

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF SIAYA

TENDER DOCUMENT

FOR

PROPOSED ESTABLISHMENT OF TREE NURSERIES AND DISTRIBUTION OF TREE SEEDLING IN UGUNJA

TENDER NO. CGS/SCM/WENR/OT/2018-19/81
Supplier Portal Negotiation No. 730634-2018/2019

(Sub-County Specific Procurement Reserved for Residents of Siaya County)

CHIEF OFFICER
WATER ENVIRONMENT AND NATURAL RESOURCES
COUNTY GOVERNMENT OF SIAYA
P.O. BOX 803-40600
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COUNTRY SECRETARY
COUNTY GOVERNMENT OF SIAYA
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June, 2019

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SECTION I - INVITATION TO TENDER

Date: 26/04/2019

TENDER NO: CGS/SCM/WENR/OT/2018-19/058 PROPOSED ESTABLISHMENT OF TREE NURSERIES AND DISTRIBUTION OF TREE SEEDLING IN UGUNJA

The County Government of Siaya (CGS) invites sealed bids from eligible candidates for **Proposed Establishment of Tree Nurseries and Distribution of Tree Seedling in Ugunja. This is a Sub-County Specific Procurement reserved for Residents of Siaya County.**

Interested candidates may view / inspect/ obtain complete tender documents free of charge from the CGS website (www.siaya.go.ke).

Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of 90 days from the closing/opening date of the tender.

Completed tender documents are to be enclosed in plain sealed envelopes, clearly marked with the tender identification number and name and be deposited in the Tender Box provided at the main entrance of **ALEGO USONGA SUB-COUNTY OFFICES** within Siaya Town or be addressed and posted to:

**The County Secretary
County Government of Siaya
P.O. Box 803 - 40600
SIAYA**

so as to be received **on or before 18th June, 2019 at 12.00 noon**

Tenderers **SHALL**, in addition, respond to the tenders through the IFMIS Supplier portal, by the deadline indicated above in order to be eligible for evaluation and award.

Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend at the **Alego Usonga Sub-County Offices**.

Director, Supply Chain Management
For: COUNTY SECRETARY

SECTION II – INSTRUCTIONS TO TENDERERS

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1. Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2 The procuring entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 55 of the Act.
- 2.1.3 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 services under this Invitation for tenders.
- 2.1.4 Tenderers involved in the corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 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
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.3 Contents of Tender Document

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenderers.
- (i) Instructions to Tenderers
 - (ii) Appendix to Instructions to Tenderers
 - (iii) General Conditions of Contract
 - (iv) Special Conditions of Contract
 - (v) Schedule of Requirements
 - (vi) Details of Service
 - (vii) Form of Tender
 - (viii) Price Schedules
 - (ix) Contract Form
 - (x) Confidential Business Questionnaire Form
 - (xi) Tender security Form
 - (xii) Performance security Form
 - (xiii) Declaration Form
- 2.3.2 The Tenderer is expected to examine all instructions, forms, terms and specification 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.

2.4 Clarification of Tender Documents

- 2.4.1 A Candidate making inquiries of the tender documents may notify the Procuring entity by post, fax or by email at the procuring 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 the 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 candidates who have received the tender documents.
- 2.4.2 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.
- 2.4.3 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.5 Amendment of Tender Documents

- 2.5.1 At any time prior to the deadline for submission of tenders, 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 and addendum.
- 2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.
- 2.5.3 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.

2.6 Language of Tenders

- 2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. 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.

2.7 Documents Comprising the Tender

- 2.7.1 The tender prepared by the tenderer shall comprise the following components:
- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
 - (b) Documentary evidence established in accordance with paragraph 2.11.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (c) Tender security furnished in accordance with paragraph 2.12
 - (d) Confidential Business Questionnaire
 - (e) Declaration Form.

2.8 Form of Tender

- 2.8.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

2.9 Tender Prices

- 2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and the total tender prices of the services it proposes to provide under the contract.
- 2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable.

- 2.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5
- 2.9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 2.9.5 Where contract price variation is allowed, the variation shall not exceed 15% of the original contract price.
- 2.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.10. Tender Currencies

- 2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers

2.11. Tenderers Eligibility and Qualifications

- 2.11.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted.
- 2.11.2 The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12. Tender Security

- 2.12.1 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.
- 2.12.2 The tender security shall be stated as an absolute value and shall be an amount of not more than two percent of the tender as valued by the procuring entity.
- 2.12.3 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 2.12.8
- 2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form:
 - a) Cash.
 - b) A bank guarantee.
 - c) Such insurance company guarantee as may be approved by the Public Procurement Regulatory Authority.
 - d) Letter of credit.
 - e) A guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.
- 2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.4 shall be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20.5
- 2.12.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity
- 2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.28, and furnishing the performance security, pursuant to paragraph 2.29
- 2.12.8 The tender security may be forfeited:
 - (a) If a tenderer withdraws its tender after the deadline for submitting tenders but before the expiry of the period during which tenders shall remain valid.
 - (b) in the case of a successful tenderer, if the tenderer fails:

- (i) to sign the contract in accordance with paragraph 2.28 or
- (ii) To furnish performance security in accordance with paragraph 2.29.
- (c) If the tenderer reject correction of an arithmetic error in the tender.

2.13. Validity of Tenders

- 2.13.1 Tenders shall remain valid for 90 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 2.13.2 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 2.12 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.

2.14. Format and Signing of Tenders

- 2.14.1 The tenderer shall prepare an original and a copy 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.
- 2.14.2 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 un-amended printed literature, shall be initialed by the person or persons signing the tender.
- 2.14.3 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.

2.15 Sealing and Marking of Tenders

- 2.15.1 The tenderer shall seal the original and the copy of the tender in separate envelopes, duly marking the envelopes as **"ORIGINAL TENDER"** and **"COPY OF TENDER"**. The envelopes shall then be sealed in an outer envelope.
- 2.15.2 The inner and outer envelopes shall:
 - (a) Be addressed to the Procuring entity at the address given in the Invitation to Tender
 - (b) Bear Tender identification number and name in the invitation to tender and the words: **"DO NOT OPEN BEFORE, 18TH June, 2019 at 12 NOON"**
- 2.15.3 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".
- 2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

2.16. Deadline for Submission of Tenders

- 2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than **18TH June, 2019 AT 12 NOON**
- 2.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.
- 2.16.3 Bulky tenders which will not fit the tender box shall be received by the procuring entity as provided for

in the appendix.

2.17. Modification and Withdrawal of Tenders

- 2.17.1 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.
- 2.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3 No tender may be modified after the deadline for submission of tenders.
- 2.17.4 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 2.12.8.
- 2.17.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.17.6 The procuring entity shall give prompt notice of the termination to the tenderers within fourteen days of termination and such notice shall contain the reasons for termination.

2.18. Opening of Tenders

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **12 NOON ON 18TH June, 2019** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.2 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.
- 2.18.3 The Procuring entity will prepare minutes of the tender opening, which will be submitted to tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of Tenders

- 2.19.1 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.
- 2.19.2 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.

2.20 Preliminary Examination and Responsiveness

- 2.20.1 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.
- 2.20.2 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 forfeited. If there is a discrepancy between words and figures, the amount in words will prevail

- 2.20.3 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 affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.22, 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.
- 2.20.5 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 nonconformity.

2.21. Conversion to single currency

- 2.21.1 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.

2.22. Evaluation and Comparison of Tenders

- 2.22.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20
- 2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services
- 2.22.3 The Procuring entity's evaluation of a tender will consider, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4.
- (a) Operational plan proposed in the tender;
 - (b) Deviations in payment schedule from that specified in the Special Conditions of Contract
- 2.22.4 Pursuant to paragraph 2.22.3 the following evaluation methods will be applied.
- (a) **Operational Plan:** The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform 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 on 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.
- 2.22.5 The tender evaluation committee shall evaluate the tender within 15 days from the date of opening the tender.
- 2.22.6 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.

2.23. Contacting the Procuring entity

- 2.23.1 Subject to paragraph 2.19 no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 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 Tenderers' tender.

2.24 Award of Contract

(a) Post-qualification

2.24.1 In the absence of pre-qualification, the Procuring entity will verify and 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.

2.24.2 The determination will consider the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2 , as well as such other information as the Procuring entity deems necessary and appropriate

2.24.3 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

2.24.4 Subject to paragraph 2.22 the Procuring entity will award the contract to the successful tenderer 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.

2.24.5 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 tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

2.24.6 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

2.25 Notification of Award

2.25.1 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.

2.25.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders were not successful.

2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29 the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.26 Signing of Contract

2.26.1 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.

2.26.2 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.

2.26.3 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.

2.27 Performance Security

- 2.27.1 The successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to the Procuring entity.
- 2.27.2 Failure by the successful tenderer to comply with the requirement of paragraph 2.27.1 or paragraph 2.26.2 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 tender or call for new tenders.

2.28 Corrupt or Fraudulent Practices

- 2.28.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.28.2 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
- 2.28.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public Procurement in Kenya.

APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

| Instructions to tenderers | Particulars of appendix to instructions to tenderers |
|---------------------------|--|
| 2.1 | Particulars of eligible tenderers: <ul style="list-style-type: none"> ▪ Sub-County Specific Procurement Reserved for Residents of Ugunja Sub-County ▪ Tenderers SHALL, respond both electronically through the IFMIS Supplier Portal and also manually submit physical tender documents |
| 2.1.3 | Qualification Information Statement: Not required |
| 2.2.2 | Price to be charged for tender documents. Prospective Tenderers may download complete tender document free of charge from the County Government of Siaya website (www.siaya.go.ke). |
| 2.2.3 | Reviewing the tender documents: Prospective Tenderers can access and review the tender document free of charge from County Government of Siaya website (www.siaya.go.ke). |
| 2.9.5 | Contract Price Variations: Any contract price variations shall be as allowable in the Public Procurement and Asset Disposal Act, 2015 |
| 2.10 | Particulars of other currencies allowed. None |
| 2.11 | Particulars of eligibility and qualifications documents of evidence required. Copies of: <ol style="list-style-type: none"> i) Certificate of Incorporation ii) Certificate of valid tax compliance iii) Proof of being a resident of Siaya |
| 2.12.1 | Particulars of tender security if applicable. N/A |
| 2.12.3 | Denomination of Tender Security: N/A |
| 2.14.2 | Signing of Tenders: <ul style="list-style-type: none"> ▪ The tender shall be signed only by a person(s) duly authorized to bind the tenderer ▪ The tender document should additionally be serialized. |
| 2.16.3 | Bulky tenders which do not fit in the tender box shall be delivered to the Supply chain Management Office. |
| 2.20.1 | Tenderers are required to submit the following MANDATORY DOCUMENTS which will be used during PRELIMINARY EXAMINATION to determine responsiveness, notwithstanding any other requirement in the tender document: <ol style="list-style-type: none"> 1) Copy of certificate of Incorporation / Registration 2) A Copy of Valid Tax Compliance Certificate issued by the Kenya Revenue Authority (Will be verified on the KRA TCC Checker) 3) Tender Form duly Completed, Signed and Stamped by the Tenderer in the format provided. 4) Price Schedule duly Completed, Signed and Stamped by the Tenderer in the format provided. 5) Must submit a duly completed and signed Confidential Business Questionnaire in format provided 6) Must submit evidence on financial standing such as profit and loss |

| Instructions to tenderers | Particulars of appendix to instructions to tenderers |
|---------------------------|---|
| | <p>statements and audited accounts produced within the last Eighteen (18) calendar months of the date of tender document and signed by auditor(s) approved by Institute of Public Accountants of Kenya (ICPAK)</p> <p>7) Submit a valid current Trading License / Single Business Permit issued by the County Government of Siaya</p> <p>8) Tender-Securing Declaration Form attached to this tender document duly Completed, Signed and Stamped by the Tenderer</p> <p>9) Since this is a Sub-County Specific Procurement Reserved for Residents of <u>UGUNJA</u> Sub-County, any acceptable evidence/proof is required e.g. proof of physical location of the company by attaching evidence (title deed, lease agreement, utility bills), ID etc.</p> <p>10) All tree seedlings must be sourced from tree nurseries located within the ecoregion of the catchment where they will be planted. <u><i>(Bidders Must Attach confirmation / self-declaration letter that they will source from within the ecoregion of the catchment area)</i></u></p> <p>11) Properly bound, good presented document. The tender document shall be paginated / serial numbered</p> <p>AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER. RESPONSIVE BIDS WILL PROCEED TO FINANCIAL EVALUATION.</p> |
| 2.20.2 | Arithmetic Errors: The tender sum as submitted and read out during tender opening shall be final and shall not be the subject of any corrections, adjustments or amendments. |
| 2.21 | Conversion to a single currency: Tender Prices shall be in Kenya Shillings and no other currencies are allowed. There will therefore be no conversions |
| 2.24 (a) | Particulars of post – qualification if applicable. The CGS may conduct post-qualification as it deems necessary in accordance with “The Public Procurement & Disposal Act 2015 Section 83 (1), which provides that <i>“An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act”</i> |
| 2.24.4 | Award Criteria: Award Will be made to the lowest evaluated bidder. |
| 2.27 | Particulars of performance security if applicable. N/A |
| Other's as necessary | Complete as necessary. None |

SECTION III - GENERAL CONDITIONS OF CONTRACT

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SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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 services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The contractor means the individual or firm providing the services under this Contract.
- f) “GCC” means general conditions of contract contained in this section
- g) “SCC” means the special conditions of contract
- h) “Day” means calendar day

3.2 Application

- 3.2.1 These General Conditions shall apply to the extent that they are not superceded by provisions of other part of contract.

3.3 Standards

- 3.3.1 The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

3.4 Patent Right's

- 3.4.1 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 services under the contract or any part thereof.

3.5 Performance Security

- 3.5.1 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.
- 3.5.2 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.
- 3.5.3 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) A bank guarantee.
 - c) Such insurance guarantee approved by the Authority.
 - d) Letter of credit.

- 3.5.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

3.6 Inspections and Tests

- 3.6.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services 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.
- 3.6.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), 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.
- 3.6.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- 3.6.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.7 Payment

- 3.7.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

3.8 Prices

- 3.8.1 Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.9 Assignment

- 3.9.1 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.

3.10 Termination for Default

- 3.10.1 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 provide any or all of the services 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.
- 3.10.2 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, services similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar services.

3.11 Termination of insolvency

- 3.11.1 The procuring entity may at anytime terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.12 Termination for convenience

- 3.13.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.
- 3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.13 Resolution of disputes

- 3.13.1 The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.
- 3.13.2 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.

3.14 Governing Language

- 3.14.1 The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.15 Force Majeure

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

3.16 Applicable Law.

- 3.16.1 The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC

3.17 Notices

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

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special conditions of contract with reference to the general conditions of contract.

| General conditions of contract reference | Special conditions of contract |
|---|---|
| 3.5 | Specify performance security if applicable: N/A. |
| 3.7 | Specify method Payments. Shall be payable within 45 days after submission of invoice upon satisfactory completion and certification. Any part payment will be as agreed by Employer upon satisfactory completion and certification of agreed milestones |
| 3.8 | Specify price adjustments allowed. None |
| 3.14 | Specify resolution of disputes. Disputes to be settled as per the Arbitration Laws of Kenya |
| 3.16 | Specify applicable law. Laws of Kenya |
| 3.17 | Indicate addresses of both parties. Client: The County Government of Siaya P. O. Box 803-40600 Nairobi |
| Other's as necessary | Complete as necessary |

SECTION V - SCHEDULE OF REQUIREMENTS

The service provider(s) is expected to establish tree nurseries as per scope of works.

All tree seedings must be sourced from tree nurseries located within the ecoregion of the catchment where they will be planted. *Employer must approve source of seedings.*

SECTION VI - DESCRIPTION OF SERVICES / SCOPE

The service provider(s) is expected to establish Tree Nurseries in Ugunja Sub-County as described in the schedule of prices / BoQs

SECTION VII - STANDARD FORMS

Notes on the standard Forms

1. **Form of Tender** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Price Schedule Form-** The price schedule form must similarly be completed and submitted with the tender.
3. **Contract Form** - The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
4. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
5. **Tender Security Declaration Form** - This form must be completed by the tenderer and submitted with the tender documents.

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7.1 FORM OF TENDER

Date _____
Tender No. _____

To: **The County Secretary**
County Government of Siaya
P. O. Box 803-40600
NAIROBI

Sir/Madam:

Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to **Proposed Establishment of Tree Nurseries And Distribution of Tree Seedling in Ugunja** in conformity with the said Tender documents for the sum of Kshs. _____ *[Amount in figures]* Kenya Shillings _____ *[Amount in words]* 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 Services in accordance with the delivery schedule specified in the Schedule of Requirements.

We agree to abide by this Tender for the Tender validity period specified in Clause 2.13 of the Appendix to Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process.

Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

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.

We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this _____ day of _____ 20_____.
(Name)

[signature] _____ *[in the capacity of]*
Duly authorized to sign Tender for and on behalf of _____

7.2 PRICE SCHEDULE FORM / BOQS

| |
|--|
| BILL OF QUANTITIES |
| ACTIVITY: ESTABLISHMENT OF TREE NURSERIES AND DISTRIBUTION OF SEEDLINGS |
| SUB COUNTY: UGUNJA |
| WARD: UGUNJA |
| AREA: UGUNJA |
| CODE IN SUPPLIMENTARY BUDGET: 3110755 |

Materials required for work

| | Material | UNIT | QTY | COST (KSHS.) | |
|----|---|------------|-----|--------------|-------|
| | | | | UNIT | TOTAL |
| 1 | Seeds (<i>Casuarina equisetifolia</i> , <i>Markhamia lutea</i> , <i>Croton megalocarpus</i> , <i>Grevillea robusta</i> , <i>Moringa oleifera</i>) | Kg | 10 | | |
| 2 | Fencing poles (cedar) | No | 10 | | |
| 3 | chain link 7' | rolls | 3 | | |
| 4 | u nails | Kg | 2 | | |
| 5 | Ballast (1 tonne pick up) | tonne | 1 | | |
| 6 | Sand (1 tonne pick up) | tonne | 2 | | |
| 7 | Cement | Bags | 3 | | |
| 9 | Potting tubes | 10kgs roll | 1 | | |
| 10 | Nails 3" | Kg | 2 | | |
| 11 | Tee hinges | pair | 2 | | |
| 12 | timber 3*2 | ft | 21 | | |
| 13 | gate chain | pc | 2 | | |
| 15 | labour for fencing | Lumpsum | | | |
| 16 | Watering can | No | 3 | | |
| 24 | jerry can | No | 10 | | |
| 25 | storage water tank (plastic 2,000 lts) | No | 1 | | |
| 26 | Taps and Fittings | No | 1 | | |
| 27 | Outlet horsepipes | 18m | 1 | | |
| 28 | Site clearing | Lumpsum | | | |
| 30 | Manure purchase and supply | pick up | 1 | | |
| 32 | Pesticide (pest control) | No | 1 | | |
| 33 | Tending | Months | 4 | | |
| 34 | potting labour | No | 40 | | |
| 35 | purchase and transport of soil | pick up | 1 | | |
| 36 | 5% supervision fee for pmc | | | | |
| | Grand Total Transferred to Form of Tender | | | | - |

Signature of tenderer _____

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

7.3 CONTRACT FORM

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 materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of[contract price in words and figures]

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 tenderer hereby covenants with the Procuring entity to provide the materials and spares 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 provision of the materials and spares 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 _____.

7.4 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 applied to your type of business.

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

| |
|---|
| <p>Part 1 General</p> <p>Business Name.....</p> <p>Location of Business Premises</p> <p>Plot No,..... Street/Road</p> <p>Postal address Tel No.</p> <p>Fax Email.....</p> <p>Nature of Business</p> <p>Registration Certificate No.....</p> <p>Maximum value of business which you can handle at any one time – Kshs.</p> <p>Name of your bankers</p> <p>.....</p> <p>Branch</p> |
|---|

| | | | | |
|--|---|------------------------|---------------------|--------|
| | Part 2 (a) – Sole Proprietor | | | |
| | Your name in full..... | Age..... | | |
| | Nationality..... | Country of Origin..... | | |
| | Citizenship details | | | |
| | Part 2 (b) – Partnership | | | |
| | Given details of partners as follows | | | |
| | Name | Nationality | Citizenship details | Shares |
| | 1. .... | ..... | ..... | ..... |
| | 2. .... | ..... | ..... | ..... |
| | 3. .... | ..... | ..... | ..... |
| | 4. .... | ..... | ..... | ..... |
| | Part 2 (c) – Registered Company | | | |
| | Private or Public | | | |
| | State the nominal and issued capital of company | | | |
| | Nominal Kshs. | | | |
| | Issued Kshs. | | | |
| | Given details of all directors as follows | | | |
| | Name | Nationality | Citizenship details | Shares |
| | 1. .... | ..... | ..... | ..... |
| | 2. .... | ..... | ..... | ..... |
| | 3. .... | ..... | ..... | ..... |
| | 4. .... | ..... | ..... | ..... |
| | Date.....Signature of Candidate..... | | | |

7.5 TENDER SECURITY DECLARATION FORM

[The Bidder shall complete in this form in accordance with the instructions indicated]

Date: _____ **Tender No.** _____

**To: The County Government of Siaya
P. O. Box 803 – 40600
SIAYA**

We, the undersigned, declare that:

1. We understand that, according to your conditions, bid must be supported by a Bid-Securing Declaration.
2. We accept that we will be automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of twelve months starting, if we are in breach of our obligation(s) under the bid conditions, because we –
 - (a) Have withdrawn our bid during the period of bid validity; or
 - (b) Having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,
 - (i) Fail, refuse or deliberately delay to execute the contract, if required, or
 - (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
 - (i) our receipt of a copy of your notification of the name of the successful Bidder; or
 - (ii) twenty-eight days after the expiration of our Tender
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits bid and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Name:
[insert complete name of person signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of:
[insert complete name of Bidder]

Signed:
[insert signature of person whose name and capacity are shown]

In the capacity of:
[insert legal capacity of person signing the Bid Securing Declaration]

Date:
[insert date of signing]