



Our Ref: KEBS/T013/2020-2023

10th March, 2021

M/s

Dear Sir/Madam,

ADDENDUM NO. 2 TO THE INTERNATIONAL TENDER NO. KEBS/T013/2020-2023 FOR PROVISION OF PRE-EXPORT VERIFICATION OF CONFORMITY (PVOC) TO STANDARDS SERVICES

The following amendments are made to the specified provisions of the Tender document for the Provision of Pre-Export Verification of Conformity (PVOC) to Standards Services.

1. RELATIONSHIP WITH THE PRINCIPAL TENDER DOCUMENT

Save where expressly amended by the terms of this Addendum, the Principal Tender Document shall continue to be in full force and effect.

The provisions of this Addendum shall be deemed to have been incorporated in and shall be read as part of the Principal Tender Document.

2. CHANGES IN THE TENDER DOCUMENT:

There are additional instructions under the Appendix to Instructions to Tenderers and are as follows;

APPENDIX: INSTRUCTIONS TO THE TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

No.	ITT Reference Clause	Particulars of Appendix
1.	2.1 Eligible Tenderers	<p>I. The tenderer must demonstrate existence and physical presence and must have the technical infrastructure and qualified personnel required for performing the required service.</p> <p>II. The tenderer must demonstrate existence of operational ICT infrastructure that can integrate with KEBS ICT Systems for seamless operations.</p> <p>III. The tenderer must be a legally registered company.</p> <p>IV. The tenderer shall have the financial capability to perform the contract and shall not have filed for bankruptcy or be under receivership.</p> <p>V. The tenderer shall be accredited to ISO/IEC 17020:2012 standard for inspection services.</p> <p>VI. The tenderer shall not have been debarred for a specified period of time of not less than 3 years and must not be precluded from entering into contract with KEBS or the Government of Kenya as per the Act.</p>

No.	ITT Reference Clause	Particulars of Appendix
		<p>VII. Except for client-provider relationships, the tenderer shall not be associated with activities that may suggest or be deemed to be in conflict with the inspection or certification services.</p> <p>VIII. The tenderer shall not be associated with another company proposing in this tender.</p> <p>1. Both the tenderer and its legal representatives shall be free of any impediment to contract with the client.</p> <p>IX. The tenderer shall present a tender as specified in Section V, to provide the services requested herein.</p> <p>X. The tenderer, their servant or agent shall not have offered any inducement to any personnel of Kenya Bureau of Standards.</p> <p>XI. The successful tenderer(s) shall be required to execute a contract with the client within thirty (30) days from the date of notification of award.</p> <p>XII. The successful tenderer shall provide the services for a period of three (3) years from the date of commencement specified in the contract (hereinafter referred to as the term).</p> <p>XIII. The tenderer and his or her sub-contractor, if any, is not debarred from participating in any procurement proceedings</p> <p>XIV. The tenderer has not been convicted of corrupt or fraudulent practices</p>
2	2.11.2 (10) Documentary evidence of financial capability	i. Verifiable proof that the company has the financial strength to perform the contract. For the purpose of this tender, Approved audited accounts for the last three years certified by a notary public.
3.	2.11.2 Documents of evidence of eligibility	<p>1. A list of all directors, their shareholding, giving full name, passport number, nationality, email address and daytime telephone numbers for each director.</p> <p>2. A notarized/certified copy of certificate of incorporation</p> <p>3. A notarized/certified copy of valid Tax Compliance Certificate</p> <p>4. Organizational Profile (Minimum content for qualification: brief history, business activities, organizational structure showing how the services shall be offered)</p> <p>5. Curriculum vitae / brief of the staff directly responsible for inspection</p> <p>6. executed declaration of conflict of interest by executive staff and directors</p> <p>7. filled and signed Confidential Business Questionnaire</p> <p>8. List of countries the tenderer intends to carry out the services</p>

No.	ITT Reference Clause	Particulars of Appendix
		<p>9. Notarized/certified copy(ies) of necessary license(s) to do business in each of the countries the tenderer intends to carry out the services</p> <p>10. Evidence of current accreditation to ISO/IEC 17020:2012 - Conformity assessment -- Requirements for the operation of various types of bodies performing inspection to provide services in the countries the tenderer listed in 8 above.</p> <p>11. Verifiable proof that the company has the financial strength to perform the services in form of approved audited account details for the last three (3) years (January 2017 - December 2019).</p> <p>12. The tenderer shall provide list and proof of competent staff involved in inspection.</p> <p>13. The tenderer shall also include a sworn statement made before a commissioner for oaths/notary public (attach valid practicing certificate as a commissioner for oaths/notary public) for the following:</p> <ul style="list-style-type: none"> i. That the company has not filed for bankruptcy or is not under receivership. ii. That the tenderer shall not have committed an offence relating to procurement under any other Act or Law of Kenya or any other jurisdiction or have been debarred for a specified period of time of not less than 3 years and must not be precluded from entering into contract with KEBS or the Government of Kenya as per the Act. iii. That, except for client-provider relationships the tenderer is not associated with any business that may lead to a conflict of interest or with another company proposing in this tender. iv. That both the tenderer and its legal representatives are free of any impediment to contract with the Kenya Bureau of Standards or the Government of Kenya and are not in any material legal dispute. <p>14. Tender security.</p> <p>15. Duly Filled and signed tender form</p> <p>16. Tender document must be paginated. All tenderers are required to submit their documents paginated in a continuous ascending order from the first page to the last page in this format, i.e., 1, 2, 3, ..., n (where n is the last page)</p> <p><i>Duly filled and signed tender form must be filled together with financial proposal</i></p>
4.	2.1(xxvi) Contract period	The contract period is three (3) years.

No.	ITT Reference Clause	Particulars of Appendix
5.	2.10.1 Tender Currencies	Prices to be quoted in United States Dollars (USD)
6.	2.12 Tender Security	<p><i>Tenders must be accompanied by Tender Security of United States Dollars 200,000 in accordance with clause 2.12.3 below. The format of the tender security is as specified in the Tender Security Form (30 days beyond the tender validity period.)</i></p> <p>The tender validity period is 180 days.</p> <p><i>The tender security shall be denominated in United States Dollars and shall be in the form of bank guarantee from a registered and licensed bank.</i></p>
7.	2.14.3 Tender presentation	<p><i>This is a ONE envelope tender. The financial and the technical proposals shall be presented in ONE envelope.</i></p> <p><i>The outer envelope of the original shall be clearly marked "Original" while the outer envelope of the each of the copies shall be clearly marked "Copy".</i></p>
8.	3.5.1 Performance Security	<i>The performance security shall be in a form of a bank guarantee valued USD 500,000. The validity of the bond shall be equivalent to the contract period.</i>
9.	Section 1 Invitation to Tender	<i>TENDER NO KEBS/T013/2020-2023 is an International Open Tender and shall be awarded under framework agreement for a period of three years as per section 114 of the Public Procurement and Disposal (PPAD) Act 2015</i>
10.	2.11.2 (C) Financial Evaluation	<p><i>An additional clause no. 5 has been added to cater for margin of preference to Kenyan Citizens as per Section 164(d) of the Public Procurement and Disposal Regulations (PPADR) 2020.</i></p> <p><i>The clause shall read as follows;</i></p> <p><i>5) Eight percent (8%) margin of preference where percentage of shareholding of Kenyan citizen is less than fifty percent (50%) but above twenty percent (20%). The base royalty shall be the highest royalty fee given. KEBS indicated royalty is fixed.</i></p> <p><i>For example;</i></p> <p><i>International Firm A without Kenyan shareholding has given the highest royalty of USD 40.</i></p> <p><i>International Firm B without Kenyan Shareholding has given royalty of USD 38</i></p> <p><i>International Firm C with Kenyan Shareholding has given royalty of USD 37</i></p> <p><i>One upon calculating will notice that International firm B percentage on the base is 5%</i></p> <p><i>International Firm C with Kenyan Shareholding percentage on the base is 7.5%</i></p> <p><i>Since International Firm C has Kenyan Shareholding it shall be preferred and awarded.</i></p> <p><i>The preference shall not surpass 8%</i></p>

No.	ITT Reference Clause	Particulars of Appendix
		<p>Note:</p> <p>i. Notarized documentation on proof of shareholding Must be presented to qualify for preference application.</p> <p>ii. Margin of preference shall only apply to Royalties only.</p>
11.	2.22.3 Mode of Award of Contract	<p><i>This is a multiple award tender.</i></p> <p><i>KEBS shall award the tender to the tenderer(s) that is (are) responsive to Technical and Financial bids with the highest royalty fee offer subject to a minimum of eight (8) tenderers (service providers). Where bidders tie in technical scores and are financial responsive both shall be awarded.</i></p> <p><i>Supposedly the tender does NOT achieve a minimum of eight (8) tenderers a possible re-tender may be done to achieve additional numbers of service providers to reach the minimum eight (8) service providers or even more.</i></p>

3. CLARIFICATION HAVE BEEN SOUGHT AS FOLLOWS:

Question 1

Reference is made to ADDENDUM NO.1 to above subject. We seek clarification on the below:

- a) **Notarization should be done at source:** Does this mean Notarization from the country where the bidder's Headquarter resides; or from every country that the bidder intends to bid for? What does Source mean?

Answer: The term "source" means, Notarization should be done from the Country where the bidder intends to bid for.

- b) **CV and Certificates to be certified by attorney:** Can the in-house attorney certify these documents? Could the inhouse attorney based in a different bidder's office certify the documents? Most offices have few staff and do not have inhouse attorney but makes use of the services of inhouse attorneys in other affiliate offices.

Answer: The in-house attorney can certify the said documents. Since most offices do not have in house attorney, the documents can be certified by the organization's attorney based at the Headquarters. Please note that, the documents certified by the attorney should be accompanied by the attorney's current/valid practicing certificate and or license for 2021.

Question 2

We refer to the above referenced tender and respectfully request clarification and possible re-consideration of the following clause found in the invitation to tender:

- a) **Clause 2.11.2 (a) (10) Accreditation to ISO 17020:** Evidence of current accreditation to ISO/IEC 17020:2012 - Conformity assessment

We take cognisance of the above requirement and seek clarification on the acceptance of ISO 17065 as an alternative in those countries where such accreditation is available and provided.

International Federation of Inspection Agencies (IFIA), now Testing, Inspection and Certification Council (TIC Council)" has developed a Code of Practice on Consignment Based Conformity Assessment (CBCA).@

This Code of Practice is designed to provide confidence to Governments and consumers that IFIA Members implementing CBCA programmes comply with a recognized industry code and are subject to annual audit to ensure such compliance. One of the requirements stipulated in this Code of Practice is given in clause 4.2 as follows.

4.2 "The IFIA Member shall demonstrate competence as an accredited conformity assessment body through accreditation to ISO Guide 65 (now replaced with ISO/IEC 17065), ISO 17020 or similar by an accreditation body signatory of the MRA of IAF/ILAC, as applicable. While the accreditation need not extend to every branch of the member's network, all branches engaged in the CBCA activity shall operate under the member's system that is subject to accreditation and be under the control of personnel deemed competent under the terms of the member's accreditation."

Based on the above requirement, conformity assessment bodies shall be accredited either to ISO/IEC 17065 or ISO/IEC 17020 or similar standards as applicable. The above clause does not require for accreditation to both the ISO/IEC 17065 and ISO/IEC 17020 standards.

ISO/IEC 17065 standard covers the requirements of ISO/IEC 17020 standard. The only difference is that ISO/IEC 17020 standard is very much focused on the inspection activity and personnel involved in the inspection process such as Inspectors, Inspection Manager/Technical Manager (however it is named) whereas ISO/IEC 17065 standard covers the entire certification process from receipt of application, application review, evaluation (via testing, inspection or audit), review, certification decision and issuance of product certification. When obtaining an accreditation to ISO/IEC 17065 standard, the inspection activity and competency of inspection personnel are also assessed by the accreditation body as part of the overall certification process performed by the Conformity Assessment Body (CAB) seeking ISO/IEC 17065 accreditation. Therefore, being accredited to ISO/IEC 17065 standard means that the inspection activity was also verified and found to be complying with ISO/IEC 17020 standard requirements.

Answer: Whereas KEBS appreciates the cooperation of Industry related bodies to streamline the way a business activity is carried out by way of codes of industry codes of practice, it also appreciates that the development of Conformity Assessment Standards is meant to address specific business concerns. KEBS is currently looking for Inspection Agencies with the capability to provide Pre-Export Verification of Conformity services based on the requirements of "ISO/IEC 17020: Conformity Assessment - Requirements for the operations of various types of bodies performing Inspection" for the countries that they apply for.

Question 3

We would like to seek further clarification mainly why Kenya was not included in Annex 6. As one is aware most local inspection companies are domiciled in Kenya offering services across Africa due to the strategic position of Kenya. We also notice there were 671 inspection services carried out in Kenya as per Annex 5 which are more than many of the countries listed in Annex 6.

Answer: The tender is seeking international inspection service providers that will offer inspection services at the country of exportation for goods destined to Kenya.

Question 4

When the consignment, the exporter, the country of origin/export or any related entities or individual are subject to sanctions set by international or national organizations such as the United Nations, European Commission, Office of Foreign Assets Control (OFAC) and any other authority from a country where the service provider operates. Therefore, as a service provider, we are required to comply with the regulations and sanctions applicable in such circumstances and countries.

As such, we may therefore decline to provide services due to specific request when the consignment, its products, the exporter, the importer, the country of origin/export or any related entities or individual are subject to such sanctions.

We are therefore seeking KEBS clarification as to whether such a decline to offer services would be considered as a breach of contract and subject to penalty.

Answer:

"When there are sanctions against a product/organization/individual or any entity by an internally recognized body like European commission, united nations etc. KEBS shall not penalize partners for failure to carry out inspections as under the PVoC program provided that the partner notifies KEBS in advance"

5. NOTE:

Addendum no. 1 is attached as an appendix to this addendum.

6. CLOSING DATE

The new closing date is Wednesday, 24th March 2021; 1100hrs (East African Time).

All other terms and conditions remain as per the Principal Tender Document (PTD).

Yours faithfully,
For: **KENYA BUREAU OF STANDARDS,**



Lt Col (Rtd.) BERNARD N NJIRAINI
MANAGING DIRECTOR

