

COUNTY GOVERNMENT OF MARSABIT



CONSTRUCTION AND EQUIPPING SOLAR-POWERED STORAGE UNIT ALONG SHORE LINES (10 CONTAINERS WITH DEEP FREEZERS).

TENDER NO.: MBT/COU/AGRI/131/2017-18

TENDER DOCUMENT

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SECTION I: INSTRUCTIONS TO BIDDERS**INVITATION*****TENDER REF No.: MBT/COU/AGRI/131/2017-18***

TENDER NAME **construction and equipping solar-powered storage unit alone shore lines (10 containers with deep freezers)**

1. County Government of Marsabit (herein referred to as the Employer) now invites sealed bids from suitably qualified Contractors Certificate of Registration with the National Construction Authority (NCA)

The Scope of works shall cover:

- A. Construction and equipping solar-powered storage unit alone shore lines (10 containers with deep freezers).
2. Tendering will be conducted through the National Competitive Bidding procedures specified in the *Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114* and are open to all Tenderers as defined in the Regulations.
3. A complete set of bidding documents in English may be purchased by interested eligible bidders upon submission of a written application to the address below and upon payment of a non-refundable fee of Kshs. 1,000. The method of payment will be bank slip or banker's cheque payable to Marsabit County Revenue Account. The Bidding documents will be collected from the address below upon production of a purchase receipt.
4. Completed Tender Documents in plain, sealed envelopes bearing ONLY with the Tender Number and its description, and without bearing any name or mark, whatsoever to indicate the identity of the sender must be deposited at Tender Box located at the Governor's office building or returned to the Procurement Office Treasury Square, Marsabit so as to reach her not later than 10.00 a.m. on 12th February 2018
5. Tenders shall be publicly opened in the presence of bidders who choose to attend the tender opening at 10.30 a.m. in the administration boardroom or where directed by the County Secretary.
6. Prices quoted should be inclusive of all taxes and delivery and must be in Kenya Shillings shall remain valid for 90 days from the closing date of the tender.
7. Canvassing or lobbying for the tender shall lead to automatic disqualification.

COUNTY SECRETARY

COUNTY GOVERNMENT OF MARSABIT

SECTION II - INSTRUCTIONS TO TENDERERS –**1. General****1. Definitions**

- (a) “Tenderer” means any persons, partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- (b) “Approved tenderer” means the tenderer who is approved by the Employer
- (c) Any noun or adjective derived from the word “tender” shall be read and construed to mean the corresponding form of the noun or adjective “bid”. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- (d) “Employer” means ‘COUNTY GOVERNMENT OF MARSABIT’.

2. Eligibility and Qualification Requirements**2.1 Eligibility requirements**

This invitation to tender is open to all tenderers who are qualified as stated in the appendix.

The Cope of works is as detailed in the appendix to instructions

2.2 Qualification Requirements

To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1. above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to submit the following information with their tenders unless otherwise stated:

- (a) Details of experience and past performance of the tenderer on the works of a similar nature and details of current work on hand and other contractual commitments.
- (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.
- (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- (d) Details of sub-contractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Condition of Contract.

- (e) Details of any current litigation or arbitration proceedings in which the tenderer is involved as one of the parties.

2.3 Joint Ventures

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements: -

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners
- (b) One of the partners shall be nominated as being in charge, and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for an on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender)
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

3. Cost of Tendering

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2 The price to be charged for the tender document shall not exceed Kshs. 1,000/=
- 3.3 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

4. Site Visit- clause deleted

5. Tender Documents

- 5.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.
 - a. Form of Invitation for Tenders
 - b. Instructions to Tenderers
 - c. Form of Tender
 - d. Appendix to Form of Tender
 - e. Form of Tender Surety

- f. Statement of Foreign Currency Requirements (Not applicable)
 - g. Tender and Confidential Business Questionnaires
 - h. Details of Sub contractors
 - i. Schedules of Supplementary Information
 - j. General Conditions of Contract – Part I
 - k. Conditions of Particular Application – Part II
 - l. Specifications
 - m. Bills of Quantities
 - o. Declaration Form
- 5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer’s own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.
- 5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as “private and confidential”.

6. Inquiries by tenderers

- 6.1 A tenderer making an inquiry relating to the tender document may notify the Employer in writing or by telex, cable or facsimile at the Employer’s mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer’s response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.
- 6.2 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

7. Amendment of Tender Documents

- 7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.
- 7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

PREPARATION OF TENDERS

8. Language of Tender

- 8.1 The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

9. Documents Comprising the Tender

- 9.1 The tender to be prepared by the tenderer shall comprise:
- i. the Form of Tender and Appendix thereto,
 - ii. a Tender Security
 - iii. the Priced Bills of Quantities and Schedules
 - iv. the information on eligibility and qualification
 - v. any other materials required to be completed and submitted in accordance with the Instructions to Tenderers.

The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

10. Tender Prices

- 10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.
- 10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not. Items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the Work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties, taxes and other levies payable by the Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

- 10.3 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.
- 10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed in the Conditions of Contract clause 70 where appropriate. The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 10.5 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the Provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other supporting information as required under clause 70 of the Conditions of Contract Part II.
- 10.6 Contract price variations shall not be allowed within the first 12 months of the contract.
- 10.7 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.
- 10.8 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

11. Currencies of Tender and Payment

- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
- 11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.
- 11.3 The rate or the rates of exchange used for pricing the tender shall be the selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.
- 11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

Tender Validity

- 12.1 The tender shall remain valid and open for acceptance for a period of ninety (90) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.3 ere above) whichever is the later.
- 12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

12. Tender Security

- 13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.
- 13.2 The tender security shall not exceed 2 percent of the tender price.
- 13.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period.
- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 13.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible but not later than twenty-eight (28) days after expiration of the tender validity period. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.
- 13.6 The Tender Surety may be forfeited:
- a) if a tenderer withdraws his tender during the period of tender validity; or
 - b) in the case of a successful tenderer, if he fails, within the specified time limit
 - i. to sign the Agreement, or
 - ii. to furnish the necessary Performance Security
 - c) if a tenderer does not accept the correction of his tender price pursuant to clause 23.

14 No Alternative Offers

- 14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.

- 14.2 The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price. Any tenderer who fails to comply with this clause will be disqualified.

15 Pre-tender Meeting

- 15.1 If a pre-tender meeting is convened, the tenderer's designated representative is invited to attend at the venue and time in the Invitation to Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven (7) days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting, will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in – Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
 - (b) Non-attendance at the pre-bid meeting will not be cause for disqualification of a bidder.

16 Format and Signing of Tenders

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set “ORIGINAL” and the other “COPY”.
- 16.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

SUBMISSION OF TENDERS

17 Sealing and Marking of Tenders

- 17.1 The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY”. The envelopes shall then be sealed in an outer separate envelope.
- 17.2 The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.
- 17.3 The inner envelopes shall each indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the tenderer.
- 17.4 If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

18 Deadline for Submission of Tenders

- 18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.3, 18.2 and 18.3. Tenders delivered by hand must be placed in the “tender box” provided in the office of the Employer.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

- 18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights

and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

- 18.3** Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

19 Modification and Withdrawal of Tenders

- 19.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribed deadline for submission of tenders.
- 19.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked "MODIFICATION" or "WITHDRAWAL" as appropriate.
- 19.3 No tender may be modified subsequent to the deadline for submission of tenders.
- 19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.
- 19.5 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

TENDER OPENING AND EVALUATION

20 Tender Opening and Evaluation

- 20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.

- 20.4 The Employer shall prepare minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out at the tender opening shall not be considered further for evaluation, irrespective of the circumstances.
- 20.6 Evaluation of tenders shall be as per the criteria provided in the Appendix to instructions to tenderers.

21 Process to be Confidential

- 21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

22 Clarification of Tenders

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.
- 22.2 No tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

23 Determination of Responsiveness

- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.

- 23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

24 Correction of Errors

Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums).
- (e) The Error Correction Factor shall be applied to all builder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.
- (f) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

25 Conversion to Single Currency

- 25.1 For comparison of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty-one (21) days before the final date for the submission of tenders.
- 25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

26 Evaluation and Comparison of Tenders

- 26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
- (a) Making any correction for errors pursuant to clause 24.
 - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 26.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.
- 26.6 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding provisional sums to a non-indigenous sub-contractor.

- 26.7 Preference where allowed in the evaluation of tenders shall not exceed 15%.
- 26.8 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 26.9 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 26.10 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.
- 26.11 Poor past performance shall not be used as an evaluation criteria unless specifically provided for in the appendix.

27 AWARDS OF CONTRACT

Award Criteria

- 27.1 Subject to Sub-clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works as required in Sub-clause 2.1 and 2.2 here above.
- 27.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

28 Notification of Award

- 28.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 28.2 At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 28.3 Within fourteen [14] days of receipt of the Form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.

28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

29 Performance Guarantee

29.1 Within twenty-eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in the amount stated in the Appendix to Instructions to Tenderers and in the format stipulated in the Conditions of Contract.

29.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 60(5) of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

29.3 Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract. The Employer may award the Contract to the next ranked tenderer.

30 Advance Payment

An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

31 Corrupt or fraudulent practices

31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

SECTION II APPENDIX TO INSTRUCTIONS TO TENDERERS

Notes on the Appendix to Instructions to Tenderers

The following appendix to instructions to tenderers shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2	A. Construction and equipping solar-powered storage units along shore lines(10 containers with deep freezer)
13	The amount of Tender Security shall be in form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPOA), bankers cheque valid for 120 days from the date of tender opening in the format provided in the tender document
16 & 17 & 20	<p>The tender prepared by the tenderers shall comprise of Technical and financial Submission Envelope "A"</p> <p>Only tenders that are responsive to the mandatory requirements and have attained the passmark of 75% in the technical evaluation shall have their financial submission opened.</p> <p>After the deadline for submission of tenders, only technical submission will be opened on the date of tender opening.</p> <ul style="list-style-type: none"> i. Particulars of Tendering Company to include Company background, Taxpayer Registration Certificate, Certificate of Incorporation/Registration and Current/Valid Tax Compliance Certificate from Kenya Revenue Authority, Current/Valid Single Business Permit (MANDATORY). ii. Certificate of Registration with the National Construction Authority (NCA) and above in partnership /Joint ventures .(MANDATORY). iii. Tender Security of 2% in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPOA), valid for 120

	<p>days from the date of tender opening in the format provided in the tender document (MANDATORY).</p> <p>iv. Duly filled and signed Confidential Business Questionnaire and Declaration Form (MANDATORY).</p> <p>v. Duly filled and signed Anti-Corruption Declaration Commitment/ Pledge (MANDATORY).</p> <p>vi. Experience in previous and on-going works of a similar nature and size for at least three years covering from 2013 to 2017.</p> <p><i>Bidders MUST provide</i></p> <p><i>Names and addresses of clients who may be contacted for further information on these contracts for each of the works provided to be considered.</i></p> <p>Evaluation Criteria</p> <p>a. Compliance to specification as provided in the schedule of requirement-60 mks</p> <p>b. Experience-Your brief company profile should list down atleast 4 reputable organization that you have dealt within the last 3 years and evidence of lpo and certificate of completion-8 mks</p> <p>c. Educational & other qualification for technical staff provide Cvs and experience of atleast 3 technical in the event of tender award-12 mks</p> <p>d. After sale services-provide details of:</p> <ul style="list-style-type: none"> • Delivery period of the container-4 mks • Maintenance & price of deep freezer-4 mks • Customer services-3 mks <p>vii. Written undertaking in bidder's letter head that the staff and major equipment / plant proposed shall be available for the entire duration of the contract. (MANDATORY).</p> <p>viii. Certified copies of Audited Financial reports for the last three (3) years 2015, 2016 and 2017 or 2015, 2016 and 2017 where available.8 mks</p> <p>ix. Written Undertaking that the tenderer shall abide by the negotiated rates to be arrived at after the time of contract award through averaging the rates of the lowest evaluated bidders, subject to prevailing market rates (MANDATORY).</p> <p>x. Duly filled and completed Details of Sub Contractor Information</p>
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	<p>Form along with accompanying information as follows if applicable: (MANDATORY).</p> <p>xi. Written undertaking that the Subcontractors proposed will be available for the whole duration of the contract (MANDATORY).</p>
27	The Procuring Entity shall award the contract to the first lowest evaluated bidders

SECTION III CONDITIONS OF CONTRACT

SECTION IV - CONDITIONS OF PARTICULAR APPLICATION

Particular conditions

Item	Sub- Clause	Data
Law of the Contract	1.4	Kenya
Language	1.5	English
Authorized Person	3.1	The Head of works
Name and address of Employer's Representative	3.2	The Head of works County Government of marsabit Marsabit
Performance Security Amount	4.4	KShs.

Form	4.4	As per the form of Performance Security attached in the Tender Documents
Period for notifying defects	9.1& 11.5	365 days from the date stated in the notice under sub-clause 8.2
Variation Procedure	10.2	A maximum rate of 25% on all rates shall be permitted for fluctuations in price after the first year from the date of signing the Agreement subject to prevailing market rates.
Percentage value of Materials and plant	11.2	Materials: 75 % of tender rates Plant: Nil
Interim payments/Percentage of retention	11.3	Within 30 days from receipt of invoice / 10 %
Insurances	14.1	The total approximate value of works plus 15%
The works, materials and plant		Full replacement cost
Contractor's equipment		KShs _____
Third party injury to persons and damage to property		

SPECIFICATION for 10 containers with deep freezers

Description	Technical particulars	Tenderers specification	Amount
Victron multipus	12V/800W PSW inverter/charger		
PHOCOS FR	Series (12v/240L) 2 fridges for each container		
LC250-P60, 250W LORENTZ PV	12 solar modules for each container		
Trojan 8D-GEL 225Ah 12V	Solar batteries for each container		
Switch gears, cables accessories for each containers			
10 containers "20"			
Partition of the 10 containers			
PV Mounting structures and Accessories for each containers			

REF: TENDER NO. MBT/COU/AGRI/131/2017-18

ITEM NO.	DESCRIPTION	UNIT PRICE KSHS	TOTAL AMOUNT KSHS (Inclusive of all taxes)	REMARKS
	Construction and equipping solar-powered storage units along shore lines (10 containers)			

SECTION VII - STANDARD FORMS**FORM OF TENDER**

TENDER NO. Construction and equipping solar powered storage units along shore lines (10 containers with deep freezers)

TO:

_____ [Name of Employer] _____ [Date]

_____ [Name of Contract]

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete such Works and remedy any defects therein for the sum of
Kshs. _____ [Amount in figures] Kenya
Shillings _____
_____ [Amount in words]
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____

Signature _____ in the capacity of _____

Duly authorized to sign tenders for and on behalf of

_____ [Name of Employer]
of _____ [Address of Employer]

Witness; Name _____

Address _____

Signature _____

Date _____

FORM OF TENDER SECURITY**TENDER NO. CONSTRUCTION AND EQUIPPING SOLAR POWERED STORAGE UNIT ALONE SHORE LINES (10 CONTAINERS WITH DEEP FREEZERS)**

BY THIS SECURITY WE. (hereinafter called "The Tenderer") and

 (Bank) whose registered office is at
 (hereinafter called "the Surety") are held
 and firmly bound unto COUNTY GOVERNMENT OF MARSABIT (hereinafter called "the
 Authority") in the sum of Kenya Shillings.....) for the payment of which sum the
 Tenderer and Surety bind themselves, their successors and assigns jointly and severally by these
 presents.

Sealed with our respective seals and dated thisday of 2018

WHEREAS

The Authority has invited the Tenderer and other persons to complete Tenders in similar terms
 for the **CONSTRUCTION AND EQUIPPING SOLAR POWERED STORAGE UNIT
 ALONE SHORE LINES (10 CONTAINERS WITH DEEP FREEZERS)**

1. (hereinafter called "the Works") and submit the same for consideration by the Authority.
2. The Tenderer proposes to submit to the Authority a Tender (hereinafter called "the
 Tender") in accordance with such invitation and by the above written Security, to provide
 security for the due performance by him of the undertakings and obligations in the
 Tender on his part contained.

NOW THE CONDITIONS of the above-written Security are such that:

- (a) If the Tenderer withdraws his Tender during the period of validity specified in the
 Form of Tender; or,
- (b) If the Tenderer refuses to accept the correction of errors in his Tender; or,
- (c) If the Tenderer having been notified of the acceptance of his Tender by the
 Authority during the period of Tender validity;
 - i) Fails to execute the Contract Agreement
 - ii) Fails to furnish the Performance Security or Guarantee, in accordance with the
 Contract, within the time limits set in the Instructions to Tenderers,

we undertake to pay the Authority an amount not exceeding the sum stated above on receipt of
 its first written demand, without the Authority having to substantiate its demand.

This guarantee will remain in force up to and including thirty (30) calendar days after the period
 of Tender validity including any extensions thereof, and any demand in respect thereof should
 reach the Surety not later than the above stated date.

The common seal of (the Tenderer) was hereunto affixed in the presence of:

Signature.....

Name.....

In the capacity of.....

The common seal of(the Surety) was hereunto affixed in the presence of:

Signature.....

Name.....

In the capacity of.....

CONFIDENTIAL BUSINESS QUESTIONNAIRE - MANDATORY
TENDER NO. MCG/.....

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) and 2 (d) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.

Part 1 – General

Business Name

Location of business premises; Country/Town.....

Plot No..... Street/Road

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: (State Currency)

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

*Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

	Name in full	Nationality	Citizenship Details	Shares
1.
2.
3.

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the Company-

Nominal (State Currency)

Issued (State Currency)

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details*. Shares.

1.
.....

2.
.....

3.
.....

4.
.....

Part 2(d) – Interest in the Firm:

Is there any person / persons in (Name of Employer) who has interest in this firm? Yes/No..... (Delete as necessary)

I certify that the information given above is correct.

.....
(Title)

.....
(Signature)

.....
(Date)

**DECLARATION FORM ON PARTICIPATION IN PUBLIC PROCUREMENT
(MANDATORY)**

TENDER NO. MBT/COU/AGRI//2017-18

Date _____

To COUNTY GOVERNMENT OF MARSABIT

The tenderer i.e. (name and address) _____

declare the following:

1. Has not been debarred from participating in public procurement.
2. Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Title

Signature

Date

UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

1. Each Tenderer must submit a statement, as part of the Tender documents, in the given format which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
3.
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
 - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Upon completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
 - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the procuring entity and/or the unsuccessful competitors in the tendering process.
6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their general or project-specific Compliance Program.
7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full

access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

(Sections 39, 40, 41, 42, 43 & of the PPD Act, 2005)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

DETAILS OF SUB-CONTRACTORS

If the Tenderer wishes to sublet any portions of the Works under any heading, he must give below details of the sub-contractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet:

.....

[i] Full name of Sub-contractor and address of head office:

.....

(ii) Sub-contractor's experience of similar works carried out in the last 3 years with Contract value:

.....

.....

.....

(2) Portion of Works to sublet:

.....

(i) Full name of sub-contractor and address of head office:

.....

.....

.....

(ii) Sub-contractor's experience of similar works carried out in the last 3 years with contract value:

.....

.....

[Signature of Tenderer)

Date

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
dated the...day of20.....in the matter of Tender No.....of
20...

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical
 address.....Fax No.....Tel. No.....Email, hereby request the Public Procurement
 Administrative Review Board to review the whole/part of the above mentioned decision on the following
 grounds , namely:-

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED (Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of
20.....

SIGNED
 Board Secretary

