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REPUBLIC OF KENYA



MINISTRY OF DEVOLUTION AND ASAL
State Department of Devolution

**COUNTY GOVERNMENT OF NYANDARUA
DEPARTMENT OF AGRICULTURE, LIVESTOCK AND FISHERIES**

TENDER DOCUMENT

FOR

THE PROPOSED SUPPLY, DELIVERY, INSTALLATION AND TESTING OF AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK

**TENDER NO.
NYA/LED: IDEAS 2019-397-550/005**

NOVEMBER 2020

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SECTION I – INVITATION TO TENDER

TENDER REFERENCE: NYA/LED: IDEAS 2019-397-550/005

TENDER NAME: PROPOSED SUPPLY, DELIVERY, INSTALLATION AND TESTING OF AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK

- 1.1 The County Government of Nyandarua, here and in the subsequent sections referred to as the **procuring entity, in partnership with European Union (EU)** now invites sealed Tenders from eligible candidates for the Proposed Supply, Delivery, Installation and Commissioning of Aeroponics & Hydroponic Irish Potato Seed Production System for The County Government of Nyandarua at the Agricultural Training Center in Ol Joro Orok. The tender is a National Open Tender. The supplies must adhere to the Rules of Origin as laid down in Annex IV of the Cotonou Agreement as revised by DECISION No/2014 of the ACP-EU COUNCIL OF MINISTERS OF 20th June, 2014 (2014/428/EU);
- 1.2 Interested eligible candidates may obtain further information and inspect **Tender Documents** and the **Specifications** at the Supply-Chain Management Office, Department of Agriculture, Livestock and Fisheries, located at the junction of Nyahururu- Njabini Road) during normal working hours (8.00AM-5:00PM) or may download the same from the county government web-portal www.nyandarua.go.ke and or the national government procurement information web-portal www.tenders.go.ke free of charge;
- 1.3 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 120 days from the closing date of tender;
- 1.4 Tenders must be accompanied by a security from a Bank or insurance company approved by PPRA of KES200,000, (say Kenya Shillings Two Hundred Thousands only) and in the format as described under Section III - Appendix to Instructions to Tenderers. The Tender security should be valid for 150 days from the deadline of submission of the tender;
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number as per instructions in the Tender Documents addressed to:

**THE COUNTY SECRETARY & HEAD OF PUBLIC SERVICE
COUNTY GOVERNMENT OF NYANDARUA
P.O BOX 701-20303
OLKALOU**

Should be deposited in the tender box situated at the entrance of the Chief Officer, Agriculture Livestock and Fisheries office at the junction of Nyahururu- Njabini Road, so as to be received on or before **18th December 2020, at 11.00am**. Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend

- 1.6 Tenderers may request for clarifications via email to agriculture@nyandarua.go.ke

SECTION II -INSTRUCTIONS TO TENDERERS

1.1. Eligible Tenderers

- 1.1.1. This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall complete the supply, install and commissioning of the equipment by the intended completion date specified in the tender documents.
- 1.1.2. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under the Act.
- 1.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

1.2. Eligible Equipment

- 1.2.1. All equipment to be supplied and installed under the contract shall have their origin in eligible source countries.
- 1.2.2. For purposes of this clause, "origin" means the place where the equipment(s) are produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.2.3. The origin of equipment is distinct from the nationality of the tenderer and shall be treated thus in the evaluation of the tender.

1.3. Cost of Tendering

- 1.3.1. The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 1.3.2. The price to be charged for the tender document shall not exceed Kshs. 5,000.00
- 1.3.3. The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

1.4. Contents of Tender Document

- 1.4.1. The tender document comprises the documents listed below and addenda issued in accordance with clause 1.6 of these instructions to tenderers
 - (i) Invitation to Tender

- (ii) Instructions to Tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire Form
- (xiv) Declaration form
- (xv) Request for Review Form

1.4.2. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

1.5. Clarification of Tender Documents

1.5.1. A prospective tenderer making inquiries of the tender documents may notify the Procuring entity in writing or by post at the entity's address indicated in the invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

1.5.2. 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.

1.6. Amendment of Tender Documents

1.6.1. At any time prior to the deadline for submission of tender, the procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

1.6.2. All prospective tenderers that have obtained the tender documents will be notified of the amendment in writing or by post and will be binding on them.

1.6.3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

1.7. Language of Tender

1.7.1. The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may

be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

1.8. Documents Comprising the Tender

- 1.8.1. The tender prepared by the tenderers shall comprise the following components.
- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 1.9, 1.10 and 1.11 below
 - (b) documentary evidence established in accordance with paragraph 1.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (c) documentary evidence established in accordance with paragraph 1.13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
 - (d) tender security furnished in accordance with paragraph 1.14
 - (e) Confidential Business Questionnaire

1.9. Tender Form

- 1.9.1. The tenderer shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the equipment to be supplied, installed and commissioned and a brief description of the equipment, their country of origin, quantity, and prices.

1.10. Tender Prices

- 1.10.1. The tenderer shall indicate on the appropriate Price Schedule the unit prices where applicable and total tender price of the equipment and installation it proposes to supply under the contract.
- 1.10.2. Prices indicated on the Price Schedule shall be entered separately in the following manner:
- (a) the price of the equipment quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:
 - (b) charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and
 - (c) installation charges shall also be indicated separately for each equipment
- 1.10.3. Prices quoted by the tender shall remain fixed during the Tender's performance of the contract. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 1.22 unless otherwise agreed by the parties.

1.11. Tender Currencies

- 1.11.1. Prices shall be quoted in the following currencies:
- (a) For equipment that the tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings; and
 - (b) For equipment that the tenderer will supply from outside Kenya, the prices may be quoted in US Dollars or in another freely convertible currency.
 - (c) Cost of installation and commissioning will be in Kenya Shillings.

1.12. Tenderers Eligibility and Qualifications

- 1.12.1. Pursuant to paragraph 1.1. The tenderers shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 1.12.2. The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 1.1
- 1.12.3. The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction;
 - (a) that, in the case of a tenderer offering to supply equipment under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the equipment, Manufacturer or producer to supply the equipment
 - (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
 - (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

1.13. Goods Eligibility and Conformity to Tender Document

- 1.13.1. Pursuant paragraph 1.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all equipment which the tenderer proposes to supply under the contract
- 1.13.2. The documentary evidence of the eligibility of the goods shall consist of statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 1.13.3. The documentary evidence of conformity of the equipment to the tender documents may be in the form of literature, drawings, and data, and shall consist of:
 - (a) a detailed description of the essential technical and performance characteristic of the equipment
 - (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the equipment for a period of two (2) years, following commencement of the use of the equipment by the Procuring entity; and
 - (c) a clause-by-clause commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
- 1.13.4. For purposes of the commentary to be furnished pursuant to paragraph 1.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not

restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

1.14. Tender Security

- 1.14.1. The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.
- 1.14.2. The tender security shall be in the amount not exceeding 2 percent of the tender price.
- 1.14.3. The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 1.14.7
- 1.14.4. The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of;
 - (a) Cash
 - (b) A bank guarantee
 - (c) Such insurance guarantee approved by the Authority
 - (d) Letter of credit.
- 1.14.5. Any tender not secured in accordance with paragraph 1.14.1 and 1.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 1.22
- 1.14.6. Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 1.14.7. The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 1.27 and furnishing the performance security, pursuant to paragraph 1.28
- 1.14.8. The tender security may be forfeited:
 - a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
 - b) in the case of a successful tenderer, if the tenderer fails:
 - i) to sign the contract in accordance with paragraph 1.27.1 or
 - ii) to furnish performance security in accordance with paragraph 1.28
 - c) If the tenderer rejects correction of an arithmetic error in the tender.

1.15. Validity of Tenders

- 1.15.1. Tenderers shall remain valid for 120 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.20. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 1.15.2. In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be

made in writing. The tender security provided under paragraph 1.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

1.16. Format and Signing of Tender

- 1.16.1. The Procuring entity shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 1.16.2. The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 1.16.3. The tender shall have no interlineations, erasures, or overwriting 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.

1.17. Sealing and Marking of Tenders

- 1.17.1. The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.
- 1.17.2. The inner and outer envelopes shall:
 - (a) be addressed to the Procuring entity at the address given on the Invitation to Tender.
- 1.17.3. bear the tender number and name in the Invitation to Tender and the words “DO NOT OPEN BEFORE 18th December, 2020 at 11:00am. The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.
- 1.17.4. If the outer envelope is not sealed and marked as required by paragraph 1.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

1.18. Deadline for Submission of Tenders

- 1.18.1. Tenders must be received by the Procuring entity at the address specified under paragraph 1.17.2 not later than *the time and date specified* under Section I – Invitation to Tenders.
- 1.18.2. The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended
- 1.18.3. Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the Appendix.

1.19. Modification and Withdrawal of Tenders

- 1.19.1. The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.
- 1.19.2. The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 1.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked no later than the deadline for submission of tenders.
- 1.19.3. No tender may be modified after the deadline for submission of tenders.
- 1.19.4. No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 1.14.7

1.20. Opening of Tenders

- 1.20.1. The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at the time, on the date and location as specified under Section I – Invitation to Tender. The tenderers' representatives who are present shall sign a tender opening register evidencing their attendance.
- 1.20.2. The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 1.20.3. The Procuring entity will prepare minutes of the tender opening.

1.21. Clarification of Tenders

- 1.21.1. To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 1.21.2. Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

1.22. Preliminary Examination and Responsiveness

- 1.22.1. The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 1.22.2. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price

and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures the amount in words will prevail

- 1.22.3. The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
- 1.22.4. Prior to the detailed evaluation, pursuant to paragraph 1.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 1.22.5. If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

1.23. Conversion to Single Currency

- 1.23.1. Where other currencies are used, the Procuring Entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

1.24. Evaluation and Comparison of Tenders

- 1.24.1. The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 1.22
- 1.24.2. The Procuring entity's evaluation of a tender will exclude and not take into account
 - (a) in the case of equipment manufactured in Kenya or equipment of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
 - (b) any allowance for price adjustment during the period of execution of the contract, if provided in the tender.
- 1.24.3. The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.
- 1.24.4. The Procuring entity's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 1.23.5 and in the technical specifications:
 - (a) delivery and installation schedule offered in the tender;
 - (b) deviations in payment schedule from the specifications in the Special Conditions of Contract;
 - (c) the cost of components, mandatory spare parts and service;
 - (d) the availability in Kenya of spare parts and after-sales service for the equipment offered in the tender;

1.24.5. Pursuant to paragraph 1.24.4 the following evaluation methods will be applied

(a) *Delivery schedule*

(i) The Procuring entity requires that the equipment under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. ***Tenders offering deliveries longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.***

(b) *Deviation in payment schedule*

Tenderers shall state their tender price for the payment of schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

(c) *Spare parts and after sales service facilities*

Tenderers must offer items with service and spare parts back-up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers items without such back-up in the country, he must give a documentary evidence and assurance that he will establish adequate back-up for items supplied.

1.24.6. The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

1.24.7. Preference where allowed in the evaluation of tenders shall not exceed 15%

1.25. **Contacting the Procuring Entity**

1.25.1. Subject to paragraph 1.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

1.25.2. Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

1.26. **Award of Contract**

(a) **Post-Qualification**

1.26.1. In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

1.26.2. The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 1.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

1.26.3. An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in

which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) Award Criteria

1.26.4. The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily;

1.26.5. To qualify for contract awards, the tenderer shall have the following:

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

(c) Procuring Entity's Right to Accept or Reject Any or All Tenders

1.26.6. The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderer of the grounds for the procuring entity's action

1.26.7. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination

1.26.8. 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.

1.26.9. A tenderer who gives false information in the tender document about is 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.

1.27. Notification of Award

1.27.1. Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

1.27.2. The notification of award will signify the formation of the Contract but will have to wait until the contract is finally signed by both parties. Simultaneous other tenderers shall be notified that their tenders have not been successful.

1.27.3. Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 1.29, the Procuring entity will simultaneously inform the other tenderers that this tenders have not been successful.

1.28. Signing of Contract

- 1.28.1. At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 1.28.2. Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 1.28.3. 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.

1.29. Performance Security

- 1.29.1. Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.
- 1.29.2. Failure of the successful tenderer to comply with the requirements of paragraph 1.28 or paragraph 1.29 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

1.30. Corrupt or Fraudulent Practices

- 1.30.1. 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 and will not be involved in corrupt or fraudulent practices.
- 1.30.2. The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 1.30.3. Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

SECTION III - APPENDIX TO INSTRUCTIONS TO TENDERERS

1.1. General;

Where there is a contradiction between Section II– Instructions to Tenderers and Section III - Appendix to Instructions to Tenderers, the latter shall be the reference

1.2. Eligible Tenderers

This is a National Open Tender

1.3. In order to be considered for further evaluation, the tenderer shall be providing to the procuring entity the items below under **Table 1 - Mandatory Requirements;**

Table 1 – Mandatory Requirements

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Statutory and General Requirements							
No of documents	Bidder must submit number of documents as requested under Instruction to Tenderers	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> Number of documents, TWO in number, one (1) original, one (1) copy under ONE ENVELOPE system; In line with 1.16/7 of Section II – Instructions to Tenderers 	
Registration as a Company	Bidder Must be a legally constituted firm according to the laws of Kenya and must have been in operation for at least 3 years as per certificate of incorporation	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> Certificate of Incorporation; Fully completed - confidential Business Questionnaire – Section VIII of Standard Forms 	
Tax Compliance	Bidder MUST be Tax Registered and be Tax Compliant	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	Current and valid Tax Compliance Certificate – valid as of submission deadline.	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Tender Sum and Tender Validity Period	Bidder shall quote the Tender Sum and Validity period.	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>N / A</i>	<ul style="list-style-type: none"> Completed Form of Tender – Section VIII of Standard Forms; Validity period must be at least as stipulated under Section I – Invitation to Tenders 	
Bid Security	The Bidder shall furnish as part of its bid, a bid security in form as specified under Section I, Invitation to Tenders.	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>N / A</i>	<ul style="list-style-type: none"> In original, unconditional bank guarantee, hard cash, or banker’s cheque, or insurance bond and in the amount and in Kenya Shillings and as specified under Section I - Invitation to Tender 	
Sanctity of the bid document	Having the document intact, legible, sequential pagination/serialization of all pages including attachments, well bound, (not tempered with in any way and signed by the authorized person - granted by power of attorney)	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>N / A</i>	<p>Properly prepared Bid which should: -</p> <ul style="list-style-type: none"> Be sequentially serialized from front page to last page including all attachments; Stamping, signing, and dating where required within the document including the standard forms; Well bound and not loose. 	
Power of Attorney	Written confirmation authorizing the signatory of the Bid to commit the Bidder, properly attested by commissioner of oaths or a notary public	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<ul style="list-style-type: none"> Affidavit – Power of attorney; <i>All the signature sections of the tenderers bid should be signed by the authorised person as per the power of attorney</i> 	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Joint Venture Documents	Bids submitted by a JV shall include a Joint Venture Agreement entered into by all partners.	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> Joint Venture Agreement properly executed by a commissioner of oaths 	
Declaration on code of Ethics	The declaration of code of Ethics to be properly completed.	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> Completed Commitment to Code of Ethics Form – Section VIII – Standard Forms (Commissioned by a Commissioner of Oaths) 	
Bidder debarment/Bidder ineligibility	Tenderer has not been debarred in the past by the Public Procurement Regulatory Authority in line with PPDA 2015, the procuring entity, Ministry of Devolution and ASALS (MoDA) the European Union (EU) to participate in this tender and has not been associated in the past with this project in line with section 2.1.3 of the Instructions to Tenderers	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<ul style="list-style-type: none"> Completed Commitment to Code of Ethics Form – Section VIII – Standard Forms; 	
Schedule of Prices	Completed Schedule of prices	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> Completed Form of Price Schedule of Goods - Section VIII – Standard Forms - Schedule of Detailed Costs – A & B, Schedule of Cost Summary. 	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Bidder Information	The bidder to provide mandatory information	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	<i>N/A</i>	Fully completed Section VIII – Standard forms <ul style="list-style-type: none"> • Form of Tender; • Tender Questionnaire; • Confidential Business Questionnaire • Details of Sub-Contractors (if any) 	
Manufacturer/ Dealers License/Warranty Transfer	Where a Tenderer is not the manufacturer of the goods in question, to provide a dealer’s licence from the manufacturer.	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<i>Must meet requirement.</i>	<ul style="list-style-type: none"> • Completed - Form of Manufacturer’s Authorization - Section VIII – Standard Forms; 	
Bidder Conformity	Conformity Statement to Annex IV of the Cotonou Agreement as revised by DECISION No/2014 of the ACP-EU COUNCIL OF MINISTERS OF 20th June, 2014 (2014/428/EU)	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	<ul style="list-style-type: none"> • Completed Section VII - Technical Specifications – (A) Schedule of particulars & SECTION VII - TECHNICAL SPECIFICATIONS (B) – Factory Acceptance Test (FAT) • Completed - Form of Manufacturer’s Authorization - Section VIII – Standard Forms 	
Historical Financial Performance	Submission of audited reports for the last three financial years (2017, 2018 and 2019) to demonstrate the current soundness of the bidders’ financial position and its prospective long-term financial capacity.	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>N/A</i>	Audited financial reports for the last three years (2017, 2018 and 2019) signed/certified by a CPA(K) auditor	

Sub-Factor	Requirement	Bidder				Documentation Required	Provide d (Y/N)/ or N/A
		Single Entity	Joint Venture				
			All partners combined	Each partner	At least 1 partner		
Average Annual Turnover	Minimum average annual turnover for the years in question – 2017, 2018 and 2019 of Kenya Shillings at least 20Million as demonstrated by the audited financial statements	<i>Must meet requirement</i>	<i>Must meet requirement</i>	<i>N/A</i>	<i>Must meet requirement</i>	Audited financial reports for the last three years (2017, 2018 and 2019) signed/certified by a CPA (K) auditor.	
Specific Experience	The tenderer to provide evidence of having undertaken a minimum of three similar contracts in the last ten (10) years	<i>Must meet requirement</i>	<i>Must meet requirements</i>	<i>N/A</i>	<i>N/A</i>	<ol style="list-style-type: none"> 1. Table of list of supply contracts with – Item(s) and their description, name, contracting authority, when the supply was completed, and amounts in monetary terms; 2. Support documentation – LPOs, & Delivery Notes & Reference Letters from contracting entities/corporates – this information should be 3rd party verifiable 	

NOTE: Tenderers/Bidders must meet all Mandatory Requirements to be considered for Technical Evaluation

1.4. Technical Evaluation

The tenderers Schedule of Particulars under SECTION VII - TECHNICAL SPECIFICATIONS (A) - SCHEDULE OF PARTICULARS, and SECTION VII – TECHNICAL SPECIFICATIONS (B) – Factory Acceptance Test (FAT) shall be compared with the procuring entity requirements. Tenderers that meet all requirements shall be considered for further Evaluation;

1.5. Financial Evaluation

Tenderers who shall qualify from Technical Evaluation shall have their Tender Sums ranked from the lowest to the highest;

1.6. Award

The tenderer that shall have quoted the lowest from Financial Evaluation above shall be considered for award subject to post qualification evaluation.

SECTION IV -GENERAL CONDITIONS OF CONTRACT

1.1. Definitions

1.1.1. In this Contract, the following terms shall be interpreted as indicated: -

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

1.2. Application

1.2.1. These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment to the extent that they are not superseded by provisions of other part of contract.

1.3. Country of Origin

1.3.1. For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

1.3.2. The origin of Goods and Services is distinct from the nationality of the tenderer and will be treated thus in the evaluation of the tender.

1.4. Standards

1.4.1. The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

1.5. Use of Contract Documents and Information

1.5.1. The Candidate shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

1.5.2. The tenderer shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 1.5.1 above

1.5.3. Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer’s performance under the Contract if so required by the Procuring entity

1.6. Patent Rights

1.6.1. The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity’s country.

1.7. Performance Security

- 1.7.1. Within twenty-eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.
- 1.7.2. The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 1.7.3. The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the procuring entity and shall be in the form of
 - a) Cash
 - b) Bank guarantee
 - c) Such insurance guarantee approved by the Authority
 - d) Letter of credit
- 1.7.4. The performance security will be discharged by the Procuring entity and returned to the Candidate not late than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

1.8. Inspection and Tests

- 1.8.1. The Procuring entity or its representative shall have the right to inspect and/or to test the equipment to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 1.8.2. The inspections and tests may be conducted in the premises of the tenderer. All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 1.8.3. Should any inspected or tested equipment fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 1.8.4. The Procuring entity's right to inspect test and where necessary, reject the equipment after the equipment arrival and installation shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 1.8.5. Nothing in paragraph 1.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.
- 1.8.6. **Project Sign and Branding**
The tenderer shall furnish and install a project sign and brand the equipment required as part of the work under the contract as guided.

1.9. Delivery and Documents

- 1.9.1. Delivery of the equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract.

1.10. Insurance

- 1.10.1. The equipment supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

1.11. Payment

- 1.11.1. The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract
- 1.11.2. Payments shall be made promptly by the Procuring entity as specified in the contract

1.12. Prices

- 1.12.1. Prices charged by the tenderer for equipment delivered and installation performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.
- 1.12.2. Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 1.12.3. Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 1.12.4. Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

1.13. Assignment

- 1.13.1. The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

1.14. Subcontracts

- 1.14.1. The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

1.15. Termination for Default

- 1.15.1. The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part
- (a) if the tenderer fails to deliver any or all of the equipment within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
 - (b) if the tenderer fails to perform any other obligation(s) under the Contract
 - (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract
- 1.15.2. In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar equipment.

1.16. Termination for convenience

1.17. Liquidated Damages

- 1.17.1. If the tenderer fails to deliver and/or install any or all of the items within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price

of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

1.18. Resolution of Disputes

- 1.18.1. The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract
- 1.18.2. If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

1.19. Language and Law

- 1.19.1. The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise specified in the SCC

1.20. Force Majeure

- 1.20.1. The Tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

1.21. Notices

- 1.21.1. Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.
- 1.21.2. A notice shall be effective when delivered or on the notices effective date, whichever is later.

SECTION V - SPECIAL CONDITIONS OF CONTRACT

- 1.1. **Scope of Supply**
The Scope of Supply shall be defined in County's Standard Specifications and requirements under Section VI, VII – Technical Specifications, **TECHNICAL SPECIFICATIONS (A) - SCHEDULE OF PARTICULARS, & SECTION VII - TECHNICAL SPECIFICATIONS (B) – – Factory Acceptance Test (FAT)**
Substandard quality of equipment or parts will not be allowed/accepted. Tenderers must adhere strictly to the specifications as there shall be no compromises.
- 1.2. **Start date/expected supply date – IMMEDIATELY** and as shall be agreed at the contracting stage and in line with the delivery clause below;
- 1.3. **Rule of Origin;**
For contracts of EURO100, 000 and above, the bidders must adhere to the Rules of Origin as laid down in Annex IV of the Cotonou Agreement;
- 1.4. **Delivery**
 - (i) The contract in question is for Supply, Delivery, Installation & Testing of Aeroponics & Hydroponic Irish Potato Seed Production System for The County Government of Nyandarua at the Agricultural Training Center in Ol Joro Orok.
 - (ii) **The contractor/Supplier shall complete the project within 150 days from the date of order/LPO.**
- 1.5. **Minimum Requirements/Specifications & Testing**
The goods shall be accepted after (1) Inspection and after meeting all requirements under SECTION VI and VII - **Technical Specifications, TECHNICAL SPECIFICATIONS (A) - SCHEDULE OF PARTICULARS, & SECTION VII - TECHNICAL SPECIFICATIONS (B) – Factory Acceptance Test (FAT) and after satisfactory testing.**
- 1.6. **Payment**
The contractor/Supplier shall be paid after delivery, acceptance, Installation & Testing;
The VAT component shall be withheld by the procuring entity and the contractor/supplier shall be given a VAT withholding certificate instead.
Advance payment shall not be granted
- 1.7. **Performance Security;**
Delete entirely line 1.7.1 of General Conditions of Contract and replace with the following:

'The successful tenderer shall provide to the procuring entity Performance Security of 10% of CONTRACT PRICE in form of a Performance bank Guarantee from a reputable Commercial Bank, acceptable to the Employer and approved by PPRA, in the format as specified under Section VIII – Standard Forms – Performance Bank Guarantee, or in the form of Hard Cash, or Bankers Cheque written in the favor of IDEAS LED GRANT NYANDARUA COUNTY at the KENYA COMMERCIAL BANK Acct No. 1240139284 and within 1 week after contract award and before signing of the final contract.

Failure to deliver within the stipulated period shall lead to withdrawal of contract offer'

SECTION VI - TECHNICAL SPECIFICATIONS

1.1. General

- 1.1.1. These specifications describe the requirements for goods. Tenderers **MUST** quote for all equipment;
- 1.1.2. Tenderers must indicate under **Section VII – 1.1. - Technical Specifications – Schedule of Particulars – Technical Requirements Schedule A and B**, under **Bidder’s Response Column** whether the equipment offered comply with each specified requirement. Non-Conformity will lead to automatic disqualification. Similarly, Tenderers **MUST** complete **SECTION VII - TECHNICAL SPECIFICATIONS (A) - SCHEDULE OF PARTICULARS – 1.2 - Delivery, Support and Warranty Requirements to be considered.**
- 1.1.3. All the dimensions and capacities of the equipment to be supplied shall not be less than those required under **Section VII – Technical Specifications – Schedule of Particulars (A)**, and **SECTION VII - TECHNICAL SPECIFICATIONS (B) – Factory Acceptance Test (FAT);**
- 1.1.4. Where the specifications are not clear, the interested tenderers may request for clarifications in line with **Section II – Instructions to Tenderers;**
- 1.1.5. The delivery period is as per **Section IV – Special Conditions of Contract.** Delivery period more than the period specified under the section shall be rejected. By mere tendering, it shall be assumed that tenderers are in agreement with this delivery period.

SECTION VII - TECHNICAL SPECIFICATIONS (A) - SCHEDULE OF PARTICULARS

1.1. Technical Requirements

Under the table below, **bidders must indicate under Bidders Response whether they meet all requirements under ‘Bidder’s Response’ column.** The drawings and designs for both the Aeroponics and Hydroponic greenhouses have been annexed to this tender document.

1.1.1. Schedule A

#	Item Description	Requirements	Country of Manufacture in line with Annex IV of the Cotonou Agreement	Bidder’s response (Yes/No)
1	<p>AEROPONICS SYSTEM GREENHOUSE 8 M X 30 M (1)</p> <p>AEROPONICS BOXES, MISTING SYSTEM, CONTROL PANEL AND PUMP SETS - SUPPLY AND INSTALL</p>	<ul style="list-style-type: none"> • Screen house 8M wide by 30M long Galvanized metal frame clad with anti- insect netting all round to gutter level. Roof cover greenhouse plastic sheeting diffused light. 50% shade netting on top of the roof plastic and at gutter level for temperature control. Aeroponics area 8M x 27M, entry chamber 8M x 3M • Masonry half wall 0.5M high at screen house perimeter plus ground cover black HDPE geo membrane • Aeroponic boxes 6.8M x 1.2M x 1M height complete with plastic liner, Styrofoam 12 No doors with a provision of 2,040 plants • Irrigation misting system including misters, piping, valves and drain collection system • Control panel including timer, mechanical and electrical inter-lock • Pump set including suction, delivery foot valve fittings • Drainage systems from boxes to tanks • Plastic tanks 1,000 litres • Backup power for 24 Hours – 3 KW inverter set C/W 200 AH deep cycle battery and charge controller combo on trolley 		
2	<p>HYDRPONIC BOXES, DRIP IRRIGATION SYSTEM CONTROL PANEL AND PUMP SET FOR GREEN HOUSES 8M</p>	<ul style="list-style-type: none"> • Screen house 8M wide by 30M long Galvanized metal frame clad with anti- insect netting all round to gutter level. Roof cover greenhouse plastic sheeting diffused light. 50% shade netting on top of the roof plastic and at gutter level for temperature control. Hydroponic area 8M x 27M, entry chamber 8M x 3M • Masonry half wall 0.5M high at screen house perimeter plus ground 		

#	Item Description	Requirements	Country of Manufacture in line with Annex IV of the Cotonou Agreement	Bidder's response (Yes/No)
	x 30M	cover black HDPE geo membrane <ul style="list-style-type: none"> • Hydroponics boxes 2.6Mx 1.2M x 0.6M height x 2 sides complete with plastic liner, coco peat • Irrigation drip system including drip lines, valves and drain collection system • Control panel including timer, mechanical and electrical inter-lock • Pump set including suction, delivery foot valve fittings • Drainage system form boxes to tanks • Plastic tanks 1,000 liters • Backup power for 24 Hours – 3 KW inverter set C/W 200 AH deep cycle battery and charge controller combo on trolley 		

1.2. Delivery, Support and Warranty Requirements

#	Item Description	Requirement	Meets ALL requirements (YES/NO)
1	Sales & Support Bidder to specify the location and contacts of the sales and service Centre (s) where after sales support & service can be obtained. The center should be in-country	<ul style="list-style-type: none"> • Bidder statement in bidder letterhead 	
2.	Warranty - Bidder to provide a written commitment to the effect that should they win the tender, they shall provide a 12-month warranty after commissioning, transferable from the manufacturer (if supplier is not the manufacturer)	<ul style="list-style-type: none"> • Bidder statement in bidder letterhead 	
3.	Delivery timelines Bidders should provide a Gantt chart or a supply schedule/work plan for the supply of the plant that includes all major milestones, and details the manufacturing, testing and delivery schedules and Installation, commissioning and training	<ul style="list-style-type: none"> • Gantt chart with key milestones 	
4	Emergency spare parts for one year to be included in the bid price	<ul style="list-style-type: none"> • Completed Schedule of Prices with emergency parts 	

SECTION VII - TECHNICAL SPECIFICATIONS (B) – Factory Acceptance Test (FAT)

Factory Acceptance Test (FAT)

The Procuring Entity or its representative **shall** carry out inspections and /or tests on the equipment to confirm their conformity to the Contract specifications. The Technical Specifications shall specify what inspections and tests shall be carried out. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

The inspections and tests may **be conducted at the premises of the Supplier or its subcontractor(s) and reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.**

Should any inspected or tested equipment fail to conform to the Specifications, the Procuring Entity may reject the equipment, and the Supplier shall replace the rejected equipment to meet specification requirements free of cost to the Procuring Entity.

The Procuring Entity's right to inspect, test and, where necessary, reject equipment after the equipment's arrival in the Procuring Entity's country shall in no way be limited by reason of the equipment having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the equipment shipment from the country of origin.

SECTION VIII - STANDARD FORMS

1.1. FORM OF TENDER

Date: _____

Tender No. _____

County Secretary, County Government of Nyandarua,
P.O BOX 701-20303
Ol Kalou

Gentlemen and/or Ladies:

Having examined the tender documents including Addenda Nos _____ (*insert numbers*), the receipt of which is hereby duly acknowledged, we, the undersigned, offer to **SUPPLY, DELIVER & INSTALL AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK** in conformity with the said tender documents for the sum of _____ (*total tender amount in words and figures*) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this tender.

We undertake, if our tender is accepted, to deliver the goods in accordance with the delivery schedule specifies in the Schedule of Requirements;

If our tender is accepted, we will obtain the guarantee of bank in a sum equivalent to at least 10%(percent) of the Contract Price for the due performance of the Contract, in the form as prescribed under Section IV – Special Conditions of Contract;

We agree to abide by this tender for a period of _____ (*number*)days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us may be accepted at any time before the expiration of the period;

With our signature, we attest that we have not been debarred in the past by the Public Procurement Regulatory Authority in line with PPDA 2015, the procuring entity, the EU to participate in this tender and we have not been associated in the past with this project in line with sections 1.1.1/2/3 of the Instructions to Tenderers;

Until a formal Contract is prepared and executed, this tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us;

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 tender for and on behalf of _____ (Name of Company/Stamp)

1.2. Form of Price Schedule for Goods/Equipment

The rates inserted here below shall be for the **PROPOSED SUPPLY, DELIVERY, INSTALLATION AND TESTING OF AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK** inclusive of all taxes and charges and conforming to the stated specifications **TENDER NO. NYA/LED: IDEAS 2019-397-550/005 - THE PROPOSED SUPPLY, DELIVERY, INSTALLATION AND TESTING OF AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK**

1.1. Schedule of Detailed Costs - A

#	Item Description	Requirements	Quantity	Unit Cost	Total
1	AEROPONICS SYSTEM GREENHOUSE 8 M X 30 M (1) AEROPONICS BOXES, MISTING SYSTEM, CONTROL PANEL AND PUMP SETS - SUPPLY AND INSTALL	<ul style="list-style-type: none"> Screen house 8 M wide by 30 M long or equivalent area of 240sq meters. Galvanized metal frame clad with Anti Insect netting all round to gutter level. Roof cover greenhouse plastic sheeting diffused light. 50% shade netting on top of the roof plastic and at gutter level for temperature control. Aeroponics area 8 M X 27 M, entry chamber 8 M X 3 M 	1		
		<ul style="list-style-type: none"> Masonry half wall 0.5 M high at screen house perimeter plus ground cover black HDPE Geo Membrane 	1		
		<ul style="list-style-type: none"> Aeroponics boxes 6.8 M X 1.2 M X 1.0 M height complete with plastic liner, Styrofoam, 12 No. Harvesting doors with a provision for 2,040 plants 	10		
		<ul style="list-style-type: none"> Irrigation misting system including misters, piping, valves and drain collection system 	1		
		<ul style="list-style-type: none"> Control panel including timers, mechanical and electrical inter-lock 	1		
		<ul style="list-style-type: none"> Pump set including suction, delivery, foot valve, fittings 	3		
		<ul style="list-style-type: none"> Drainage system from boxes to tanks 	1		
		<ul style="list-style-type: none"> Plastic tanks 1,000 Liters 	3		
		<ul style="list-style-type: none"> Backup power for 24 hours - 3 Kw inverter set C/W 200 Ah deep cycle battery and charge controller combo on trolley 	1		
		<ul style="list-style-type: none"> Fittings, accessories and spare parts 	1		

#	Item Description	Requirements	Quantity	Unit Cost	Total
		<ul style="list-style-type: none"> Labour for assembling and installation 	1		
17	Delivery & Installation Cost				
Subtotal					
VAT					
Total Cost – Schedule of Detailed Costs - A					

1.2. Schedule of Detailed Costs - B

#	Item Description	Requirements	Quantity	Unit Cost	Total
1	HYDROPONICS BOXES 2.6 M X 1.2 M X 0.6 M HEIGHT X 2 SIDES (2) COMPLETE WITH PLASTIC LINER, COCO PEAT	<ul style="list-style-type: none"> Screen house 8 M wide by 30 M long. Galvanized metal frame clad with anti-insect netting all round to gutter level. Roof cover greenhouse plastic sheeting diffused light. 50% shade netting on top of the roof plastic and at gutter level for temperature control. Aeroponics area 8 M X 27 M, entry chamber 8 M X 3 M 	2		
		<ul style="list-style-type: none"> Masonry half wall 0.5 M high at screen house perimeter plus ground cover Black HDPE Geo membrane 	2		
		<ul style="list-style-type: none"> Hydroponics boxes 2.6 M X 1.2 M X 0.6 M height X 2 sides complete with plastic liner, coco peat 	40		
		<ul style="list-style-type: none"> Irrigation drip system including driplines, piping, valves and drain collection system 	2		
		<ul style="list-style-type: none"> Control panel including timers, mechanical and electrical inter-lock 	2		
		<ul style="list-style-type: none"> Pump set including suction, delivery, foot valve, fittings 	6		
		<ul style="list-style-type: none"> Drainage system from boxes to tanks 	2		
		<ul style="list-style-type: none"> Plastic tanks 1,000 Liters 	6		
		<ul style="list-style-type: none"> Backup power for 24 hours - 3 Kw inverter set C/W 200 Ah deep cycle battery and charge controller combo on trolley 	2		
		<ul style="list-style-type: none"> Fittings, accessories and spare parts (for the 2 units) 	2		
		<ul style="list-style-type: none"> Labour for assembling and installation (for the 2 units) 	2		

#	Item Description	Requirements	Quantity	Unit Cost	Total
17	Delivery & Installation Cost				
Subtotal					
VAT					
Total Cost – Schedule of Detailed Costs - A					

#	Item	Amount (KShs)
1.1.	Schedule of Detailed Costs – A	
1.2.	Schedule of Detailed Costs - B	
1.3.	Sub-Total – #1.1 and 1.2	
1.3	Add VAT (if any)	
1.4	Grand Total transferred to Form of Tender	

Note (1) The expected delivery period must be in line with **SECTION V - SPECIAL CONDITIONS OF CONTRACT**

Tender Sum carried to Form of Tender _____ (amounts in figures and Words)

Signature of Tenderer _____ (Signature/Name of Signatory & Position/Company/Stamp)

Note: The amounts transferred to the Form of Tender shall be assumed to be final and shall not be subject to adjustments or correction of errors.

1.3. FORM OF TENDER SECURITY

Whereas _____ *name of the Tenderer*) (*hereinafter called "the Tenderer"*) has submitted its tender dated _____ (*date of submission of tender*) for the **TENDER NO. NYA/LED: IDEAS 2019-397-550/005 - PROPOSED SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF AEROPONICS & HYDROPONIC IRISH POTATO SEED PRODUCTION SYSTEM FOR THE COUNTY GOVERNMENT OF NYANDARUA AT THE AGRICULTURAL TRAINING CENTER IN OL JORO OROK** (*hereinafter called "the tender"*) _____ KNOW ALL PEOPLE by these presents that WE _____ of _____ having our registered office at _____ (*hereinafter called "the Bank"*) are bound unto _____ County Government of Nyandarua (*hereinafter called "Procuring Entity"*) in the sum of _____ for which payment well and truly to be made to the said County Government of Nyandarua, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20_____

THE CONDITIONS of this obligation are: -

If the Tenderer withdraws its tender during the period of tender validity specified by the Tenderer on the tender form;

or if the Tenderer, having been notified of the acceptance of its tender by the County Government of Nyandarua during the period of tender validity:

- i Fails or refuses to execute the Contract Form, if required; or
- ii Fails or refuses to furnish the performance security, in accordance with the Instructions to Tenderers.

We undertake to pay to the County Government of Nyandarua up to the above amount upon receipt of its first written demand, without the County Government of Nyandarua having to substantiate its demand, provided that in its demand the County Government of Nyandarua will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

(Signature of the Bank)

Name of Signatory

Seal

1.4. FORM OF CONTRACT

THIS AGREEMENT made the _____ day of _____ 20 _____ between
..... [*name of Procurement entity*] of [*country of Procurement entity*]
(hereinafter called “the Procuring entity) of the one part and [*name of tenderer*]
of [*city and country of tenderer*] (hereinafter called “the tenderer”) of the
other part;

WHEREAS the Procuring entity invited tenders for certain goods] and has accepted a tender by
the tenderer for the supply of those goods in the sum of [*contract price*
in words and figures] (hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively
assigned to them in the Conditions of Contract referred to:

2. The following documents shall be deemed to form and be read and construed as part of
this Agreement viz:

- (a) the Tender Form and the Price Schedule submitted by the tenderer
- (b) the Schedule of Requirements
- (c) the Technical Specifications
- (d) the General Conditions of Contract
- (e) the Special Conditions of contract; and
- (f) the Procuring Entity’s Notification of Award

3. In consideration of the payments to be made by the Procuring entity to the tenderer as
hereinafter mentioned, the tender hereby covenants with the Procuring entity to provide the
goods and to remedy defects therein in conformity in all respects with the provisions of the
Contract

4. The Procuring entity hereby covenants to pay the tenderer in consideration of the
provisions of the goods and the remedying of defects therein, the Contract Price or such other
sum as may become payable under the provisions of the Contract at the times and in the manner
prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in
accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Procuring entity

Signed, sealed, delivered by _____ the _____ (for the tenderer in the presence of _

1.5. PERFORMANCE BANK GUARANTEE

To: _____ (Name of Employer) _____
(Date)

_____ (Address of Employer)

Dear Sir,

WHEREAS _____
(hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. _____
dated _____ to execute
_____ (hereinafter called "the Works");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. _____
(amount of Guarantee in figures) Kenya Shillings _____
(amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without civil or argument, any sum or sums within the limits of Kenya Shillings _____
(amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change, addition or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any change, addition, or modification.

This guarantee shall be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR _____
Name of Bank

Address

Date

(Amend accordingly if provided by Insurance Company)

1.6. PERFORMANCE BOND

By this Bond, We _____ of (or whose registered office is situated at] _____
as Principal (hereinafter called "the Contractor") and _____ of [or
whose registered office is situated at] _____
as Surety (hereinafter called "the Surety"), are held and firmly bound unto
_____ of [or whose registered office is situated at] _____
as Obligee (hereinafter called "the Employer") in the amount of Kshs. _____ [*amount
of Bond in figures*] Kenya Shillings _____
[*amount of Bond in words*], for the payment of which sum well and truly, the Contractor and
the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly
and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the
_____ day of _____ 20 _____ for the execution of

[*name of Contract*] in accordance with the Contract documents, Specifications and amendments
thereto, which to the extent herein provided for, are by reference made part hereof and are
hereinafter referred to as the Contract.

NOW THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly
and faithfully perform the said Contract (including any amendments thereto), then this obligation
shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor
shall be, and declared by the Employer to be, in default under the Contract, the Employer having
performed the Employer's obligations thereunder, the Surety may promptly remedy the default,
or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a tender or tenders from qualified tenderers for submission to the Employer for
completing the Contract in accordance with its terms and conditions, and upon
determination by the Employer and the Surety of the lowest responsive tenderer, arrange
for a Contract between such tenderer and Employer and make available as work
progresses (even though there should be a default or a succession of defaults under the
Contract or Contracts of completion arranged under this paragraph) sufficient funds to
pay the cost of completion less the balance of the Contract Price; but not exceeding,
including other costs and damages for which the Surety may be liable hereunder, the
amount set forth in the first paragraph hereof.

The term "Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the

Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) pay the Employer the amount required by the Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this ____ day of __ 20__

SIGNED ON _____ SIGNED ON _____

On behalf of _____ On behalf of _____
[name of Contractor] *[name of Surety]*

By _____ By _____

In the capacity of _____ In the capacity of _____

In the presence of; Name _____ In the presence of; Name _____

Address _____ Address _____

Signature _____ Signature _____

Date _____ Date _____

1.7. FORM OF BANK GUARANTEE FOR ADVANCE PAYMENT

To[*name of Procuring entity*]

[*name of tender*]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, [*name and address of tenderer*] (hereinafter called "the tenderer") shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [*amount of guarantee in figures and words*].

We, the [*bank or financial institutions*], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding [*amount of guarantee in figures and words*]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until [*date*].

Yours truly,

Signature and seal of the Guarantors

[*name of bank or financial institution*]

[*address*]

[*date*]

1.8. TENDER QUESTIONNAIRE

TENDER QUESTIONNAIRE

Please fill in block letters.

1. Full names of tenderer;

.....

2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below);

.....

3. Telephone number (s) of tenderer;

.....

4. Telex of tenderer;

.....

5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);

.....

Signature of Tenderer

Make copy and deliver to: _____ (*Name of Employer*)

1.9. FORM OF CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part-General: -

Business Name:-

Location of Business Premises: -.....

Plot No: -.....Street/Road:.....Postal Address: -.....Tel No:-

Nature of Business:-.....

Current Trade License No: -.....Expiring Date: -

Maximum Value of Business, which you can handle at any one time

Kshs:

Name of 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: -

<u>NO.</u>	<u>NAME</u>	<u>NATIONALITY</u>	<u>CITIZENSHIP DETAILS</u>	<u>SHARES</u>
1.....
2.....
3.....

Part

2(c) – Registered Company

Private/Public:

State the nominal and issued capital of the Company: -

Nominal Kshs:Issued Kshs:

Give details of all directors as follows: -

<u>NO.</u>	<u>NAME</u>	<u>NATIONALITY</u>	<u>CITIZENSHIP DETAILS</u>	<u>SHARES</u>
1.....
2.....

Date: -.....Signature of Applicant.....

- If Kenyan Citizen, indicate under “Citizenship Details” Whether by birth,
- Naturalisation or Registration
- GPK (L)

Date -----Signature of Applicant -----

1.10. FORM OF MANUFACTURER’S AUTHORIZATION

To *[name of the Procuring entity]*

WHEREAS*[name of the manufacturer]* who are established and reputable manufacturers of *[name and/or description of the goods]* having factories at *[address of factory]* do hereby authorize *[name and address of Agent]* to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. *[reference of the Tender]* for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[signature for and on behalf of manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent.

1.11. DETAILS OF SUB-CONTRACTORS

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

Failure to comply with this requirement may invalidate the tender.

<i>FULL NAME AND ADDRESS OF THE SUB-CONTRACTOR</i>	<i>PORTION OF WORKS TO BE SUB-CONTRACTED AND CONTRACT VALUE</i>	<i>SUB-CONTRACTOR'S EXPERIENCE IN SIMILAR WORKS</i>

Note: *Attach relevant evidence.*

I certify that the above information is correct.

.....
(Title)

.....
(Signature)

.....
(Date)

1.12. COMMITMENT TO CODE OF ETHICS FORM

PART I - Title - DECLARATION FOR CODE OF ETHICS

This code may be cited as the Code of Ethics for Suppliers in Public Procurement & Disposal

1. Interpretation

In this codes, unless the context otherwise requires-

“The Act” MEANS The Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“Candidate” means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity

“Code of Ethics” means a statement encompassing the set of rules based on values and the standards of conduct to which suppliers are expected to conform

“Consultant” is a person who provides services of predominantly intellectual, technical or advisory nature

“Contractor” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services, and includes the main contractor

“Ethics” means values, customs, rules or principles, which govern right conduct

“Gift” has meaning assigned to it in the Leadership and Integrity Regulations, 2015

“Integrity” means the quality of being honest and having strong moral and ethical principles

“Persons” has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship

“Procuring Entity” means a public entity making a procurement to which the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies

“Public Officer” has the meaning assigned to it in Article 260 of the Constitution

“Regulations” means regulations made under the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof

“State Officer” has the meaning assigned to it in Article 260 of the Constitution.

“Supplier” means a candidate, bidder, and tenderer, Contractor, service provider or a consultant.

“Tenderer” means a person who submitted a tender pursuant to an invitation by a public entity

For purposes of this Code, all terms used, unless expressly defined herein, have the meaning assigned to them in the Act.

2. Application of the Code

- (i) This Code of Ethics is applicable to suppliers participating in public procurement or disposal of public assets.
- (ii) The objective of the Code is to set minimum standards of ethical behavior for Suppliers to ensure compliance with the Act and the Regulations and the adoption of good business practices.

PART II – REQUIREMENTS/OBLIGATIONS OF THE SUPPLIERS

3. Laws and Regulations

- (i) All public procurement & disposal shall be undertaken in accordance with the values and principles of the Constitution of Kenya, 2010 (Article 10)
- (ii) All Suppliers shall comply with the rule of Law.
- (iii) Suppliers shall observe other laws, regulations, rules and practices relating to taxation, labour, health and safety standards as well as environmental protection.

4. Professionalism

- (i) Suppliers are required to comply with professional standards of their industry or of any professional body of which they are members. Where a supplier is a member of a professional body, the Supplier shall uphold the code of ethics of the respective profession and be of good standing.
- (ii) Suppliers shall maintain the highest standards of integrity and professionalism in their operations.
- (iii) Suppliers in public procurement shall accord mutual respect and courtesy to the public officer(s) and other suppliers without compromising their independent and distinct roles.
- (iv) Public procurement & disposal activities shall be undertaken with the objective of meeting the closest public scrutiny.

5. Impartiality

A supplier shall not engage in acts aimed at encouraging patronage, tribalism, cronyism and nepotism.

6. Gifts, Favors and Corrupt practices

- (i) A supplier shall not offer or give gifts of any kind to public entities and/or the employees.
- (ii) No supplier shall contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them.
- (iii) A supplier shall not engage in fraudulent, collusive, or corrupt practices, or inappropriate influences.
- (iv) A supplier shall not act inappropriately by attempting to interfere with the procurement process

7. Conflict of Interest

- (i) A supplier shall not accept contracts which would constitute a conflict of interest with any prior or current contract. Suppliers shall disclose to all concerned parties those conflicts of interest that cannot be reasonably avoided.
- (ii) A supplier shall not enter into a contract with a procuring entity if the supplier is:
 - o An employee of the procuring entity or a member of a board or committee of the procuring entity;
 - o A State Officer, public Officer or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Cabinet Secretary;
 - o A person, including a corporation, who is related to a person described in paragraph (i) or (ii). A relative has meaning assigned to it in section 33(2) of the Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof applies;
 - o Debarred from participating in procurement proceedings.

8. Performance of Duties

8.1. A supplier shall:

- (i) Duly sign this code of ethics and include it in a tender, proposal or quotation submitted.
- (ii) Obtain and submit bid documents in the manner prescribed in the tender notice and tender documents
- (iii) Supply the right quantity and quality of the contracted item and deliver at the stipulated time(s) and shall not abandon the work that they have been contracted to do.
- (iv) Perform the obligations of the contracts efficiently and effectively

8.2. Suppliers shall not participate in procurement proceedings without invitation to tender and understanding the instructions to tenderers.

- 8.3. While responding to tenders, quotations or request for proposals, bidders should not include unfair, discriminatory or unreasonable conditions in their bids.
- 8.4. Suppliers should
 - (i) Ensure that their deliverables provide value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.
 - (ii) Ensure that competent persons carry out the contractual obligations of the supplier.
 - (iii) Accept full responsibility for all works, services or supplies provided
- 8.5. A supplier shall not
 - (i) Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to procurement and disposal.
 - (ii) Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement and disposal.

9. Communication and Accuracy of Information

A supplier shall:

- (i) Observe strict communication limitations during the bidding process and as provided for in the Act
- (ii) Respond promptly and courteously to all proper requests for information, clarifications, complaints or enquiries from procuring entities, the Authority or any law enforcement agency.
- (iii) Ensure that all information provided to procuring entities is given in writing by Authorized Officers.
- (iv) Ensure that certified copies of all mandatory certificates are availed
- (v) Ensure that information given while participating in public procurement or disposal is true, accurate and fair, and not designed to mislead.

10. Confidentiality

Information obtained in the course of performance of a procurement contract shall not be disclosed to unauthorized persons and shall not be used for the Supplier's advantage or material gain or for furtherance of private interest. The obligation to preserve the confidential information continues even after the business/contractual relationship with the Procuring Entity ends.

11. Duty to report impropriety/corruption

A supplier shall reject and report to the PPOA and/or the relevant agency any procurement practice which might be deemed improper.

PART III - OVERSIGHT BY THE PPOA

12. PPOA shall assist in undertaking continuous training of the suppliers to eliminate malpractices which might arise due to ignorance of the public procurement system.
13. PPOA will exercise oversight in the enforcement of this Code of Ethics, including taking remedial measures where the Code of Ethics is breached
14. PPOA shall revise the code of ethics as appropriate in consultation with the relevant stakeholders

PART IV - COMPLIANCE & MONITORING

15. A Procuring Entity may conduct due diligence, on-site evaluations and inspections of suppliers' facilities and/or project site, including those of their subcontractors and Joint Venture partners to review their compliance to this Code during execution of the Contract.
16. PPOA shall, on its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Ethics and institute debarment proceedings in line with Regulation 90 of the Public Procurement and Disposal Regulations, 2006
17. PPOA shall establish a complaints management system for reporting and receipt of complaints on alleged violations of the Code of Ethics

- 18. PPOA may collaborate and partner with other agencies, organizations and professional bodies in enforcement of this Code of Ethics.
- 19. All Procuring Entities shall submit a report to PPOA, annually or upon request, of any breaches by suppliers, and any action taken against the breach, in such format as is provided by PPOA.

PART V - ENFORCEMENT OF THE CODE

- 20. Any person may lodge a complaint alleging a breach of this code by a supplier to the Authority or a Procuring entity.
- 21. Upon receipt of the complaint, the Authority or the Procuring entity shall register and carry out investigations into the complaint, and may take action against the supplier in accordance with the Act and any Regulations
- 22. A breach of this Code shall be subject to a debarment process as stipulated in the Act which may attract a debarment for a period not less than five years. The breach may further be subjected to a Court process that may lead to the imposition of other penalties as stipulated in the Act and other Laws.
- 23. A Procuring Entity may disqualify a supplier from further participation in a procurement or disposal proceeding or terminate a contract if it establishes a breach of this Code
- 24. A breach of this Code shall lead to termination of registration of a supplier
- 25. A supplier who violate the law or engage in unethical business dealings may be subject to disciplinary proceedings.

26. Declaration and Signature

- 26.1. I (Supplier)
Confirm that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act 2015 and the Code of Ethics for Suppliers and my responsibilities under the Code.
- 26.2. I also certify that I am duly authorized to sign this Code on my own behalf and on behalf of my organization, and agree to comply with the Code of Ethics.

Name.....Sign.....

Position.....

Office address.....Telephone.....

E-mail.....

Name of the Firm.....

(Company Seal/ Rubber Stamp where applicable)

Sworn at.....

By the said

Deponent

This.....day of.....20.....

Before Me.....

Commissioner for Oaths/Magistrate}

1.13. 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

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