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TENDER NO: MSU/T/003/2022-2023

**CONTRACT NAME: SUPPLY AND DELIVERY OF BULK GAS
REFILL AT MASENO UNIVERSITY**

(OPEN TO ALL)

CLOSING DATE: 20TH SEPTEMBER, 2022

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Introduction

- 1.1 This Standard Tender Document has been prepared for use by public entities in Kenya
- 1.2 The following general directions should be observed when using the document.
 - (a) Specific details should be furnished in the Invitation to Tender and in the special conditions of contract. The final documents to be provided to the tenderers should not have blank spaces or give options
 - (b) The Instructions to Tenderers and the general conditions of contract should remain unchanged. Any necessary amendments to these parts should be made through the special conditions of contract and the appendix to instructions to tenderers.
- 1.3
 - (a) Information contained in the Invitation to Tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate and shall indicate any important tender requirements.
 - (b) The Invitation to Tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following the invitation for expression of interest for which the invitation is issued.

SECTION I INVITATION TO TENDER

TENDER REF NO: MSU/T/003/2022-2023

TENDER NAME: SUPPLY AND DELIVERY OF BULK GAS REFILL AT MASENO UNIVERSITY

Interested and eligible candidates may obtain further information; as pertains to this tender from the Procurement Office, Maseno University (Tel: +254 (057) 351622, 351008, 351011 Fax: + 254 (057) 351221, 351432, 0722203411/0703591231) during normal working hours from Monday to Friday. Email: [**po@maseno.ac.ke**](mailto:po@maseno.ac.ke).

- 1.1 A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of Kshs.1,000.00 deposited at KCB Luanda **Account No: 1108378226**.or be downloaded free from the University's website [*www.maseno.ac.ke*](http://www.maseno.ac.ke).
- 1.2 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number **MSU/T/003/2022-2023** and be deposited in the Tender Box 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 ***20th September 2022 at 11.00am as per the University clock at the reception.*** Late bids will not be accepted and will be returned unopened.
- 1.3 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.
- 1.4 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend on ***20th September 2022 at 11.00am as per the University clock at the reception*** in the Procurement Boardroom- Main Campus.
- 1.5 Canvassing or lobbying for the award of the above tender directly or through a proxy shall lead to automatic disqualification of the tenderer.

Sophia A. Ogila
For: Vice Chancellor

SECTION II - INSTRUCTIONS TO TENDERERS

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 Maseno University's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by 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.
- 2.1.4 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 The price to be charged for the tender document shall not exceed Kshs.1,000/=

2.3.3 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) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

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 University'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 the 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 60 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 Maseno University'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 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of 1% of the tender price.

- 2.14.3 The tender security is required to protect Maseno University against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7
- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to Maseno University and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by Maseno University as non responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by Maseno University.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by Maseno University on the Tender Form; or
 - (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.27
 - or
 - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 90 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. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security.

A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

2.16.1 Tenderer shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.

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 at the address given in the Invitation to Tender:

(c) Bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” (*20th September 2022 at 11.00am as per the University Clock at the reception*).

2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, Maseno University 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 not later than **20th September 2022 at 11.00am as per the University 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 not 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 **11.00am on 20th September, 2022** 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

2.20.3 and such other details as Maseno University, at its discretion, may consider appropriate, will be announced at the opening.

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

2.22.3 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 30 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 allowed in the evaluation of tenders 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 any thing 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.

Appendix to Instructions to Tenderers

Notes on the Appendix to the Instruction to Tenderers

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. Maseno University should specify in the appendix information and requirements specific to the circumstances of Maseno University, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
 - (a) The information that specifies and complements provisions of Section II to be incorporated
 - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated.
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<i>Open to all.</i>
2.30	<i>Not Applicable</i>
2.11 & 2.23.1	<i>Must be in Kenya Shillings</i>
2.14.1	<i>Not Applicable</i>
2.15.1	<i>Should be valid for 120 days</i>
2.16.2	<i>Pages must be numbered with a table of content.</i>
2.18.1	<i>20th September, 2022 at 11.00am as per the University Clock at the reception</i>
2.5.1	<i>Must be in writing</i>
2.7.1	<i>Must be in English</i>
2.25	<i>Not Applicable</i>
2.29.1	<i>As in 2.18.1 above</i>
2.30 & 3.7.1	<i>Performance security not required</i>

(Complete as necessary)

SECTION III: GENERAL CONDITIONS OF CONTRACT

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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 the procurement installation and commissioning of equipment

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**

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 Maseno University against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Maseno University's country

3.7 Performance Security

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to Maseno University the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to Maseno University as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to Maseno University and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to Maseno University, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by Maseno University and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

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 Maseno University 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.

3.20 Force Majeure

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

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

The clauses in this section are intended to assist Maseno University in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of Maseno University and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4. EVALUATION CRITERIA

The received tenders will be evaluated in three stages:

- A. Mandatory Requirements
- B. Technical Evaluation
 - a. Technical Specifications Evaluation
 - b. Technical Evaluation Criteria
- C. Financial Evaluation

STAGE 1: STATUTORY /MANDATORY DOCUMENTS

These are mandatory requirements and bidders are expected to provide all the documents in order to proceed to the next stage of evaluation. This stage shall be evaluated on a **RESPONSIVE(R) OR NOT RESPONSIVE (NR)** basis.

S/NO.	PARTICULARS	RESPONSIVE(R) OR NOT RESPONSIVE(NR)
1.	Form of tender (original duly signed and stamped by the tenderer)	
2.	Valid Copy of Tax Compliance Certificate /Tax Exemption Certificate, issued by KRA, valid up to and including the tender closing date.	
3.	Copy of PIN Certificate	

4.	Duly filled in Confidential Business Questionnaire (Company Profile) in the format provided.	
5.	Copy of Current Business Permit	
6.	Copy of Certificate of Business Registration	
7	Copy of Petroleum business License issued by Energy & Petroleum Regulatory Authority	
8.	Tender Security of 1% of the bid price	

To qualify to the Technical and Financial Stage, bidders are expected to score Responsive (R), to ALL the seven (7) items above.

B. TECHNICAL EVALUATION

a. Technical Specifications Evaluation

The Technical Specifications provided for the goods must be met for the bidders to qualify to proceed to the next stage for the evaluation (Financial Evaluation)

TECHNICAL EVALUATION

NO.	EVALUATION ATTRIBUTE	Weighting score	Max score %	Tenderer's response
T1	Proven Experience of the firm in the supply and delivery of Bulk Gas Refill. Bidder should provide evidence (references) of at least three- five clients which the firm has supplied with similar items	Each corporate client in the last 3years scores 10 marks up to a maximum of three-five(5) clients	20	
T2	Number of years in the business of supply of bulk gas refill	1- 3years and above 10% 2. Others Prorated at : $\frac{\text{No. of years} \times 10}{3}$	30	
T3	Financial Stability (Attach audited financial statements for the last 3 financial years) to enable us know your capacity.		30	
T4	Delivery/Completion period after the award of tender (the quoted period should be realistic)	Shortest delivery period: 20% Others prorated as follows: Shortest delivery period $\frac{\text{quoted} \times 20}{\text{Other delivery periods}}$	20	

Total score		100	
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C. FINANCIAL EVALUATION

This shall be done based on the lowest evaluated bidder who shall have met our specifications.

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>Performance Security not applicable</i>
3.8.2	<i>Not applicable</i>
3.12.1	<i>Payments shall be done upon completion of delivery of goods.</i>
3.13	<i>Price variation not allowed</i>

(Complete as necessary)

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 - SCHEDULE OF REQUIREMENTS

S/No	Item Description	Unit of Issue	Quantity	Days to deliver after contract signing
1.	Supply and Delivery of Bulk Gas Refill (Siriba campus and Main Campus @ 1800 kg each) for a period of 2 years.	Kg	86,400	

SECTION VII - PRICE SCHEDULE FOR GOODS

Name of tenderer _____ Tender Number _____ Page _____ of _____

S/No	Item Description	Unit of Issue	Quantity	Unit Price	Total Price	Country of origin	Days to deliver
1.	Supply and Delivery of Bulk Gas Refill (Siriba campus and Main Campus @ 1800kg each) for a period of 2 years.	Kg	86,400				

Signature of tenderer _____

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

SECTION VIII - STANDARD FORMS

Notes on the sample Forms

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to Maseno University.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

8.1 **FORM OF TENDER- TO BE FILLED**

Date _____

Tender No. _____

To: _____

[name and address of Maseno University]

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 an on behalf of _____

8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM-TO BE FILLED

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. Given details of all directors as follows				
	<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;"></td> <td style="width: 33%; text-align: center;">Name</td> <td style="width: 33%; text-align: center;">Nationality</td> <td style="width: 33%; text-align: center;">Citizenship Details</td> </tr> </table>		Name	Nationality	Citizenship Details
	Name	Nationality	Citizenship Details		
	Shares 1..... 2. 3. 4. 5				
	Date Signature of Candidate				

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

4. EVALUATION CRITERIA

The received tenders will be evaluated in three stages:

- D. Mandatory Requirements
- E. Technical Evaluation
 - a. Technical Specifications Evaluation
 - b. Technical Evaluation Criteria
- F. Financial Evaluation

STAGE 1: STATUTORY /MANDATORY DOCUMENTS

These are mandatory requirements and bidders are expected to provide all the documents in order to proceed to the next stage of evaluation. This stage shall be evaluated on a **RESPONSIVE(R) OR NOT RESPONSIVE (NR)** basis.

S/NO.	PARTICULARS	RESPONSIVE(R) OR NOT RESPONSIVE(NR)
1.	Form of tender (original duly signed and stamped by the tenderer)	
2.	Valid Copy of Tax Compliance Certificate /Tax Exemption Certificate, issued by KRA, valid up to and including the tender closing date.	
3.	Copy of PIN Certificate	
4.	Duly filled in Confidential Business Questionnaire (Company Profile) in the format provided.	
5.	Copy of Current Business Permit	
6.	Copy of Certificate of Business Registration	
7.	Copy of Petroleum business License issued by Energy & Petroleum Regulatory Authority	
8.	Tender Security of 1% of the bid price	

To qualify to the Technical and Financial Stage, bidders are expected to score Responsive (R), to ALL the seven (7) items above.

D. TECHNICAL EVALUATION

b. Technical Specifications Evaluation

The Technical Specifications provided for the goods must be met for the bidders to qualify to proceed to the next stage for the evaluation (Financial Evaluation)

TECHNICAL EVALUATION

NO.	EVALUATION ATTRIBUTE	Weighting score	Max score %	Tenderer's response
T1	Proven Experience of the firm in the supply and delivery of Bulk Gas Refill. Bidder should provide evidence (references) of at least four clients which the firm has supplied with similar items	Each corporate client in the last 3years scores 10marks up to a maximum of three-five(5) clients	20	
T2	Number of years in the business of supply of bulk gas refill	1- 3years and above	30	
T3	Financial Stability (Attach audited financial statements for the last 3 financial years) to enable us know your capacity.	1- 3years and above	30	

T4	Delivery/Completion period after the award of tender (the quoted period should be realistic)	Shortest delivery period	20	
	Total score		100	

E. FINANCIAL EVALUATION

This shall be done based on the lowest evaluated bidder who shall have met our specifications.

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)

8.7 MANUFACTURER'S AUTHORIZATION FORM

To *[name of Maseno University]*

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.

8.8 LETTER OF NOTIFICATION OF AWARD

Maseno University
Private Bag
Maseno.

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) _____
