



MASENO UNIVERSITY

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TENDER NO: MSU/T/007/2023-2024

FOR:

**PROVISION OF ERP MAINTENANCE AND ENHANCEMENT SERVICES WITH 3 YEAR
SUPPORT PLAN**

AT MASENO UNIVERSITY

OPEN TO ALL

TENDER CLOSING DATE: 8TH NOVEMBER, 2023 AT 11.00AM



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SECTION I: INVITATION TO TENDER

Date: 30th October, 2023

Tender Ref No.: MSU/T/007/2023-2024

Maseno University invites sealed tenders from eligible candidates for **ERP Maintenance and Enhancement with 3 Year Support Plan.**

1.0 Interested and eligible candidates may obtain further information, as pertains to this Tender from the Procurement Office, Maseno University (Tel: +254(057) 351622, 351622, 351008, 351011 Fax: +254 (057) 351221, 351432, 0722203411/070351231) during working hours between 9.00am to 5pm from Monday to Friday. Email po@maseno.ac.ke

1.1 Prices quoted should be inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of 120 days from the closing date of the tender.

1.2 Tender documents duly completed in sealed envelopes clearly marked Tender No. **MSU/T/00/2023-2024** should be deposited in the Tender Box located at the entrance to the Administration Block, College Campus or addressed to The Vice Chancellor, Maseno University, Private Bag, MASENO so as to be received on or before **8th November, 2023 at 11.00 a.m.as per the University wall clock at the reception.** Late bids will not be accepted.

1.3 Tenders will be opened publicly on **8th November, 2023 at 11.00 a.m.as per the University wall clock at the reception.** in Procurement department boardroom located at the Main Campus. Interested tenderers or their representatives may attend the tender opening ceremony.

1.4 Canvassing or lobbying for the award of the above tender directly or through a proxy shall lead to automatic disqualification of the tenderer.

SOPHIA OGILA

For: Vice Chancellor



PART 1 - TENDERING PROCEDURES

SECTION II

INSTRUCTIONS TO TENDERERS

A. General Provisions

1. Scope of Tender

1.1 The Procuring Entity as defined in the TDS invites tenders for supply of goods and, if applicable, any Related Services incidental thereto, as specified in Section V, Supply Requirements. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.

1.2 Throughout this tendering document:

- a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
- b) if the context so requires, “singular” means “plural” and vice versa;
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

2. Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

3. Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT3.7, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*wives, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender.

In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the TDS.



3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

- a) directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
- b) receives or has received any direct or indirect subsidy from another Tenderer; or
- c) has the same - representative or ownership as another Tenderer; or
- d) has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
- e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
- f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
- g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or has a close business or family relationship with a professional staff of the Procuring Entity (or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.

3.5 A firm that is a Tenderer (either individually or as a JV member) shall not submit more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the PPRA's website www.ppra.go.ke

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar



to any commercial enterprise to enable it compete with firms in the private sector on an equal basis. Public employees and their close relatives are not eligible to participate in the tender.

- 3.9 Tenderers may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting for supply of goods or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 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.
- 3.11 Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the TDS
- 3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.
- 3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4. Eligible Goods and Related Services

- 4.1 All the Goods and Related Services to be supplied under the Contract shall have their origin in any country that is eligible in accordance with ITT 3.9.
- 4.2 For purposes of this ITT, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” include services such as insurance, installation, training, and initial maintenance.
- 4.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.
- 4.4 A procuring entity shall ensure that the items listed below shall be sourced from Kenya and there shall be no substitutions from foreign sources. The affected items are:
- a) motor vehicles, plant and equipment which are assembled in Kenya;
 - b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather, agro-processed products, sanitary products, and other goods made in Kenya; or
 - c) goods manufactured, mined, extracted or grown in Kenya.
- 4.5 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

B. Contents of Request for Tenders Document

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5. Sections of Tendering Document

5.1 The tendering document consist of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT8.

PART 1: Tendering Procedures

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tendering Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

PART 2: Supply Requirements

- v) Section V - Schedule of Requirements

PART 3: Contract

- vi) Section VI - General Conditions of Contract (GCC)
- vii) Section VII - Special Conditions of Contract (SCC)
- viii) Section VIII- Contract Forms

5.2 The notice of Invitation to Tender or the notice to the prequalified Tenderers issued by the Procuring Entity is not part of the tendering document.

5.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the minutes of the pre-tender meeting (if any), or addenda to the tendering document in accordance with ITT7.

5.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

6. Clarification of Tendering Document

6.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 6.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 5.3, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Procuring Entity shall also promptly publish its response at the web page identified in the TDS. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 7.

6.2 The Procuring Entity shall specify in the TDS if a pre-tender conference will be held, when and where. The Tenderer's designated representative is invited to attend a pre-Tender meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

6.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the TDS before the meeting.

6.4 Minutes of the pre-Tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all



Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

6.5 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting at the web page identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 7 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

7. Amendment of Tendering Document

7.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.

7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tender document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 7.1.

7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

C. Preparation of Tenders

8. Cost of Tendering

8.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

9. Language of Tender

9.1 The Tender, 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. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

10. Documents Comprising the Tender

10.1 The Tender shall comprise the following:

- a) Form of Tender prepared in accordance with ITT11;
- b) Price Schedules: completed in accordance with ITT 11 and ITT 13;
- c) Tender Security or Tender-Securing Declaration, in accordance with ITT 18.1;
- d) Alternative Tender: if permissible, in accordance with ITT12;
- e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT19.3;
- f) Qualifications: documentary evidence in accordance with ITT 16.2 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
- g) Tenderer Eligibility: documentary evidence in accordance with ITT16.1 establishing the Tenderer eligibility to tender;
- h) Eligibility of Goods and Related Services: documentary evidence in accordance with ITT 15, establishing the eligibility of the Goods and Related Services to be supplied by the Tenderer;



- i) Conformity: documentary evidence in accordance with ITT15.2 that the Goods and Related Services conform to the tender document; and
- j) any other document required in the TDS.

10.2 In addition to the requirements under ITT 10.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

10.3 The Tenderer shall furnish in the Form of Tender information on commissions gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Tender.

11. Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialise pages of all tender documents submitted.

12. Alternative Tenders 10

12.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.

13. Tender Prices and discounts

13.1 The prices quoted by the Tenderer in the Form of Tender and in the Price, Schedules shall conform to the requirements specified below.

13.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.

13.3 The price to be quoted in the Form of Tender in accordance with ITT10.1 shall be the total price of the Tender, including any discounts offered.

13.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.

13.5 Prices quoted by the Tenderer shall be fixed during the performance of the Contract and not subject to variation on any account, unless otherwise specified in the TDS. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 28. However, if in accordance with the TDS, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

13.6 If specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise specified in the TDS, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 13.4 provided the Tenders for all lots (contracts) are opened at the same time.

13.7 The terms EXW, CIP, CIF, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce.



13.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in any eligible country. Similarly, the Tenderer may obtain insurance services from any eligible country in accordance with ITT 3.6, Eligible Tenders. Prices shall be entered in the following manner:

a) For Goods manufactured in Kenya:

- i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the- shelf, as applicable) final destination point indicated in the TDS, including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
- ii) any sales tax and other taxes which will be payable in Kenya on the Goods if the Contract is awarded to the Tenderer; and
- iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination specified in the TDS.

b) For Goods manufactured outside Kenya, to be imported:

- i) the price of the Goods, quoted CIP named place of destination, in Kenya, as specified in the TDS;
- ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination specified in the TDS;

c) For Goods manufactured outside Kenya, already imported:

- i) the price of the Goods, including the original import value of the Goods; plus, any mark-up (or rebate); plus, any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported;
- ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
- iii) any sales and other taxes levied in Kenya which will be payable on the Goods if the Contract is awarded to the Tenderer; and
- iv) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) specified in the TDS.

d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements, the price of each item comprising the Related Services (inclusive of any applicable taxes).

14. Currencies of Tender and Payment

14.1 The currency (ies) of the Tender, the currency (ies) of award and the currency (ies) of contract payments shall be the same.

14.2 The Tenderer shall quote in Kenya shillings. If allowed in the TDS, the Tenderer may express the Tender price in any currency, provided it shall use no more than two foreign currencies in addition to the Kenya Shilling.

14.3 The rates of exchange to be used by the Tenderer shall be based on the exchange rates provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening.

15. Documents Establishing the Eligibility and Conformity of the Goods and Related Services

15.1 To establish the eligibility of the Goods and Related Services in accordance with ITT 15, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.



- 15.2 To establish the conformity of the Goods and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the TDS following commencement of the use of the goods by the Procuring Entity.
- 15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

16. Documents Establishing the Eligibility and Qualifications of the Tenderer

- 16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- a) that, if required in the TDS, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Kenya;
 - b) that, if required in the TDS, in case of a Tenderer not doing business within the Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - c) that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

17. Period of Validity of Tenders

- 17.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT

A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

- 17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 18, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 17.3.



17.3 If the award is delayed by a period exceeding the number of days to be specified in the TDS days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:

- a) in the case of fixed price contracts, the Contract price shall be the tender price adjusted by the factor specified in the TDS;
- b) in the case of adjustable price contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

18. Tender Security

18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS.

18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

18.3 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer option:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
- iv) a letter of credit; or
- v) guarantee by a deposit taking micro-finance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.

18.4 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT

18.5 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

18.6 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

18.7 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

18.8 The Tender Security may be forfeited or the Tender Securing Declaration executed:

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
- b) if the successful Tenderer fails to:
 - i) sign the Contract in accordance with ITT 45; or
 - ii) furnish a Performance Security in accordance with ITT 46.



- 18.9 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 18.10 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT3.1 and ITT 10.2.
- 18.11 A tenderer shall not issue a tender security to guarantee itself.
19. Format and Signing of Tender
- 19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 12, shall be clearly marked “ALTERNATIVE.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.2 Tenderers shall mark as “CONFIDENTIAL” information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 19.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by each members' legally authorized representatives.
- 19.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.
- D. Submission and Opening of Tenders
20. Sealing and Marking of Tenders
- 20.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 11; and
 - b) in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
 - c) if alternative Tenders are permitted in accordance with ITT 12, and if relevant:
 - i) in an envelope or package or container marked “ORIGINAL –ALTERNATIVE TENDER”, the alternative Tender; and
 - ii) in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.



20.2 The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity.
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

20.3 Where a tender package or container cannot fit in the tender box, the procuring entity shall:

- a) Specify in the TDS where such documents should be received.
- b) maintain a record of tenders received and issue acknowledgement receipt note to each tenderer specifying time and date of receipt.
- c) Ensure all tenders received are handed over to the tender opening committee for opening at the specified opening place and time.

20.4 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

21. Deadline for Submission of Tenders

21.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified in the TDS. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT7, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

22. Late Tenders

22.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

23. Withdrawal, Substitution, and Modification of Tenders

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT19.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

23.3 Tenders requested to be withdrawn in accordance with ITT 23.1 shall be returned unopened to the Tenderers.

23.4 No Tender may be withdrawn, substituted, or modified 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 Form of Tender or any extension thereof.



24. Tender Opening

- 24.1 Except as in the cases specified in ITT 23, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the TDS in the presence of Tenderers' designated representatives who choose to attend, including to attend any specific electronic tender opening procedures if electronic tendering is permitted in accordance with ITT 21.1, shall be as specified in the TDS.
- 24.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 24.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 24.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.
- 24.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the TDS.
- 24.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 22.1).
- 24.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) the Tender Price, per lot (contract) if applicable, including any discounts;
 - c) any alternative Tenders;
 - d) the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required;
 - e) number of pages of each tender document submitted.
- 24.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be issued to a Tenderer upon request.

E. Evaluation and Comparison of Tenders

25. Confidentiality



- 25.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.
- 25.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.

25.3 Notwithstanding ITT 25.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

26. Clarification of Tenders

26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 30.

If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

27. Deviations, Reservations, and Omissions

27.1 During the evaluation of Tenders, the following definitions apply:

- a) "Deviation" is a departure from the requirements specified in the Tendering document;
- b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
- c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

28. Determination of Responsiveness

28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT28.2.

28.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- a) if accepted, would:
 - i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
 - ii) limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 15 and ITT 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

28.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.



29. Non-conformities, Errors and Omissions

29.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender.

29.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

29.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS. The adjustment shall be based on the *average* price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate.

30. Arithmetical Errors

30.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

30.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive .
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail.

30.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

31. Conversion to Single Currency

31.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in a single currency as specified in the TDS.

32. Margin of Preference and Reservations

32.1 A margin of preference may be allowed on locally manufactured goods only when the contract is open to international tendering, where the tender is likely to attract foreign goods and where the contract exceeds the threshold specified in the Regulations.

32.2 For purposes of granting a margin of preference on locally manufactured goods under international competitive tendering, a procuring entity shall not subject the items listed below to international tender and hence no margin of preference shall be allowed. The affected items are:

- a) motor vehicles, plant and equipment which are assembled in Kenya;
- b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather agro-processing, sanitary products, and other goods made in Kenya; or
- c) goods manufactured, mined, extracted or grown in Kenya.



32.3 A margin of preference shall not be allowed unless it is specified so in the TDS.

32.4 Contracts procured on basis of international competitive tendering shall not be subject to reservations to specific groups as provided in ITT 32.5.

32.5 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the TDS, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender as specified in the TDS. No tender shall be reserved to more than one group. If not so stated in the Tender documents, the invitation to tender will be open to all interested tenderers.

33. Evaluation of Tenders

33.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) substantially responsive to the tender documents; and
- b) the lowest evaluated price.

33.2 Price evaluation will be done for Items or Lots (contracts), as specified in the TDS; and the Tender Price as quoted in accordance with ITT 14. To evaluate a Tender, the Procuring Entity shall consider the following:

- a) price adjustment due to unconditional discounts offered in accordance with ITT 13.4;
- b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31;
- c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 29.3; and
- d) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.

33.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

33.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 33.2. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

33.5 The Procuring Entity's evaluation of a Tender will include and consider:

- a) in the case of Goods manufactured in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer;
- b) in the case of Goods manufactured outside Kenya, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Tenderer;

33.6 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless



otherwise specified in the TDS from amongst those set out in Section III, Evaluation and Qualification Criteria. The additional criteria and methodologies to be used shall be as specified in ITT 33.2(d).

34. Comparison of Tenders

34.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost (place of final destination) prices for all goods and all prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Kenya, together with prices for any required installation, training, commissioning and other services.

35. Abnormally Low Tenders

35.1 An Abnormally Low Tender is one where the Tender price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns with the Procuring Entity as to the capability of the Tenderer to perform the Contract for the offered Tender price.

35.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procuring Entity shall seek written clarification from the Tenderer, including a detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

35.3 After evaluation of the price analysis, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the contract for the offered Tender price, the Procuring Entity shall reject the Tender.

36. Abnormally High Tenders

36.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

36.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

36.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause relevant Government Agencies to institute an investigation on the cause of the compromise, before retendering.

37. Post-Qualification of the Tenderer



37.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

37.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 15 and 16. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.

37.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

38. Lowest Evaluated Tender

38.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

- a) most responsive to the Tender document; and
- b) the lowest evaluated price.

39. Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.

39.1 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 notification Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

40. Award Criteria

40.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender in accordance with procedures in Section 3: Evaluation and Qualification Criteria.

41. Procuring Entity's Right to Vary Quantities at Time of Award

41.1 The Procuring Entity reserves the right at the time of Contract award to increase or decrease, by the percentage (s) for items as indicated in the TDS.

42. Notice of Intention to enter into a Contract

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract / Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;



43. Standstill Period

43.1 The Contract shall not be awarded earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied candidate to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

43.2 Where standstill period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract to the successful Tenderer.

44. Debriefing by the Procuring Entity

44.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 41, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

45. Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter. 24

46. Signing of Contract

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

47. Performance Security

47.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next lowest Evaluated Tender.



47.3 Performance security shall not be required for a contract, if so specified in the TDS.

48. Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish and publicize the awarded contract at its notice boards, entity website; and on the Website of the Authority in manner and format prescribed by the Authority. At the minimum, the notice shall contain the following information:

- a) name and address of the Procuring Entity;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration.
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening;

49. Procurement Related Complaints and Administrative Review

49.1 The procedures for making a Procurement-related Complaint are as specified in the TDS.

49.2 A request for administrative review shall be made in the form provided under contract forms.

TENDER DATA SHEET (TDS)

The following specific data shall complement, : Particulars Of Appendix To Instructions To Tenders or amend the provisions in the Instructions to (ITT). Whenever there is a conflict, the provisions shall prevail over those in ITT. ITT Reference

A. General

ITT 1.1

The reference number of the Invitation for Tenders is: *MSU/T/007/2023-2024*
The Procuring Entity is: **MASENO UNIVERSITY**
The name of the Contract is: **Tender Provision Of Provision Of ERP Maintenance and Enhancement Services with 3 Year Support Plan**

ITT 1.2(a)

[delete if not applicable]
Electronic –Procurement System
The Procuring Entity shall use the following electronic-~~t~~ system to manage this Tendering process:
[insert name of the e-system and full address or link]
The electronic-procurement system shall be used to following aspects of the Tendering process:
[list aspects here and modify the relevant parts of the TDS accordingly e.g., issuing Tendering submissions of Tenders, opening of Tenders]

ITT 2.3

The Information made available on competing firms is N/A

The firms that provided consulting services for the contract being tendered for are:N/A

ITT 3.1

Maximum number of members in the Joint Venture be:N/A



ITT 3.7	A list of debarred firms and individuals is available on website: www.ppra.go.ke
ITT 3.11	Tenderers shall be required to be to be registered with Maseno University.
B. Contents of Tendering Document	
ITT 6.1	<p>(a) Address where to send enquiries is:, Vice Chancellor Maseno University, Private Bag. Maseno. Physical Address; Main Campus, Maseno University New Administration Block Ground floor.</p> <p>(b) The Procuring Entity publish its response at 1 _____</p>
ITT 6.2	<p>A pre-tender conference will be held/not be held (<i>sel</i> _____ (<i>specify date and</i> _____ (<i>specify city, stree</i> <i>floor and room</i>) N/A</p>
ITT 6.3	<p>The questions to reach the Procuring Entity not _____ (<i>specify date and time</i>).</p>
ITT 6.5	<p>The Minutes of the Pre-Tender meeting shall be publish the website _____N/A</p>
C. Preparation of Tenders	
ITT 10 (j)	<p>The Tenderer shall submit the following additional docu Tender: <i>[list any</i></p>



2.1 **Eligible Tenderers**

- 2.1.1 This Invitation for Tender is open to all.
- 2.1.2 Successful tenderers shall complete supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.3 Maseno University's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.4 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 Maseno University 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.
- 2.1.5 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 **Eligible Goods**

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or 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
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3 **Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and Maseno University, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4. **The Tender Document**

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 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) Contract Form



- (ix) Bank Guarantee for Advance Payment Form
- (x) Manufacturer's Authorization Form
- (xi) Confidential Business Questionnaire

2.4.2 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.

2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify Maseno University in writing or by post at the entity's address indicated in the Invitation to Tender. Maseno University 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 Maseno University. 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.

2.5.2 Maseno University 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.

2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, Maseno University, 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 amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

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

2.7 Language of Tender

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and Maseno University, 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.

2.8 Documents Comprising of Tender

2.8.1 The tender prepared by the tenderers shall comprise the following components

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.1 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 2.2 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 2.14

2.9 Tender Forms

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

2.10 Tender Prices

- 2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- 2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
- 2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

2.11 Tender Currencies

- 2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

2.12 Tenderers Eligibility and Qualifications

- 2.12.1 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 its tender is accepted.
- 2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to Maseno University's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
- 2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to Maseno University's satisfaction;
- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
 - (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.



2.13 Goods Eligibility and Conformity to Tender Documents

- 2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract
- 2.13.2 The documentary evidence of the eligibility of the goods shall consist of a 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.
- 2.13.3 The documentary evidence of conformity of the goods 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 goods;
 - (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 goods for a period of two (2) years, following commencement of the use of the goods by Maseno University; 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.
- 2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(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.

2.14 Validity of Tenders

- 2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by Maseno University, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by Maseno University as non-responsive.
- 2.15.2 In exceptional circumstances, Maseno University 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.. A tenderer may refuse the request. A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

- 2.16.1 The tenderer must fill two copies of tender document, clearly marking each as **"ORIGINAL TENDER"** and **"COPY OF TENDER,"** as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons



signing the tender.

2.16.3 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.

2.17 Sealing and Marking of Tenders

2.17.1 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.

2.17.2 The inner and outer envelopes shall:

- (a) be addressed to Maseno University using the address given in the Invitation to Tender: document
- (b) bear, tender number and name in the Invitation for Tenders and words, “DO NOT OPEN BEFORE,” **8th November, 2023 at 11.00 a.m.as per the University wall clock at the reception**
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”.

2.17.3 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by Maseno University at the address specified under paragraph 2.17.2 no later than **8th November, 2023 at 11.00 a.m.as per the University wall clock at the reception**

2.18.2 Maseno University 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 Maseno University and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.19 Modification and Withdrawal of Tenders

2.19.1 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 Maseno University prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. 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.

2.19.3 No tender may be modified after the deadline for submission of tenders.

2.19.4 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 2.14.7

2.19.5 Maseno University may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.



2.19.6 Maseno University 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.

2.20 Opening of Tenders

2.20.1 Maseno University will open all tenders in the presence of tenderers' representatives who choose to attend, at **8th November, 2023 at 11.00 a.m.as per the University wall clock at the reception** and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as Maseno University, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 Maseno University will prepare minutes of the tender opening.

2.21 Clarification of Tenders

2.21.1 To assist in the examination, evaluation and comparison of tenders Maseno University 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.

2.21.2 Any effort by the tenderer to influence Maseno University in Maseno University's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.22 Preliminary Examination

2.22.1 Maseno University 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.

2.22.2 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. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 Maseno University 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.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 Maseno University 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. Maseno University's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by Maseno University and may not subsequently be made responsive by the tenderer by correction of the non-conformity.



2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, Maseno University will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Tenders

2.24.1 Maseno University will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 15 days of the validity period from the date of opening the tender.

2.24.3 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 Preference

2.25.1 Preference where applicable shall not exceed 15%

2.26 Contacting Maseno University

2.26.1 Subject to paragraph 2.21 no tenderer shall contact Maseno University on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

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

2.27 Award of Contract

(a) Post-qualification

2.27.1 In the absence of pre-qualification, Maseno University 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.

2.27.2 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 2.12.3 as well as such other information as Maseno University deems necessary and appropriate.

2.27.3 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 Maseno University will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) Award Criteria

2.27.4 Maseno University 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.



(c) **Procuring entity's Right to Vary quantities**

2.27.5 Maseno University reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

(d) **Procuring entity's Right to Accept or Reject Any or All Tenders**

2.27.6 Maseno University 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 Maseno University's action

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, Maseno University will notify the successful tenderer in writing that its tender has been accepted.

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, Maseno University will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

2.29 Signing of Contract

2.29.1 At the same time as Maseno University notifies the successful tenderer that its tender has been accepted, Maseno University will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.29.2 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.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to Maseno University.

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from Maseno University, 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 Maseno University.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event Maseno University may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 Maseno University requires that tenderers observe the highest standard of ethics during the procurement



process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of Maseno University, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive Maseno University of the benefits of free and open competition;

2.31.2 Maseno University 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.

2.31.3 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 - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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

- (a) “The Contract” means the agreement entered into between Maseno University 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 Maseno University under the Contract.
- (d) “Maseno University” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

3.2	Application
3.2.1	These General Conditions shall apply in all Contracts made by Maseno University for
	ERP Maintenance and Enhancement with 3 Year Support Plan
3.3	Country of Origin

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

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

3.4	Standards
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3.4.1	The Goods supplied under this Contract shall conform to the standards mentioned in the
	Technical Specifications.
3.5	Use of Contract Documents and Information

- 3.5.1 The tenderer shall not, without Maseno University'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 Maseno University in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without Maseno University's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of Maseno University and shall be returned (all copies) to Maseno University on completion of the Tenderer's performance under the Contract if so required by Maseno University

3.6	Patent Rights
3.6.1	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 part thereof in Maseno University's country

3.8 **Inspection and Tests**

- 3.8.1 Maseno University or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. Maseno University shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. 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 Maseno University.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, Maseno University 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 Maseno University.
- 3.8.4 Maseno University's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by Maseno University or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any
Warranty or other obligations under this Contract.

3.9 **Packing**

- 3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

3.10 **Delivery and Documents**



3.10.1 Delivery of the Goods 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

3.11 Insurance

3.11.1 The Goods 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.

3.12 Payment

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by Maseno University as specified in the contract

3.13 Prices

3.13.1 Prices charged by the tenderer for goods delivered and services 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.

3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.13.4 Price variation request shall be processed by Maseno University within 30 days of receiving the request.

3.14. Assignment

3.14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with Maseno University's prior written consent

3.15 Subcontracts

3.15.1 The tenderer shall notify Maseno University 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

3.16 Termination for default

3.16.1 Maseno University 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 goods within the period(s) specified in the Contract, or within any extension thereof granted by Maseno University
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of Maseno University has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event Maseno University 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 Maseno University for any excess costs for such similar goods.

3.17 Liquidated Damages

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, Maseno University 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.

3.18 Resolution of Disputes

3.18.1 Maseno University and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 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 adjudication in an agreed national or international forum, and/or international arbitration.

3.19 Language and Law

3.19.1 The language of the contract and the law governing the contract shall be English Language and the Laws of Kenya respectively unless otherwise stated.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Tender shall in addition to the General Conditions of Tender in Section III form part of the contract.

3. Payment

Tenderers are required to indicate terms of payment

4. Specifications

The tenderer must indicate all related packages and programme of how they deliver the services

SECTION V - TECHNICAL SPECIFICATIONS

5.1 GENERAL

5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply.

5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.

5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. Maseno University reserves the right to



reject the products, if such deviations shall be found critical to the use and operation of the products.

5.1.4 The tenderers are requested to present information along with their offers as follows:

- (i) Shortest possible delivery period of each product
- (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

SECTION VI PRICE SCHEDULE FOR GOODS

No	Item Description	Unit of issue	Quantity	Unit Price	Total Price
1	Provision of ERP Maintenance and Enhancement services with 3 Year Support Plan Specifications: As stated below under B- TECHNICAL EVALUATION				

Days to deliver goods _____

Name of tenderer _____

Signature of tenderer _____

Official Rubber Stamp _____

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



SECTION VII - TENDER EVALUATION CRITERIA

The received tenders will be evaluated in three stages:

- A. Mandatory Requirements
- B. Technical Evaluation
- C. Financial Evaluation

A. MANDATORY REQUIREMENTS (MR)

The following mandatory requirements must be met notwithstanding other requirements in the documents:

NO	Requirements	Tenderer's Response
MR 1	Provide documentary evidence of the company's Certificate of Incorporation (Legal structure)	
MR 2	Provide copy of the company's current Certificate of Tax Compliance issued by Kenya Revenue Authority (KRA) Valid up to the date of tender opening.	
MR 3	Submit a completed company's profile using the Confidential Business Questionnaire provided in this tender document.	
MR 4	Submit a completed Form of Tender (duly signed and stamped by the tenderer	
MR 5	Tender Security Kshs 80,000.00	
MR 6	Provide copies of audited accounts for the company for the last three accounting years. Copy of registration certificate and practicing license from a recognized accounting body for the auditor(s) who audited the latest Annual Accounts and or financial statements of the bidder must also be attached.	
MR 7	Provide proof of authorization & support by the equipment manufacturers to sell/service the product in Kenya. A letter of authorization /Tenderer recommendation should be signed by the manufacturer.	
MR 8	Evidence of ICTA Certification in: ICTA 1: cloud computing ICTA 1: system and applications ICTA 1: information security (This shall be verified via https://accreditation.icta.go.ke/)	
MR 9	Evidence of Microsoft corporation certification	
MR 10	Provide copy of registration from the office of data protection commissioner for: Data controller Data processor (Verification will be done online)	
MR 11	Proof of having carried out work of similar nature: Must submit copy of LPO/letter of Award, Copy of contract, completion certificate and recommendation of successful implementation of a management Information System in at least one(1) public or private university/college	



B. TECHNICAL EVALUATION

The bidders will be evaluated on a Responsive/Non-responsive basis on all the items listed below. Only those bidders that are responsive on all the items will be subjected to financial evaluation.

No.	Module/Sub module	R/NR
1.	<p>Academic Module</p> <ul style="list-style-type: none"> • <i>Timetabling</i> • <i>Graduation related reports</i> • <i>Deferral management (online application and approvals)</i> • <i>Exit management (inter university transfers, inter/intra-faculty transfers etc.),</i> • <i>postgraduate students' management, Appropriate Reporting)</i> • <i>Student's status tracking</i> <p>Admissions management</p> <ul style="list-style-type: none"> • <i>Online application and approvals,</i> • <i>Application status notifications to applicants,</i> • <i>Admission management (admissions analysis dashboard, Appropriate Reporting)</i> 	
2.	<p>Examination management</p> <ul style="list-style-type: none"> • <i>Halt enforcement</i> • <i>Resit examination</i> • <i>Retake Examination</i> • <i>Supplementary examination</i> 	
3.	<p>Finance Module</p> <ul style="list-style-type: none"> • <i>Bank Reconciliations (Automatic matching of transactions),</i> • <i>Part claims (Operationalization of part-time management module)</i> • <i>Appropriate financial Reporting)</i> • <i>Chart of accounts and transaction posting</i> 	
4.	<p>Procurement Module</p> <ul style="list-style-type: none"> • <i>E-procurement</i> • <i>Procurement Planning and Budgeting</i> • <i>Inventory Control and Stores Management</i> • <i>Asset Disposal</i> • <i>Appropriate Reporting</i> 	
5.	<p>Administration & Human Resources Module</p> <ul style="list-style-type: none"> • <i>Recruitment Module,</i> • <i>Promotions,</i> • <i>Salary Increment,</i> • <i>Contract Appointment,</i> • <i>Appraisals,</i> • <i>Management of students on attachment</i> • <i>Exit and succession management</i> • <i>Appropriate Reporting</i> • <i>Ask HR(implement a tool for HR to gather feedback from members of staff.</i> 	
6.	<p>Student Affairs Module</p> <ul style="list-style-type: none"> • <i>Work Study</i> • <i>Student Disciplinary</i> • <i>Clubs and societies</i> • <i>Election management</i> 	



	<ul style="list-style-type: none"> • <i>Students' leave absence management</i> • <i>Appropriate Reporting</i> <p>Hostels Management</p> <ul style="list-style-type: none"> • <i>Accommodation billing</i> • <i>Room allocation slips generation</i> • <i>Handling of hostel related complaints,</i> • <i>Appropriate Reporting</i> 	
7.	<p>Health Services Module</p> <ul style="list-style-type: none"> • <i>Clinical Decision Support</i> • <i>Order Entry and Prescribing</i> • <i>Health Information and Appropriate Reporting</i> • <i>Pharmacy management</i> • <i>Referrals management</i> • <i>Dependents management</i> • <i>Health inventory management</i> • <i>Laboratory tests listing and enhancement</i> • <i>Appropriate Reporting</i> 	
8.	<p>Transport/Fleet management</p> <ul style="list-style-type: none"> • <i>Vehicle allocation and management</i> • <i>Fuel requisitions</i> • <i>Vehicle Repair/maintenance and Garage operations management</i> • <i>Insurance management</i> • <i>Vehicle disposal management</i> • <i>Vehicle acquisition and management</i> • <i>Driver and user allocation to fleets</i> • <i>Fleet tracking</i> 	
9.	<p>Security</p> <ul style="list-style-type: none"> ➤ <i>Visitors registration and recording,</i> ➤ <i>Security Incidence Records</i> ➤ <i>Tracking of all devices connected to MIS/ERP at any given time and possible services being accessed.</i> ➤ <i>Notify course lecturers on any modifications done to marks relating to their</i> 	
10.	<p>Students' Portal</p> <ol style="list-style-type: none"> i. <i>Streamline profile photo upload</i> ii. <i>Exit evaluation form; students to evaluate the University upon graduation</i> iii. <i>Caution money refund application.</i> iv. <i>Graduation application; through this students should confirm their order of they should feature in their certificates.</i> v. <i>Registration for;</i> <ul style="list-style-type: none"> • <i>Resit Examination</i> • <i>Supplementary Examination</i> • <i>Retake Examination</i> vi. <i>Students' notice board where any information intended for students can be p</i> <i>The notice board should be in such a way that it's the first page a student vi</i> <i>login to the portal.</i> 	



11.	Integration with Financial Institutions <ul style="list-style-type: none"> • <i>Handle payment duplications arising from Equity bank integration buffer when the service gets into an error state</i> 	
12.	Staffs' Portal <ol style="list-style-type: none"> <i>Management of internal Documents and notices.</i> <i>Staff notice board where any information intended for staff can be posted.</i> 	
14.	Utilities <ol style="list-style-type: none"> <i>Bulk Messaging (The system should have the capability to send bulk sms to users/students/staff as required based on contacts already captured in the system)</i> <i>Bulk emailing</i> 	
15.	Hotel Management <ul style="list-style-type: none"> • <i>Guest Registration and Management</i> • <i>Room booking and management</i> • <i>Cash management and invoicing</i> • <i>Restaurant and bar management Inventory control</i> • <i>Housekeeping management</i> • <i>Guests' complaints and feedback handling mechanism</i> • <i>KRA ETR receipt on all payments</i> • <i>Appropriate Reporting</i> 	
16.	Stores Management <ul style="list-style-type: none"> • <i>Inventory management</i> • <i>Stores requisitions</i> • <i>Order transfers</i> • <i>Stock-taking procedures</i> • <i>Appropriate Reporting</i> 	
17.	Part-time lecturer Management <ul style="list-style-type: none"> • <i>Appointment letters</i> • <i>Part time claims management</i> • <i>Part time payment voucher management</i> • <i>Part time payments tracker</i> • <i>Appropriate Reporting</i> 	
19.	Quality Assurance Management <p><i>The system should provide a mechanism to audit quality across all areas of ERP to ensure quality is attained and maintained. This should include among others;</i></p> <ul style="list-style-type: none"> ➤ <i>Online audit of QMS</i> ➤ <i>Online Course and instructor/Lecturer evaluation</i> ➤ <i>Tracking of Examination Process from setting to result generation.</i> 	
21.	Certificate Issuance Module <p><i>The module should provide a mechanism for tracking certificate issuance process and automatically generate invoices for storage fees for certificates not picked within stipulated time.</i></p>	
23.	E-learning Integration <p><i>The system should provide for integration with existing e-learning system to enable students to access their examination results and fee payment history.</i></p>	



24.	Library Integration <i>The system should provide for an integration with the existing library system (KOH</i>	
25.	Mobile Application <i>Implementation of a mobile app that has the capability of reading barcode on student smart card and use the information to retrieve the following student details from the</i> <ul style="list-style-type: none"> • <i>Fee balance</i> • <i>Current status</i> • <i>Program of study</i> • <i>Year of study</i> 	

C. FINANCIAL EVALUATION

To qualify to financial evaluation stage bidders are expected to have met all the technical requirements above.

Stage 3: Financial Stage

Only bidders who shall have met all the requirements in the technical stage shall move to financial evaluation stage.

The lowest evaluated bidder who met our specification shall be awarded the contract.



SECTION VIII - STANDARD FORMS

8.1 FORM OF TENDER

Date _____

Tender No. _____

To: Maseno University
Private Bag, MASENO.

Gentlemen and/or Ladies:

1. 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 and commission

(..... (insert equipment description) 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.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to _____ percent of the Contract Price for the due performance of the Contract , in the form prescribed by(Maseno University).

4. 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 and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

6. 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 _____



8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

Part 1 – General:

Business Name

Location of business premises.....

Plot No.....Street/Road.....

Postal Address Tel No. Fax

E mail.....

Nature of Business.....

Registration Certificate No.....

Maximum value of business which you can handle at any one time – Kshs.....

.....

Name of your bankers Branch

Part 2 (a) - Sole Proprietor

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

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

Citizenship details.....

Part 2 (b) Partnership 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.

Name	Nationality	Citizenship	Details	Shares
1.				
2.				
3.				
4.				
5.				
6.				
Date.....Signature of Candidate.....				



8.4 CONTRACT FORM

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

WHEREAS Maseno University 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) Maseno University’s Notification of Award
3. In consideration of the payments to be made by Maseno University to the tenderer as hereinafter mentioned, the tender hereby covenants with Maseno University to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. Maseno University 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 Maseno University

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

(Amend accordingly if provided by Insurance Company)

[Date]



8.7 MANUFACTURER'S AUTHORIZATION FORM

To *Maseno University*
Private Bag
MASENO.

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.



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



