

## SECTION I

## INVITATION TO TENDER

**TENDER NAME:** LEASING OF OFFICE SPACE WITHIN THE KISUMU CITY  
**TENDER REF:** QUOTATION NO. PCPB/05/2011-2012  
**DATE:** 4<sup>TH</sup> JANUARY 2012

- 1.1 The Pest Control Products Board (PCPB) invites sealed tenders from eligible candidates for Leasing of Office Space within the Kisumu City .
- 1.2 Interested eligible candidates may obtain further information and the tender documents from the Board's Western Regional office based in Kisumu City, Varsity Plaza, Kenyatta Avenue, 1<sup>st</sup> Flr Kekobi Block, Room 1D during normal office working hours.  
Telephone Contact No. 020-8068933 and E-mail [ksm@pcpb.or.ke](mailto:ksm@pcpb.or.ke)
- 1.3 Rent quoted should be net inclusive of all taxes and related costs, must be in Kenya Shillings and shall remain valid for (90) days from the closing date of the tender.
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box based at the PCPB Western Regional office based in Kisumu City, Varsity Plaza, Kenyatta Avenue, 1<sup>st</sup> Floor Kekobi Block Room 1D or be addressed to:  
  
The Regional Manager,  
Pest Control Products Board Western Regional Office  
P.O. Box 2757-40100,  
Kisumu  
  
so as to be received on or before Friday 13<sup>th</sup> January 2011, 10.30am.
- 1.5 The tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend at the above mentioned Western Regional office.

**Managing Director/Secretary**  
**Pest Control Products Board**

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## **SECTION II - INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1 This invitation for tenders is open to all tenderers eligible as described in the Appendix to Instruction to Tenderers. The Successful tenderer shall be contracted for the stipulated duration from the date of commencement (hereinafter referred to as the term) to be agreed on with the successful tenderer.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Public Procurement and Disposal Act, 2005.
- 2.1.3 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of Tendering**

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process

### **2.3 Contents of Tender Documents**

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.7 of the instructions to tenderers.
- (i) Instructions to tenderers
  - (ii) General Conditions of Contract
  - (iii) Special Conditions of Contract
  - (iv) Price Schedule
  - (v) Contract Form (Draft)
  - (vi) Confidential Business Questionnaire Form
- 2.3.2 The Tenderer is expected to examine all instructions, forms, terms and particulars in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

### **2.4 Clarification of tender Documents**

- 2.4.1 A prospective tenderer making inquiry on the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than four (4) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

2.4.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

## **2.5 Amendment of tender Documents**

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

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

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

## **2.6 Language of Tenders**

2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.7. Documents Comprising the Tender**

2.7.1 The tender prepared by the tenderer shall comprise the following components:

- (a) a Price Schedule completed in accordance with paragraph 2.9 and 2.10 below
- (b) documentary evidence established in accordance with paragraph 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

## **2.9. Tender Prices**

2.9.1 The tenderer shall indicate on the Price Schedules the rent payable per month and total rent for one year

2.9.2 Rent quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5

## **2.10. Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings.

## **2.11. Tenderers Eligibility and Qualifications**

- 2.11.1 Pursuant to paragraph 2.1.1 and 2.1.2 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted.
- 2.11.2 The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.13. Validity of Tenders**

- 2.13.1 Tenders shall remain valid for 90 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing.

## **2.14. Format and Signing of Tenders**

- 2.14.1 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **2.15 Sealing and Marking of Tenders**

- 2.15.1 The tenderer shall seal the proposal in an envelope, duly addressing the envelope to the Procuring entity at the address given in the Invitation to Tender and marking the envelope clearly with 'Quotation No. PCPB/05/2011-2012 for Leasing Office Space'

## **2.16. Deadline for Submission of Tenders**

- 2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than Friday 13<sup>th</sup> January 2012 by 10.30am.
- 2.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

## **2.17. Modification and Withdrawal of Tenders**

- 2.17.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.

- 2.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. a withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3 No tender may be modified after the deadline for submission of tenders.
- 2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity.

## **2.18. Opening of Tenders**

The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on Friday 13<sup>th</sup> January 2012 at 10.45am and in the location specified in the Invitation of Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance

- 2.18.1 The tender's names, tender modifications or withdrawals, tender prices, discounts will be announced at the opening.
- 2.18.2 The Procuring entity will prepare minutes of the tender opening, which will be submitted to tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of Tenders**

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

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail
- 2.20.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by the procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21. Conversion to single currency**

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

## **2.25 Award Criteria**

2.25.1 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.25.2 To qualify for contract awards, the tenderer shall have the following:-

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

## **2.27. Procuring entity's right to accept or reject any or all tenders**

2.27.1 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 contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

2.27.2 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.27.3 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.

## **2.28 Notification of Award**

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

2.28.2 The notification of award will constitute the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the unsuccessful tenderers shall be notified that their tenders have been unsuccessful.

2.28.3 The Procuring entity will promptly notify each unsuccessful Tenderer

## **2.29 Signing of Contract**

At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.29.1 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.29.2 The contract will be definitive upon its signature by the two parties.

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

## **2.31 Corrupt or Fraudulent Practices**

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

2.31.2 The Procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question

2.31.3 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

The following information for letting, leasing, licensing, tenancy, franchise or management contract of (*entity as appropriate*) shall complement, supplement, or amend, the provisions on the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the Instructions to Tenderers.

<b>INSTRUCTIONS TO TENDERERS REFERENCE</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS</b>
2.1.1	<i>Eligible tenderers- premises owners or duly authorized agents (proof of these to be provided)</i>
2.15.2	<i>Friday 13<sup>th</sup> January 2012 by 10.30am. Opening at 10.45am same day</i>
2.16.1	<i>As 2.15.2 above</i>
2.18.1	<i>As in 2.15.2 above</i>

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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 the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the rent payable to the tenderer under the Contract by the procuring entity for the full and proper performance of the contractual obligations
- (c) “The Procuring entity” means the organization seeking office space under this Contract
- (d) “The Contractor” means the organization or firm providing the office space under this Contract.
- (e) “GCC” means the General Conditions of Contract
- (f) “SCC” means the Special Conditions of Contract
- (g) “Day” means calendar day

### **3.2. Application**

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

### **3.3. Standards**

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of particulars of the tender.

### **3.4. Use of Contract Documents and Information**

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

### **3.7. Delivery of services and Documents**

3.7.1 Delivery of the services shall be made by the Contractor in accordance with the terms specified by the procuring entity in the schedule of requirements and the special conditions of contract

### **3.8. Payment**

3.8.1. The method and conditions of payment to be made to the procuring entity under this Contract shall be specified in the SCC

### **3.9. Prices**

- 3.9.1 Rent charged by the Contractor for particulars provided under the Contract shall not, with the exception of any price adjustments authorized in SCC vary from the rent quoted by the Contractor in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.
- 3.9.2 Contract price variations shall not be allowed for contract not exceeding one year (12 months)
- 3.9.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 3.9.4 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

### **3.10. Assignment**

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

### **3.11. Termination for Default**

- 3.11.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor terminate this Contract in whole or in part:
- (a) if the Contractor fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
  - (b) If the Contractor fails to perform any other obligation(s) under the Contract
  - (c) If the Contractor in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract
- 3.11.2 In the event the Procuring entity terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those un-delivered, and the Contractor shall be liable to the Procuring entity for any excess costs for such similar services. However the contractor shall continue performance of the contract to the extent not terminated.

### **3.12. Termination for insolvency**

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

### **3.13. Termination for convenience**

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

### **3.14 Resolution of Disputes**

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

### **3.15. Governing Language**

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

### **3.16. Applicable Law**

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

### **3.17 Force Majeure**

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

### **3.18 Notices**

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

## SECTION IV

## SPECIAL CONDITIONS OF CONTRACT

Tenderers are required to note that these 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 those in the GCC.

- (a) The office space is urgently required for immediate use by the Board's Western Regional office. As such, you are required to confirm when the available space will be available
- (b) The Board will require to undertake renovations to suit its office needs and you are therefore required to confirm a 'No Objection' to this requirement. The extent of the renovations will be within the contents of the contract to be agreed on with the successful tenderer. Tenderers are advised to attach a sample 'contract document' indicating your 'Terms and Conditions' of Lease
- (c) The Board's preferred Contract period is a 1 year renewable contract but tenderers are advised to confirm the period of contract that they are willing to provide and which should be renewable
- (d) The Board's preferred mode of payment is quarterly but tenderers are advised to indicate their preferred mode of payment (the two parties to the Contract will negotiate on this before signing of the Contract)
- (e) Disputes will as much as possible be resolved amicably failing which reference may be made to the Public Procurement Oversight Authority for advise
- (f) The Tenderers are required to submit:
  - 1. Incorporation/Registration Certificate
  - 2. Trade License
  - 3. A **Current** KRA Tax Compliance Certificate, PIN Certificate and VAT Certificate
  - 4. Audited Accounts for the last 2 years
  - 5. A copy of the Company Profile giving details of the bidder
  - 6. Completed Business Questionnaire

**Contract Form (Draft)**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_ between [name of Procurement entity] of [country of Procurement entity] (hereinafter called “the Procuring entity”) of the one part and [name of tenderer] of [city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS the Procuring entity invited tenders for the Lease of Office Space and has accepted a tender by the tenderer for the supply of the services in the sum of \_\_\_\_\_ [contract price in words in figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH 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 Price Schedule submitted by the tenderer;
  - (b) the General Conditions of Contract
  - (c) the Special Conditions of Contract; and
  - (d) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the office space and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

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