sum of:

EC\$

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

If my/our tender is accepted, I/We undertake to commence the Works within \_\_\_\_ **days** from the date of receipt by me/us of the official order and complete the works within \_\_\_\_ **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 tender shall remain valid for a period of 90 days from the date of submission of this tender.

I/We accept the General Terms and Conditions of Contract contained within this ITT.

Name.....

Signed.....

Name of firm (If Applicable) .....

Address.....

.....

Tel. no.....

Fax no.....

Email Address .....

Date.....

**Terms and Condition of Contract  
AGREEMENT**

**between**

**GOVERNMENT OF MONTSERRAT**

**and**

.....

## Service Contract

This Agreement (“the Agreement”) effective as of.....day of..... 2019 is by and between....., an entity having a mailing address of .....(“XXX) or (“XXX”), and the Ministry of Education (MoE) , having a mailing address of P.O. Box 103, E. Karney Osborne Building, Little Bay, Montserrat, West Indies.

### RECITALS:

WHEREAS, the Ministry of Education (MoE) desires to retain the Architectural Consultancy (XXX) to provide services and to undertake the objectives set out in Schedule “A; and

WHEREAS, the **Consultancy** desires to perform such services as described in this Agreement.

NOW, THEREFORE, the MoE and the **Consultancy** hereby agree as follows:

### **1. STRUCTURAL ASSESSMENT OF BLOCKS L & M OF THE MSS**

The Consultancy represents that it is fully experienced and properly qualified to perform the Services as provided under this Agreement as set out in Schedule “A” and that it is, and will remain for the duration of this Agreement, properly permitted, licensed, equipped, organized and financed to perform such Services.

### **2. INDEPENDENT CONTRACTOR**

Except as otherwise expressly provided in this Agreement or otherwise authorized in writing by the MoE, in performing the Services and incurring expenses under this Agreement, the **Consultancy** shall operate as, and have the status of, an independent contractor and shall not act as agent or be an agent of the MoE. As an independent contractor, the **Consultancy** shall be solely responsible for determining the means and methods of performing the Services and shall have complete charge and responsibility for the **Consultancy** personnel engaged in the performance of the Services.

### **3. ASSIGNMENT**

The **Consultancy** shall not assign any of its rights, interests or obligations under this Agreement or subcontract any of the Services to be performed by it under this Agreement without the express written consent of the MoE. Any subcontract or Assignment shall be subject to all terms of this Agreement. The MoE shall have the right to assign this Agreement to a third party upon notice to the Consultancy.

#### **4. COMPENSATION AND PAYMENT**

For satisfactory performance of the Services, or as may be modified by mutual agreement, the MoE agrees to compensate the Consultancy an amount not to exceed ..... Inclusive of reimbursable expenses, as set forth in Schedule "B" attached hereto.

#### **5. CONFIDENTIALITY**

(a) For purposes of this Clause:

(1) The term "Confidential Information" as used herein means all material and information, whether written or oral, received by the **Consultancy** from or through the MoE or any other person connected with the Project, or developed or otherwise received or obtained by the **Consultancy** in connection with the Project or the performance of Services under this Agreement. Confidential Information shall include, but not be limited to, samples, substances and other materials, conversations, correspondence, records, notes, reports and other documents, in draft or final form, including any documentation or data relating to the results of investigations, testing, sampling in laboratory or other analysis, and all conclusions, interpretations, recommendations and/or comments relating thereto.

(2) The term "**Consultancy**" as used herein includes all officers, directors, employees, agents, representatives and sub-consultants of the **Consultancy**.

The **Consultancy** shall mark all Confidential Information as "Privileged and Confidential" and keep all Confidential Information in a secure location within the **Consultancy** offices. The MoE shall have the right, but not the obligation, to enter the **Consultancy** offices in order to inspect the arrangements of the **Consultancy** for keeping the Confidential Information secure. No inspection by the MoE shall relieve the **Consultancy** of the responsibility for the performance of its obligations hereunder.

(b) The **Consultancy** shall hold the Confidential Information in trust and confidence, shall not disclose the Confidential Information or any portion thereof to any third party without the prior written consent of the MoE, and shall not use the Confidential Information or any portion thereof for any purpose whatsoever except in connection with the performance of the Services under the Agreement.

(c) The **Consultancy** shall notify the MoE immediately upon receipt by the **Consultancy** of any request for Confidential Information. The **Consultancy** is not prohibited by this Clause from disclosing portions of the Confidential Information if, and to the extent that, such portions have become generally available to the public other than by an act or omission of the **Consultancy** or any of its subcontractors, or disclosure of such portions is required by subpoena, warrant or court order; PROVIDED, however, that in the event that any third party, including but not limited to a governmental employee, officer or entity, requests all or a portion of the Confidential Information, the **Consultancy** shall oppose such request and cooperate with the MoE in obtaining a protective order or other appropriate remedy unless and until the MoE in writing –

(i) waives compliance with the provisions of this Clause; or

(ii) determines that disclosure is legally required. In the event that such protective order or other remedy is not obtained, or the MoE waives compliance with this Clause or determines disclosure

is legally required, the **Consultancy** shall disclose only such portions of the Confidential Information that, in the opinion of the MoE, it is legally required to disclose, and the **Consultancy** shall use its best efforts to obtain from the party to whom the Confidential Information is disclosed written assurance that confidential treatment will be accorded to such portions of the Confidential Information as are disclosed.

- (d) To the extent the copies of documentary Confidential Information are authorized by the MoE to be retained by the **Consultancy** they shall be retained in a secure location in the **Consultancy** office for a period of seven (7) years after completion of the Services or termination of this Agreement, and thereafter, disposed of at the MoE's direction.

## **6. MoE'S OWNERSHIP OF DOCUMENTS**

Notwithstanding any other provision herein to the contrary:

- (a) Without payment of additional compensation to the **Consultancy**, any documents prepared by the **Consultancy** for this Project shall become the MoE's property upon completion, cancellation, suspension or termination of the Services or this Agreement and upon payment of all sums due to the **Consultancy** for work properly performed. Reproducible copies of the original documents shall be turned over to the MoE at that time in a format reasonably acceptable to the MoE.
- (b) Reuse of any of these documents by the MoE shall be at the MoE's risk.

The **Consultancy** shall be permitted to retain copies, including reproducible copies, of any or all documents for such use as it may require, except that use of any document without substantial modification shall be attributed to the MoE and shall have the MoE's prior written consent. Any such re-use by the **Consultancy** shall be at its own risk.

To the extent that the MoE has paid for the **Consultancy** Services under this Agreement, the **Consultancy** hereby grants to the MoE a non-exclusive, perpetual, royalty-free license to the intellectual property embodied in the documents prepared by the **Consultancy** in connection with the Project. The MoE may make any changes, additions, and deletions thereto, all without further permission or consent of the **Consultancy**, although the **Consultancy** shall not be liable to the MoE or any third party as a result of any such changes, additions, or deletions. The MoE agrees to indemnify, defend and hold harmless the **Consultancy** from and against any damages, losses, costs or expenses (including reasonable attorneys' fees) arising out of any such changes, additions or deletions by the MoE.

## **7. INDEMNIFICATION**

The **Consultancy** agrees to indemnify, defend and hold harmless the **Consultancy**, against any and all claims, losses, damages, liabilities, costs or expenses (including, without limitation, attorney's fees and costs of litigation and or settlement, whether incurred as a result of a claim by a third party or an indemnity hereunder) arising out of the Services performed pursuant to this Agreement, except to the extent arising out of the negligence or willful misconduct of the Indemnified Party that is seeking to be indemnified.

## **8. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES**

In the case of conflicts, discrepancies, errors or omissions among the various parts of this Agreement, the **Consultancy** shall submit the matter immediately to the MoE for clarification. Any Services affected by such conflicts, discrepancies, errors or omissions which are performed by the **Consultancy** prior to clarification by the MoE shall be at the **Consultancy's** risk.

## **9. RESPONSIBILITY TO CORRECT DEFICIENCIES**

It shall be the **Consultancy's** responsibility to correct, in a timely fashion and at the **Consultancy's** sole expense, any deficiencies in its Services resulting from the **Consultancy's** failure to act in accordance with the Standard of Care, provided such deficiencies are reported to **Consultancy** within one hundred twenty (120) days after completion of the Services, i.e., on expiry of the Defects Liability Period.

## **10. TERMINATION**

The MoE may, by written notice to the **Consultancy** effective upon receipt, terminate this Agreement in whole or in part at any time (subject to the provisions of Clause 16 of this Agreement), either for the MoE's convenience or for the default of the **Consultancy** provided, however, that such termination shall not relieve the MoE of its obligation to pay charges justly due to the **Consultancy** or Services properly performed and expenses properly incurred prior to such termination. Upon termination, the **Consultancy** shall deliver to the MoE all documents required to be delivered pursuant to Clauses 6 and 7.

## **11. FORCE MAJEURE**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party, and which by that party's exercise of due diligence and foresight could not reasonably have been avoided. Upon removal of such cause, the party affected shall resume its performance as soon as reasonably possible. Neither the **Consultancy's** financial inability to perform nor an event, which could have been prevented, had the **Consultancy** acted in accordance with the Standard of Care shall be deemed to be an event of Force Majeure.

## **12. WAIVER**

The failure of the MoE to enforce, at any time, the provisions of this Agreement does not constitute a waiver of such provisions in any way or waive the right of the MoE at any time to avail itself of such remedies as it may have for any breach or breaches of such provisions. None of the conditions of this Agreement shall be considered waived by the MoE unless such waiver is explicitly given in writing by the MoE. No such waiver shall be a waiver of any past or future default, breach or modification of any of the terms or conditions of this Agreement unless

expressly stipulated in such waiver.

### **13. GOVERNING LAW**

This Agreement shall be governed by the laws of Montserrat, without regard to its conflict of law's provisions.

### **14. ENTIRE AGREEMENT AND SEVERABILITY**

The rights and obligations of the parties, and their respective agents, successors and assignees hereunder shall be subject to and governed by this Agreement, including Schedules "A", "B", which supersedes any other understandings or writings between the parties. No changes, amendments or modifications of any of the terms and conditions of this Agreement shall be valid unless reduced to writing and signed by the party to be bound. The invalidity of one provision, or invalid application thereof, of this Agreement shall not affect the validity of any other provision or any other application of any provision of the Agreement.

### **15. DISPUTE RESOLUTION**

- (a) Any controversy or claim arising out of or relating to this Agreement or the breach hereof, shall be subject to good faith negotiation and/or mediation as a condition precedent to binding dispute resolution. The MoE and the **Consultancy** will attempt in good faith to promptly resolve any controversy or claim arising out of or relating to this Agreement or the breach thereof by negotiations between representatives of each party who have authority to settle the controversy. The disputing party shall give the other party written notice of the dispute, which notice shall include a general description of the dispute, and the name and title of the individual who will represent that party. The representatives shall meet at a mutually acceptable time and place within seven (7) calendar days after the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.
- (b) If good faith negotiations are not successful, the parties shall endeavor to resolve their disputes by mediation. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 45 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If binding dispute resolution is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the mediators (s) and agree upon a schedule for later proceedings.
- (c) If the dispute has not been settled within 45 calendar days after the date of the disputing party's notice under Clause 15 (a) above, any lawsuit or proceeding regarding or relating to an unresolved dispute between the parties, regardless of whether there are other parties to the dispute, shall be commenced and filed in Montserrat.
- (d) The **Consultancy** shall and shall cause its sub consultants, if any, to continue full performance

under this Agreement pending the above claim resolution procedures and the ensuing litigation proceedings, if any, unless and until either MoE the **Consultancy** terminates this Agreement or the Final Completion Date occurs.

IN WITNESS THEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be deemed effective as of the date first written above.

**Architectural Consultancy (XXX):**

.....

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 201\_

**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.....2019

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 .....

## 10. Tender Document Checklist

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 will 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.

- |  |                          |
|--|--------------------------|
| Signed Form of Tender ( <b>Including time for completion and notice period</b> ) | <input type="checkbox"/> |
| Completed Price Breakdown  | <input type="checkbox"/> |
| Tax Compliance Certificate   | <input type="checkbox"/> |
| Signed Anti-Collusion Statement  | <input type="checkbox"/> |
| Details of Contractor Experience   | <input type="checkbox"/> |
| Respondent's Identification Details  | <input type="checkbox"/> |
| Completed Technical Questions  | <input type="checkbox"/> |

.....  
Signed on behalf of Contractor

.....  
Date