# Invitation to Tender

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| **Tender Name: SUPPLY OF MOTORCYCLES** | **Tender No:** MCK-NBO-012-2021 |
| Location: Nairobi, Kenya | Correspondence Language(s): English |
| **Brief Summary Description of Project:** Despite significant investments to address acute malnutrition in Kenya’s ASALs over many years, acute malnutrition rates frequently remain at, or above emergency levels and often fail to improve, even when households’ access to food and quality healthcare increases. USAID Nawiri is a five-year development and food security activity (DFSA) funded by USAID Bureau of Humanitarian Assistance (BHA) that began on October 1, 2019. **The project goal is to sustainably reduce levels of persistent acute malnutrition (PAM) in Samburu and Turkana.**  This will be achieved through addressing the root causes of food insecurity and malnutrition while seeking sustainable solutions that go beyond humanitarian assistance. Through collective experience and a commitment to learning in the first two years, the project has significantly deepened its understanding of the local context and honed its ability to anticipate and act on challenges and opportunities that maximize progress towards its goal. Mercy Corps, in partnership with Save the Children, Research Triangle Institute (RTI), The BOMA Project, African Population and Health Research Center (APHRC), Center for Humanitarian Change (CHC) and Caritas Lodwar is looking to transition local, context-specific, and sustainable solutions into action.Mercy Corps Kenya intends to purchase motorcycles to be used in Turkana and Samburu Counties in Kenya |

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| **Tender Package Available from:****28 / September / 2021**  | **Tender Package Pickup Location:** [**https://www.mercycorps.org/tenders**](https://www.mercycorps.org/tenders) |
| **Deadline for Offer Submission:** **6 / October / 2021 at 1700hrs EAT** | **Submit Offers to:****tenders@mercycorps.org****Clearly state Tender number** “MCK-NBO-012-2021” on the subject line of the email. |

*Mercy Corps reserves the right to accept or reject any late offers*

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| **Questions and Answers (Q&A)** |
| If any, Submit Questions in writing to: ke-pr@mercycorps.org |
| Last Day for Questions:30 /September/ 2021 at 1700hrs EAT) | Questions will be answered by:4 / October/ 2021 at 1700hrs EAT) |
| Questions will be answered through: [**https://www.mercycorps.org/tenders**](https://www.mercycorps.org/tenders) |

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| **Documentation Checklist** |
| These documents are contained within this tender package:  | * Invitation to Tender
* General Conditions for Tender
* Criteria and Submittals
* Price Offer Sheet
* Supplier Information Form
* Scope of Work/Technical Specifications/BoQ
* Sample Contract
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# General Conditions for Tender

Mercy Corps invites offers for the goods, services and/or works described and summarized in these documents, and in accordance with procedures, conditions and contract terms presented herein. Mercy Corps reserves the right to vary the quantity of work/materials specified in the Tender Package without any changes in unit price or other terms and conditions and to accept or reject any, all, or part of submitted offers.

**2.1 Mercy Corps’ Anti-Bribery and Anti-Corruption Statement**

**Mercy Corps strictly prohibits**:

* *Any form of bribe or kickback in relation to its activities*

This prohibition includes any *request* from any Mercy Corps employee, consultant or agent for anything of value from any company or individual in exchange for the employee, consultant or agents taking or not taking any action related to the award of a contract or the contract once awarded.  It also applies to any *offer* from any company or individual to provide anything of value to any Mercy Corps employee, consultant or agent in exchange for that person taking or not taking any action related to the award of the contract or the contract.

* *Conflicts of interests in the awarding or management of contracts*

If a company is owned by, whether directly or indirectly, in whole or in part, any Mercy Corps employee or any person who is related to a Mercy Corps employee, the company must ensure that it and the employee disclose the relationship as part of or prior to submitting the offer.

* *The sharing or obtaining of confidential information*

Mercy Corps prohibits its employees from sharing, and any offerors from obtaining, confidential information related to this solicitation, including information regarding Mercy Corps’ price estimates, competing offerors or competing offers, etc.  Any information provided to one offeror must be provided to all other offerors.

* *Collusion between/among offerors*

Mercy Corps requires fair and open competition for this solicitation.  No two (or more) companies submitting bids can be owned or controlled by the same individual(s). Companies submitting offers cannot share prices or other offer information or take any other action intended to pre-determine which company will win the solicitation and what price will be paid.

* *Any form of exploitation, abuse, human trafficking or internal sexual misconduct*

Mercy Corps requires its partners to adhere to its Safeguarding policies including its policies on Child Safeguarding, Prevention of Sexual Exploitation and Abuse of Beneficiaries and Community Members, Anti-Trafficking and Sexual Misconduct (available at https://www.mercycorps.org/who-we-are/ethics-policies). Companies will be expected to ensure that they have the capacity to abide by these policies, that their employees and subcontractors understand these policies, and that they communicate to its employees and subcontractors the duty to report any violation or suspected violation. Mercy Corps will not engage with a company that is found to be in violation of these policies.

Violations of these prohibitions, along with all evidence of such violations, should be reported to:

[**http://mercycorps.org/integrityhotline**](http://mercycorps.org/integrityhotline)

Mercy Corps will investigate allegations fully and will take appropriate action.  Any company, or individual that participates in any of the above prohibited conduct, will have its actions reported to the appropriate authorities, will be investigated fully, will have its offer rejected and/or contract terminated, and will not be eligible for future contracts with Mercy Corps. Employees participating in such conduct will have his/her employment terminated.

Violations will also be reported to Mercy Corps’ donors, who may also choose to investigate and debar or suspend companies and their owners from receiving any contract that is funded in part by the donor, whether the contract is with Mercy Corps or any other entity.

**2.2 Tender Basis:**

* All offers shall be made in accordance with these instructions, and all documents requested should be furnished, including any required (but not limited to) supplier-specific information, technical specifications, drawings, bill of quantities, and/or delivery schedule. If any requested document is not furnished, a reason should be given for its omission in an exception sheet.
* No respondent should add, omit or change any item, term or condition herein.
* If suppliers have any additional requests and conditions, these shall be stipulated in an exception sheet.
* Each offeror may make one response only.
* Each offer shall be valid for the period of 180 days from its date of submission.
* All offers should indicate whether they include taxes, compulsory payments, levies and/or duties, including VAT, if applicable.
* Suppliers should ensure that financial offers are devoid of calculation errors. If errors are identified during the evaluation process, the unit price will prevail. If there is ambiguity on the unit price, the Selection Committee may decide to disqualify the offer.
* Any requests for clarifications regarding the project that are not addressed in written documents must be presented to Mercy Corps in writing. The answer to any question raised in writing by any offeror will be issued to that offeror. In some cases, Mercy Corps may choose to issue clarifications to all offerors. It is a condition of this tender that no clarification shall be deemed to supersede, contradict, add to or detract from the conditions hereof, unless made in writing as an Addendum to Tender and signed by Mercy Corps or its designated representative.
* This Tender does not obligate Mercy Corps to execute a contract, nor does it commit Mercy Corps to pay any costs incurred in the preparation and submission of bids. Furthermore, Mercy Corps reserves the right to reject any and all offers, if such action is considered to be in the best interest of Mercy Corps.

**2.3 Supplier Eligibility**

Suppliers may not apply, and will be rejected as ineligible, if they:

* Are not registered companies
* Are bankrupt or in the process of going bankrupt
* Have been convicted of illegal/corrupt activities, and/or unprofessional conduct
* Have been guilty of grave professional misconduct
* Have not fulfilled obligations related to payment of social security and taxes
* Are guilty of serious misinterpretation in supplying information
* Are in violation of the policies outlined in Mercy Corps Anti Bribery or Anti-Corruption Statement
* Supplier (or supplier’s principals) are on any list of sanctioned parties issued by; or are presently excluded or disqualified from participation in this transaction by the United States Government or United Nations by the United States Government, the United Kingdom, the European Union, the United Nations, other national governments, or public international organizations.

Additional eligibility criteria, if applicable, are stated in section 3.2 of this tender package.

**2.4 Response Documents**

Offerors must submit an offer in their own format and ensure it contains all the required documents and information specified in this tender. Where an itemized Price Offer Sheet is included in the tender package, the offeror must complete and submit it with the rest of their offer.

**2.5 Acceptance of Successful Response**

Documentation submitted by offerors will be verified by Mercy Corps. The winning offeror will be required to sign a contract for the stated, agreed upon amount.

**2.6 Certification Regarding Terrorism**

It is Mercy Corps’ policy to comply with humanitarian principles and the laws and regulations of the United States, the European Union, the United Nations, the United Kingdom, host nations, and other applicable donors concerning transactions with or support to individuals or entities that have engaged in fraud, waste, abuse, human trafficking, corruption, or terrorist activity. These laws and regulations prohibit Mercy Corps from transacting with or providing support to any individuals or entities that are the subject of government sanctions, donor rules, or laws prohibiting transactions or support to such parties.

# Criteria & Submittals

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| **3.1 Contract Terms** Mercy Corps intends to issue a **Fixed Price** contract to one or several company(ies) or organization(s). The successful offeror(s) shall be required to adhere to the statement of work and terms and conditions of the resulting contract. The anticipated contract is incorporated in Section 6 herein. By submitting an offer, offerors certify that they understand and agree to all of the terms and clauses contained in Section 6. |
| **3.2 Specific Eligibility Criteria** Eligibility criteria must be met, and the corresponding supporting documents listed below under “Tender Submittals” **must** be submitted with offers. Offerors who do not submit these documents may be **disqualified** from any further technical or financial evaluation.**Eligibility Criteria:*** The offeror must be legally registered
* The offeror must be in good standing with its governing tax authority
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| **3.3 Tender Submittals**Documents and required information listed in tender submittals are necessary to support the eligibility criteria and to conduct technical evaluations of received offers (and due diligence). While absence of these documents and/or information does not denote mandatory disqualification of suppliers, the lack of these items has the potential to impact the technical evaluation of an offer severely and negatively.**Documents supporting the Eligibility Criteria:** * Legal Business Registration-Certificate of Incorporation/ Certificate of Registration
* CR 12 or Memorandum of Association
* Latest Tax Registration Certificate- Valid PIN & Tax Compliance certificate from Kenya Revenue Authority
* Valid Business Permit/ Trade License from the County Government

**Documents to conduct the Technical Evaluation and additional Due Diligence:*** Company Profile, 2-page max
* References from previous work projects (including contact information)

**Price Offer:**The Price offer is used to determine which offer represents the best value and serves as a basis of negotiation before award of a contract. As a Fixed-Price contract, the price of the contract to be awarded will be an all-inclusive fixed price basis, either in the form of a total fixed price or a per-unit/deliverable fixed price. No profit, fees, taxes, or additional costs can be added after contract signing. Offerors must show unit prices, quantities, and total price, as displayed in the Offer Sheet in Section 4. All items must be clearly labeled and included in the total offered price. Offerors must include VAT and customs duties in their offer  |
| **3.4 Currency** Offers should be submitted in: KES Kenyan Shillings.Payments will be made in: KES Kenyan Shillings. |

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| **3.5 Tender Evaluation** (**LPTA Selection Method**)Based on the above submittals, a Mercy Corps Tender Committee will conduct a tender evaluation process. Mercy Corps reserves the right to accept or reject any or all bids, and to accept the offer(s) deemed to be in the best interest of Mercy Corps. MC will not be responsible for or pay for any expenses or losses which may be incurred by any Offeror in the preparation of their tender.Evaluations will be conducted as described in the following subsections: |
| **3.5.1 Technical Evaluation** ***Lowest Price, Technically Acceptable (LPTA)***Mercy Corps Tender Committee will conduct a technical evaluation which will grade technical criteria on a pass/fail basis. Supplier’s bids **must meet the minimum technical standard** established here to receive a passing mark. Any offerors who receive a failing mark on any criteria will be automatically disqualified from the tender process.Only offerors who pass all criteria will move on to the next round of evaluation.Pass/fail technical criteria are as follows:

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| **Technical Criteria** | **Pass or Fail?** |
| **Product Technical Specifications /equivalent**

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| **SPECIFICATIONS** |  **Check** |
| Overall length x width x height | 2.020 x 745 x 1.080mm |  |
| Seat height | 790mm |  |
| Wheelbase | 1.300mm |  |
| Minimum ground clearance | 180mm |  |
| Wet weight | 125kg |  |
| Engine type | Air-cooled, 4-stroke, SOHC, 2-valve |  |
| Cylinder arrangement  | Single cylinder |  |
| Displacement | 123.6cc |  |
| Bore x stroke | 54.0 x 54.0mm |  |
| Compression ratio | 10.0:1 |  |
| Maximum power | 7.4kW/7,800rpm |  |
| Maximum torque | 9.5N-m/6,500rpm |  |
| Starting system | Electric/Kick |  |
| Lubrication | Pressurized wet sump |  |
| Engine oil capacity | 1.2 liters |  |
| Fuel tank capacity | 12.0 liters |  |
| Carburation | MV28 |  |
| Ignition system | C.D. I |  |
| Batter type | CB5L-B (12V 5Ah |  |
| Clutch type | Wet multi-plate, coil spring |  |
| Transmission type | Constant mesh, 5 forward speeds |  |
| Gear ratios  | 1st:2.643, 2nd:1.778, 3rd :1.316, 4th: 1.045, 5th :0.875 |  |
| Frame type | Diamond |  |
| Tire size (Front) | 3.0-18 47P |  |
| Tire size (Rear) | 3.0-18 47P |  |
| Brake type (Front/Rear) | Disc/Drum |  |
| Suspension type (Front/Rear) | Telescopic/Swing arm |  |
| Headlight | 35W/35W x 1 |  |
| Position lamp | 5W x 1 |  |

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| **Delivery Time**: the supplier should be able to deliver the motorcycles within 3 weeks upon the receipt of a signed contact or Purchase Order. |  |
| **Manufacturer’s Authorization:** The supplier must provide a valid, genuine, and verifiable manufacturer’s authorization. |  |
| **Experience:** Evidence of experience in supply of similar items for at least 5 corporate clients, preferably NGOs, in the past 2 years demonstrated by LPOs, LSOs or contracts, or award letters, summary of services rendered, value of contract and contact persons, address and telephone numbers for each |  |
| **Warranty**: Each motorcycle supplied should carry a statement of warranty, motorcycle warranty minimum 6 months or 6,000 km whichever comes first.**After Sales Support:** the supplier should be able to offer after-sales-support in **Turkana and Samburu Counties in Kenya**. Motorcycles will be used in those two counties hence required a supplier who can offer repair and maintenance services including supply of spare parts. |  |
| **Financial Stability**: Provide 2 years audited accounts (2019 & 2020) and 2 months recent bank statement.  |  |

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| **3.5.2 Financial Evaluation and Price/Cost Analysis**All suppliers who passed all technical criteria will move on to the financial evaluation where the lowest price offer(s) will be accepted as the winning offeror(s) assuming the price is deemed fair and reasonable and subject to the additional due diligence in section 3.5.3. |
| **3.5.3 Additional Due Diligence**Upon completion of both the technical and financial evaluations Mercy Corps may choose to engage in additional due diligence processes with a particular offeror or offeror(s). The purpose of these processes is to ensure that Mercy Corps engages with reputable, ethical, responsible Suppliers with solid financials and the ability to fulfill the contract. Additional due diligence may take the form of the following processes (though it is not limited to):* Reference Checks
* Supplier’s facility visits
* Analysis of audited financial statements
* Determination of relations and affiliations between offerors
* Other appropriate documented method giving Mercy Corps increased confidence in the supplier’s ability to perform
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# Offer Form

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| **Offerors must submit their own independent offer including at least (but not limited to):*** All documents requested in the “Eligibility Criteria” section of this Tender Package
* All documents requested in the “Tender Submittals” section of this Tender Package
* All information listed in the “Documents Comprising the Bid” section below

**All offers must be duly signed (including position and full name of the signer) and stamped, with the date of completion.** |

***Documents Comprising the Bid***

The following information must be included in the offer of any potential offeror:

* **Cover Letter** explaining interest to be a contracted vendor or supplier. The content of the cover letter shall include the following information:
* A detailed specification of the offered goods, services and/or works
* Warranty (if necessary and appropriate)
* Delivery time
* Price validity date (for this purpose and as stated on the advertisement, quote given shall remain unchanged for 180 working days)
* A Price Offer detailing the unit price only using the **Price Offer Sheet** template provided in section 7
* Completed and signed Mercy Corps **Supplier Information Form** (template provided in section 7)
* Other important documents offeror feels need to be attached to support their bid

The original bid shall be signed by the offeror or a person or persons duly authorized to bind the offeror to the contract. Financial offer pages of the bid shall be initialed by the person or persons signing the bid and stamped with the company seal.

Any interlineations, erasures, or overwriting shall be valid only if they are initialed by the person or persons signing the bid.

# 5. Scope of Work/Technical Specifications

**5.1 Background**

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| **Item** | **Quantity** |
| Motorcycles | 16 |

**5.2 Technical Specifications**

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| **Specification Item** | **Minimum Specification**  |
| As indicated on page 6 above | As indicated on page 6 above |
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# 6. Sample Contract

This is the anticipated contract. However, if required, additional terms and conditions may be added by Mercy Corps in the final contract.

PURCHASE CONTRACT

**Contract No. \_\_\_\_\_\_\_**

THIS PURCHASE CONTRACT (the “**Contract**”) entered into as of \_\_\_\_\_\_\_\_\_\_ by and between MERCY CORPS, a State of Washington, U.S.A. nonprofit corporation having its principal office in Portland, Oregon, U.S.A. (“**Mercy Corps**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Supplier**") is as follows:

1. **Defined Terms**. Each of the following terms has the meaning given to such term on Schedule I attached hereto: Authorized Representative, Contract Number, Delivery Date, Delivery Location, Delivery Terms, Donor Terms, Goods, Packing Requirements, Pricing, and Specifications. Other terms are defined as specified throughout this Contract.
2. **Purchase and Sale of Goods**. Supplier will sell to Mercy Corps, and Mercy Corps will purchase and pay for, the Goods in accordance with the terms and conditions set forth in this Contract.
3. **Specifications**. The Goods must strictly comply with or exceed the Specifications listed in Schedule II. No deviation, substitution or change is permitted without Mercy Corps’ prior written consent.
4. **Purchase Order Amendments**. Mercy Corps may suspend Supplier's performance, increase or decrease the ordered quantities, or make changes for Mercy Corps’ reasonable business needs by written notice to Supplier (each, a **“Purchase Order Amendment**"). Unless mutually agreed, a Purchase Order Amendment does not apply to change the Goods timely and fully delivered and accepted before the date of the Purchase Order Amendment. If any change causes an increase or decrease in the cost of, or the time required for, Supplier's performance, an equitable adjustment may be made in the price or delivery schedule or both, if such adjustment is set forth in a Purchase Order Amendment signed by the Authorized Representative.
5. **Non-Exclusivity.** This Contract is not intended to create an exclusive relationship between the parties.
6. **Inspection, Acceptance and Rejection**.
	1. All Goods will be subject to Mercy Corps' inspection and testing (which may be done by a third party authorized by Mercy Corps), at any time and place, including the period of manufacture/production/creation and before final acceptance. If Mercy Corps inspects or tests at Supplier's premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of Mercy Corps' inspectors. No inspection or testing done or not done before final inspection and acceptance will relieve Supplier from responsibility for defects or for other failure to meet the requirements of this Contract. Notwithstanding any prior inspections or payments made, all Goods will be subject to final inspection and acceptance at the Delivery Location within a reasonable time after delivery (but in no event, less than three days after the date of delivery).
	2. Acceptance will occur only when the Authorized Representative delivers written, signed notice of acceptance to Supplier in the form of a goods received notice (“**GRN**”) and such notice has been signed by Supplier’s representative. The GRN must include: (1) the GRN number and the packing slip number; (2) the Contract number; (3) a description of the Goods; (4) the quantity delivered; (5) final inspection date and location; (6) quantity accepted; and (7) quantity rejected or over-shipped.
	3. If any delivery, documentation or the Goods delivered do not comply with all of the terms and conditions of this Contract, Mercy Corps may do one or more of the following: (1) reject such nonconforming Goods, accept conforming Goods and reduce the purchase price by such amount as Mercy Corps determines in good faith reflects the value to Mercy Corps of the accepted Goods, (2) accept such nonconforming Goods and reduce the purchase price by such amount as Mercy Corps determines in good faith reflects the reduced value to Mercy Corps of such nonconforming Goods; (3) reject all Goods; and/or (4) terminate this Contract without any further obligation on Mercy Corps’ part.
	4. If any Goods are finally accepted, Mercy Corps will only pay for the quantity accepted up to the quantity specified in this Contract. Mercy Corps will in no event pay for quantity above the amount provided for in this Contract or accepted. Mercy Corps or its agent will hold over-shipments and non-conforming shipments at Supplier's risk and expense for a reasonable time awaiting Supplier's instructions. Supplier will bear the expense of return charges, storage charges and other expenses for over-shipped quantities and Goods not accepted.
7. **Packing**. All Goods will be prepared for shipping and delivery and will be shipped in accordance with the Packing Requirements listed in Schedule I. Price based on weight will include net weight only. Supplier will not charge Mercy Corps for packaging or pre-shipping costs, such as boxing, crating, handling damage, drayage, or storage. Supplier will mark all containers with necessary handling and shipping information, Contract Number, date of shipment, and names of the consignee and consignor. A packing list, and other documentation required for domestic or international transit, regulatory clearance or identification of the Goods will accompany each shipment.
8. **Transportation, Shipment and Delivery**. Shipment/transportation will be in accordance with the Delivery Terms, Delivery Date, and Delivery Location in Schedule I. Mercy Corps will not be charged for shipping, delivery, loading or unloading costs unless otherwise specified in the Delivery Terms.
9. **Risk of Loss**. Supplier will bear all risk of loss, damage, or destruction to the Goods, in whole or in part, occurring before final acceptance by Mercy Corps at the Delivery Location; provided, Mercy Corps is responsible for any loss caused by its gross negligence.
10. **Taxes, Duties and Expenses**.
	1. All taxes, duties and other governmental charges with respect to the manufacture/production/creation of the Goods and the delivery of the Goods to Mercy Corps in accordance with this Contract will be the liability of, and borne solely by, Supplier. If the law requires Mercy Corps to withhold taxes from payments to Supplier, Mercy Corps may withhold those taxes and pay them to the appropriate taxing authority. Mercy Corps will deliver to Supplier an official notice for such taxes. Mercy Corps will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.
	2. Supplier is responsible for all expenses incurred by it in performing under this Contract.
11. **Invoicing and Payment**.
	1. Mercy Corps will have no obligation to make any payment to Supplier with respect to the Goods until final acceptance in accordance with Section 6(b) and delivery of an invoice that fully complies with the requirements specified in this Contract. Invoices may only be submitted after Supplier receives a GRN. Invoices must be submitted within 60 days of Supplier’s acceptance of a GRN. Mercy Corps will have no obligation to pay an invoice submitted after 60 days or to pay an invoice amount that Mercy Corps disputes in a written notice to Supplier. Each invoice must contain or attach the following: (1) a copy of the signed GRN; (2) Supplier’s name and address; (3) description of the Goods delivered, delivery date, quantity, unit price and total price to be paid; (4) all information necessary for Mercy Corps to implement payment (e.g., name of representative to address payment to, address, bank account information as applicable for the method of payment); (5) the Contract Number; (6) packing slip number; (7) taxes and duties (only if payable by Mercy Corps per the terms of this Contract); (8) Delivery Location and Delivery Date; and (9) any other information reasonably required by Mercy Corps. Invoices will only be deemed received on the date they are delivered to the Authorized Representative and in full compliance with the requirements herein.
	2. Mercy Corps will make payment within 30 days of receipt of Supplier's fully conforming invoice. Payment of an invoice will not constitute acceptance of Goods, and is subject to adjustment for errors, shortages, defects or other failure of Supplier to meet the requirements of this Contract. Mercy Corps may set-off amounts owed to Mercy Corps against an amount Mercy Corps owes to Supplier or Supplier's affiliated companies, and Mercy Corps will provide notice to Supplier within a reasonable time after the setoff.
12. **Representations, Warranties and Additional Covenants**. Supplier represents and warrants to Mercy Corps and covenants with Mercy Corps as follows.
	1. Supplier has full rights and authority to enter into and perform its obligations under this Contract. Supplier’s performance will not violate any agreement or obligation between Supplier and any third party.
	2. The Goods and all documentation required will meet each of the standards and specifications set forth in this Contract. The Goods are merchantable and fit for their intended purpose, comply with all applicable law and are free from all defects in material and workmanship.
	3. Supplier will deliver good and marketable title to the Goods free and clear of all liens, claims, encumbrances and interests of any other person, entity or government. The Goods will not infringe on any patent, copyright, trademark, trade secret or other proprietary right of any third party.
	4. Supplier will comply with all applicable law, regulations and rules in the performance of its obligations under this Contract.
	5. Supplier has not, and will not, engage in transactions with, or provide resources or support to, individuals and organizations associated with terrorism, including those individuals or entities that appear on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury (http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx) or the United Nations Security designation list (<http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml>).
	6. Supplier will comply with and train its employees in all applicable laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. Supplier has not and will not offer or give any employee, agent, or representative of Mercy Corps anything of value to secure any business from Mercy Corps or influence such person to alter the terms, conditions, or performance of any contract with or purchase order from Mercy Corps, including but not limited to this Contract.
	7. Supplier does not own, directly or indirectly, any other company that was competing for award of this Contract. Supplier did not seek or obtain confidential information related to the award of this Contract from any Mercy Corps employee, agent or representative. Supplier did not collude or conspire with any other individual or entity to limit competition for the award of this Contract, to set prices being offered or in any other way to interfere with free and open competition.
	8. Supplier is not owned in whole or in part, directly or indirectly, by any immediate or extended family member of any Mercy Corps employee, agent or representative, or, if so owned, Supplier fully disclosed such relationship, and any potential conflict of interest has been waived by Mercy Corps.
	9. Supplier has not engaged in, and will not engage in, any of the following conduct: (A) trafficking in persons (as defined in the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime); (B) procuring a commercial sex act; or (C) using forced labor.
	10. Supplier is not the subject or any governmental or donor investigation and has not been debarred or suspended by any government, governmental agency or donor.
	11. Contractor [or supplier] understands that it is subject to Mercy Corps' Child Safeguarding, Prevention of Sexual Exploitation and Abuse of Beneficiaries and Community Members, Anti-Trafficking and Sexual Misconduct policies (available at <https://www.mercycorps.org/who-we-are/ethics-policies>). Contractor must report any violation or suspected violation of these policies in relation to the Contractor's activities under this contract to Mercy Corps, which may be done via its Integrity Hotline website ([www.mercycorps.org/integrityhotline](http://www.mercycorps.org/integrityhotline)). Contractor will ensure that it has the capacity to abide by these policies, that its employees and subcontractors understand these policies, and that it communicates to its employees and subcontractors the duty to report. Contractor understands and agrees that a violation of these policies may, in addition to any other remedies available under this Contract or at law, result in suspension or immediate termination of this Contract and may also result in Contractor being deemed ineligible for future contracts with Mercy Corps.
	12. **Independent Contractor.** The parties intend to be independent contractors. Supplier will be solely responsible for and have control over the means, methods, techniques, personnel and procedures for supplying goods. Neither party will be deemed an agent or partner of the other party.
13. **Confidentiality**. Supplier will maintain the confidentiality of: (i) any information Mercy Corps provides to Supplier that Mercy Corps identifies as confidential; (ii) the terms and conditions of this Contract; and (iii) nonpublic information regarding Mercy Corps’ policies and practices. Upon Mercy Corps’ request, Supplier will return to Mercy Corps all confidential information provided by Mercy Corps to Supplier. This confidentiality obligation will survive final acceptance of the Goods, payment of the purchase price and termination of this Contract.
14. **Indemnification**. Supplier will indemnify Mercy Corps and each of its officers, directors, employees, representatives and agents (each, an “**Indemnitee**”), and hold them harmless from, any and all losses, claims, damages, liabilities, any government or donor investigations, fines or penalties and related expenses (including incidental and consequential damages and reasonable attorneys’ fees, whether incurred at the investigative, trial or appellate level or otherwise) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Supplier arising out of, in connection with, or as a result of this Contract, any failure by Supplier to fully perform its obligations under this Contract or any breach by Supplier of any of its representations and warranties under this Contract, provided that such indemnity will not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses resulted from the gross negligence or willful misconduct of such Indemnitee. This indemnity obligation will survive final acceptance of the Goods, payment of the purchase price and termination of this Contract.
15. **Termination and Remedies.**  This Contract may be terminated under the following circumstances:
	1. by both Parties on mutual written agreement of the Parties.
	2. by Mercy Corps immediately upon written notice in the event Mercy Corps’ donor(s) terminates or withdraws funding that Mercy Corps would use to pay Contractor under this Contract.
	3. by either Party due to the non-terminating Party’s breach of this Contract and failure to correct such breach within 15 days prior notice of such breach.
	4. be either Party upon written notice if a force majeure event, including any not reasonably foreseeable war, insurrection, change in law or government action or inaction, strike, natural disaster or similar event, prevents the terminating Party from being able to fulfill its obligations under this Contract; or
	5. by Mercy Corps immediately upon written notice if Mercy Corps using its sole discretion determines that Contractor has or will breach any of its warranties, covenants or representations in this Contract, in which case Mercy Corps may withhold any and all amounts owed to Contractor until such breach is remedied.

In the event termination is due to Mercy Corps’ breach of this Contract, by Mercy Corps for Mercy Corps convenience, due to force majeure event, or due to loss of funding, Mercy Corps shall be obligated to pay Contractor for its reasonable, pro-rated costs of work completed and expenses properly incurred prior to termination.

If Mercy Corps determines that Supplier has or will breach any of its warranties, covenants or representations in this Contract, Mercy Corps may, in addition to any other remedies for such breach available at law or in equity, (i) terminate this Contract; (ii) reject any Goods delivered; (iii) return any Goods already accepted and obtain full repayment for any amount paid for such Goods; (iv) if Supplier breaches Section 10(j), withhold payment until such investigation, suspension or debarment is lifted; and (v) if Supplier breaches any of Section 10(e), (f), (g), (h) or (i), not pay for any Goods that have been accepted but that have been consumed or otherwise cannot be returned to Supplier and report the breach to Mercy Corps donors and appropriate governmental authorities.

1. **Dispute Resolution**. Any unresolved dispute or claims will be settled by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The number of arbitrators will be one. The place of arbitration will be Portland, Oregon. The language of the arbitration will be English.
2. **Access to Books and Records**. Mercy Corps, its donors (including, if applicable, USAID, and the Comptroller General of the United States) and any of their respective representatives will have access to any books, documents, papers and records of Supplier that are directly pertinent to this Contract for the purpose of making audits, examinations, excerpts and transcriptions or a period of seven years following the completion of the Contract.
3. **Additional Donor Terms and Conditions**. The Donor Terms (if any) are incorporated in this Contract by reference and are fully binding on Supplier and Mercy Corps. In the event of a conflict between the Donor Terms and this Contract or any other document between Supplier and Mercy Corps, the Donor Terms will prevail.
4. **Miscellaneous**.
	1. This Contract and the rights and obligations of the parties hereto will be governed by and construed in accordance with the laws of the State of Oregon (exclusive of the United Nations Convention on Contracts for the International Sale of Goods), without regard to the conflict of laws provisions thereof.
	2. No right or obligation under this Contract (including the right to receive monies due) will be assigned without the prior written consent of Mercy Corps. Any assignment without such consent will be void. Mercy Corps may assign its rights under this Contract.
	3. All notices provided for herein will be in writing and will be delivered by hand or overnight courier service, email, or fax in accordance with each party’s contact information set forth on Schedule I. Notices will be deemed to have been given when received, if notices sent by email or fax will be deemed received when sent (except that, if not sent during normal business hours for the recipient, will be deemed received at the opening of business on the next business day for the recipient).
	4. Time is of the essence of each obligation of Supplier under this Contract.
	5. If any provision of this Contract is prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provisions of this Contract.
	6. Except as otherwise provided above, this Contract may be amended or modified only by a written document signed by both parties. This Contract constitutes the entire contract between the parties relating to the subject matter hereof and supersedes all previous Contracts and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, this Purchase Contract has been duly executed as of the date first written above.

|  |  |
| --- | --- |
| MERCY CORPSBy: Name: Title:  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: Name: Title:  |

SCHEDULE I

Additional Terms

1. **Goods:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Goods”**). All Goods must precisely comply with the specifications attached hereto as Schedule II (the **“Specifications”**).
2. **Quantity:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
3. **Packing Requirements**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Packing Requirements”**).
4. **Delivery Location:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the **“Delivery Location”**).
5. **Delivery Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the **“Delivery Date”**).
6. **Transportation and Unloading Terms:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
7. **Pricing:**
	1. **Unit Price(s):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Unit Price(s)”**).
	2. **Total Price:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the **“Price”)**
8. **Additional Payment Terms (if any):** *[If applicable, include any invoicing or payment terms that differ from the standard contract and include the following statement: “To the extent necessary to ensure consistency between these terms and the terms of the Purchase Contract, in the event of inconsistency the terms in this clause shall prevail.”] [If not applicable, simply state “Intentionally Omitted.”]*
9. **Authorized Representatives and Contact Information:**
	1. **Mercy Corps:**  Only the following Mercy Corps employees are authorized to agree to any amendment of this Contract and any Change Order:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Attn:\_\_\_\_\_\_\_\_\_\_\_\_\_
Fax:\_\_\_\_\_\_\_\_\_\_\_\_\_
Email: \_\_\_\_\_\_\_\_\_\_\_\_\_

Only the following Mercy Corps employees are authorized to accept or reject Goods or sign on any GRN.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Attn:\_\_\_\_\_\_\_\_\_\_\_\_\_
Fax:\_\_\_\_\_\_\_\_\_\_\_\_\_
Email: \_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. **Supplier:** Supplier’s authorized representative for all purposes is:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Attn:\_\_\_\_\_\_\_\_\_\_\_\_\_
Fax:\_\_\_\_\_\_\_\_\_\_\_\_\_
Email: \_\_\_\_\_\_\_\_\_\_\_\_\_

1. **Donor Terms**: *[None] [The terms and conditions attached hereto as Schedule III* (the **“Donor Terms”**).]

SCHEDULE II

Description of the Goods and Specifications

1. **Specifications for the Goods:**

The Goods must all strictly adhere to the following specifications at specified on page 6 above.

# 7. Attachments to the Tender Package



**Mercy Corps**

**Supplier Information Form**

***The information provided will be used to evaluate the Company before contracting with the Mercy Corps.***

***Please complete all fields.***

**Supplier Information**

|  |  |
| --- | --- |
| Company Name |  |
| Any other names company is operating under (Acronyms, Abbreviations, Aliases) |  |
| Previous names of the company |  |
| Address |  |
| Website |  |
| Phone/Fax Numbers | Phone: Fax: |
| Primary Contact | Name: Phone Number: Email Address: |
| # of Staff |  |
| # of Locations |  |
| Avg. Value of Stock on Hand (USD) |  |
| Government - owned (yes/no) |  |
| Name(s) of Board of Directors |  |
| Name(s) of Company Owner(s) |  |
| Parent companies, if any |  |
| Subsidiary or affiliate companies, if any |  |

**Financial Information**

|  |  |
| --- | --- |
| Bank Name and Address |  |
| Name under which company is registered at bank |  |
| Payment Terms | Payment By: Check Yes | No Wire Transfer Yes | No  |
| Specify Standard Payment Terms (Net15, 30, etc.) |  |
| List Range of Products/Services Offered |  |
| Basis For Pricing (Catalog, List, etc.) |  |
| Client Name: | Contact Name, Phone, Email Address: |
| Client Name: | Contact Name, Phone, Email Address: |
| Client Name: | Contact Name, Phone, Email Address: |

**Product/Service Information**

**References**

**Supplier Self-Certification of Eligibility**

Company certifies that:

1. It, its affiliates and subsidiaries, owners, officers, directors, and key employees (to the best of its knowledge) are not the subject of any government’s sanctions, designations, donor rules or prohibitions, or laws prohibiting transactions with it/them. It is not the subject of any donor government investigation into its misconduct with any other recipient of that donors funding.
2. It, its affiliates and subsidiaries, owners, officers, directors, and key employees have not and do not engage in any form of terrorism or attacks on civilians and do not provide any form of material support or financial resources for individuals or organizations that do engage in any form of terrorism or deliberate attacks on civilians.
3. It, its affiliates and subsidiaries, owners, officers, directors, and key employees have not and do not engage in weapons or drugs manufacture, transport, sale, or distribution.
4. It is not in default on any material credit agreement, bankrupt or being wound up, are having its affairs administered by the courts, have entered arrangements with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations.
5. It is having not been determined to be in breach of a material contract by any legal body anytime within the past 2 years.
6. It pays taxes as and when due and is not currently the subject of any investigation or proceeding related to back-owed taxes.
7. It provides workers compensation insurance to its workers in accordance with the laws of the countries where it operates.
8. It pays social security obligations as required in the countries where it operates.
9. It, its owners, officers and directors have not been convicted of an offense concerning its professional conduct and has not engaged in grave professional misconduct.
10. It, its affiliates and subsidiaries, owners, officers, directors, and key employees have not been the subject of criminal investigation or judgement for fraud, corruption, human trafficking, spying, weapons transport or smuggling, sexual exploitation or abuse, internal sexual misconduct, abuse or exploitation of children, involvement in a criminal organization or any other criminal activity.
11. It treats its employees with dignity and respect and maintains social operating standards, including working conditions and social rights; avoidance of child labor, bondage, forced labor, human trafficking, or exploitation; assurance of safe and reasonable working conditions; freedom of association; freedom from harassment (including sexual harassment), exploitation, abuse, bullying and discrimination; protection of basic social rights of its employees and Mercy Corps beneficiaries.
12. To the best of its knowledge, no Mercy Corps employee, officer, consultant, or other party related to Mercy Corps has a financial interest in the Company’s business activities, nor is any Mercy Corps employee related to any owner, officer, director, or employee of the company, and, if so, it will ensure that the relationship is disclosed to Mercy Corps and will not use for improper influence. Discovery of an undisclosed Conflict of Interest will result in immediate revocation of the Company’s Authorized Supplier status and disqualification of Company from participation in future Mercy Corps procurement.
13. It understands that attempting to or agreeing to provide anything of value to any Mercy Corps employee, agent, or representative for the purpose of encouraging that person to award Company a contract or take or not take any action related to any contract will result in immediate termination of any agreement. Company certifies that it does not engage in such conduct.
14. It understands that Mercy Corps seeks fair and open competition and the fairest price available and that any attempt by company to subvert fair and open competition, including working with other bidders to fix prices, working to exclude competition, seeking confidential information from Mercy Corps or other bidders, using multiple related or controlled companies to give the appearance of competition, or any similar activity, will result in termination of any agreement. Company certifies that it does not engage in such conduct.
15. It understands that Mercy Corps prohibits any of its partners or suppliers from bribing public officials and certifies that it does not do so.
16. It is not conducting business under other names or aliases that have not been declared to Mercy Corps.

If the Company cannot certify to any of the above it should explain why not. Mercy Corps may take the individual circumstances into account for some situations. However, any false certification could be grounds for immediate disqualification and termination of any future agreement.

By signing the Supplier Information Form you certify that your Company is eligible to supply goods and services to major donor funded organizations and that all of the above statements are accurate and factual.

Company Name:

Name of Representative:

Title:

Signature:

Date:

**Attachment 2 -Price Offer Sheet template**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Price Offer Sheet** |  |  |  |

|  |
| --- |
| MC Logo Vertical.jpg |

 |
| **Item Description** | **Quantity** | **Unit of Measure** | **Unit Price** | **Total Price** |
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| **Total before tax:** |   |   |   |   |
| **VAT (if applicable)** |   |   |   |   |
| **Total:** |   |   |   |   |
|   |  |  |  |   |
| **Company Name:** |   |
| **Name of Representative:** |   |
| **Title:** |   |
| **Signature:** |   |
| **Date:** |   |
|  |  |  |  |  |
| **Tender #:** |   |