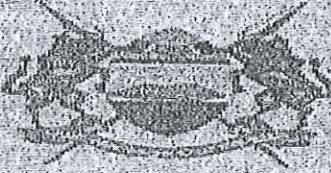


This is the exhibit marked "PCN 10"
referred to in the annexed Affidavit/Declaration
of Barasa P. Muthiga
Sworn/Declared before me this 2nd
day of August 2020 NAB

COUNTY GOVERNMENT OF BUNGOMA



CONTRACT AGREEMENT

Between

THE COUNTY GOVERNMENT OF BUNGOMA

And

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WEBMAR INVESTMENTS LIMITED

{WEBUYE TOTAL SERVICE STATION}

For

SUPPLY AND DELIVERY OF SUPER PETROL AND DIESEL- CARD
DISPENSED SERVICES.

TENDER NO: BGM/CNTY/DT/CS/001/2019-2020.

IFMIS NEGOTIATION 758393-2


January, 2020.

CONTRACT AGREEMENT

THIS AGREEMENT, (hereinafter called "the CONTRACT) made on....Day of January, 2020 between THE COUNTY GOVERNMENT OF BUNGOMA of [or whose registered office is situated at] MOI AVENUE BUNGOMA TOWN OF P.O BOX 437-50200 BUNGOMA. (Hereinafter called "the Client/Procuring entity/Employer") of the one part and M/s WEBMAR INVESTMENTS LIMITED (WEBUYE TOTAL SERVICE STATION) of P.O BOX 1096-50205 WEBUYE of [or whose registered office is situated at] WEBUYE-MALABA ROAD, WEBUYE WEIGH BRIDGE PLOT NO:NDIVISI/KHALUMULU/4269&4461 hereinafter called "the Tenderer/Supplier") on the other part;

WHEREAS The Client/Procuring entity/Employer is desirous that the Contractor/Service Provider executes SUPPLY AND DELIVERY OF SUPER PETROL AND DIESEL CARD DISPENSED SERVICES, TENDER NO. BGM/CNTY/DT/CS/001/2019-2020. IFMIS NEGOTIATION 758393-2 in quantities requested by the clients for their various operational units and motor vehicles from time to time (Hereinafter called "the goods) and the supplier is willing and has accepted to provide the product (Fuel) respectively as per the details set out in Tender No. BGM/CNTY/DT/CS/001/2019-2020.

NOW THIS AGREEMENT WITNESSETH as follows;

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.  **#IKUWEIKUWE COPY**
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement, namely;
 - (i) Invitation to Tender/tender notice.
 - (ii) Instructions to tenderers
 - (iii) The General Conditions of Contract.
 - (iv) The Special Conditions of Contract.
 - (v) Appendix to Conditions of Contract.

- (vi) The procuring entity's letter of notification of tender award
- (vii) Letter of Acceptance by the Tenderer/contractor
- (viii) The Form of Tender
- (ix) Technical Specifications and Drawings
- (x) Priced Bills of Quantities/Priced Schedule of Rates
- (xi) Schedule of requirements
- (xii) Tender Form and Price Schedules submitted by the bidder
- (xiii) Tender Security Form
- (xiv) Performance Security Form
- (xv) The Confidential Business Questionnaire.

Where the provisions of any of the documents listed above are in conflict with the provisions of this Agreement, the latter shall prevail.

In consideration of the payments to be made by the Employer/Client to the M/s Webmar Investments Limited (Webuye Total Service Station) as hereinafter mentioned, Webmar Investments Limited (Webuye Total Service Station) hereby covenants with the Employer/client to supply the product requested in conformity with all respects with the provisions of the Contract. The client hereby covenants to Webmar Investments Limited (Webuye Total Service Station), in consideration of the supply of the product for the contract price and such other sums as may become payable under the provisions of this contract at times and in the manner prescribed in this contract.

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3. Definitions

3.0 The following terms shall have the following meanings;

3.1 "Contract" means this agreement entered into between webmar Investments limited (webuye total service station) and the client as and signed by the parties, including all annexes and appendices thereto and all documents incorporated by reference herein;

3.2 "Contract Period" means the period from the commencement date until this contract terminates or such other or further term as the parties may mutually agree in writing;

3.3 "Contract Price" means the consideration payable to webmar investments limited (webuye total service station) in exchange for supply and delivery of super petrol and diesel card dispensed services as indicated in clause 8 and invoiced to the client from time to time;

3.4 "Day(s)" means calendar day(s); "Week(s)" means calendar week(s); "Month(s)" Means calendar month(s); "Year(s)" means calendar year(s)

3.5 "Delivery Points" means the general areas of Bungoma county and any other locations within locations within the Republic of Kenya as designated and communicated by the client to webmar investments limited (webuye total service station) upon commencement or during continuance of this contract.

3.6 "Party" means webmar investments limited (webuye total service station) or the client, as the case may be and "Parties" means both of them;

3.7 "Petroleum Product" or "Product" means Automotive Gas oil, Premium Motor Spirit, Illuminating Kerosene, Fuel Oil, Lubricants and liquefied Petroleum gas, or such other product as shall be agreed upon to be supplied by webmar investments limited (webuye total service station);

3.8 "Order" Means a written Local Purchase Order on the client's prescribed form given;

3.9 "Representative" Means and individual authorized to act as liaison on behalf of another, or on behalf of any company, director, office, employee, agent or subcontractor of that person.

4.0 Supply of product.

4.1 Subject to the provisions of this clause webmar investments limited {webuye total service station} shall accept orders from the client to supply Super Petrol and diesel- card dispensed services from the start of business on the commencement date.

4.2 All orders for product shall be deemed to be an offer by the client to purchase the said product pursuant to the conditions herein.

4.3 The client shall be entitled to sample the product delivered in the presence of webmar investments limited {webuye total service station}'s representative or agent and in accordance with webmar investments limited {webuye total service station}'s approved procedures.

4.4 webmar investments limited {webuye total service station} shall use reasonable endeavors to maintain sufficient stocks of product to fulfill the client's product requirement provided that the client shall communicate its product requirements in writing to webmar investments limited {webuye total service station} twenty-four (24) hours prior to the time of delivery PROVIDED ALWAYS THAT in the event of delays in delivery resulting from factors beyond the control of webmar investments limited {webuye total service station} and unforeseen conditions, webmar investments limited {webuye total service station} shall not be held liable for any resulting damages/losses to the client.

5.0 Point of delivery.

5.1 The County Government of Bungoma shall take delivery of the product at the point of pump over from webmar investments limited {webuye total service station}'s service station or webmar investments limited {webuye total service station}'s delivery vehicle to the client's motor vehicles and any corresponding liability for the product shall

pass on to the County Government of Bungoma immediately upon such delivery.

5.2 The County Government of Bungoma shall give a list of vehicles plus non-movable equipments to the supplier that shall, will strictly fuel at the webmar investments limited (webuye total service station) only and the same shall be updated in the respective fuel cards to ensure the smooth drawing of fuel from the affiliated stations within Kenya.

6.0 Access to the Product.

6.1 The County Government of Bungoma's motor vehicles that draw fuel from webmar investments limited (webuye total service station) shall be issued with fuel cards and radio frequency identification tags at ksh. 1000 registration fee for each at the first instance.

6.2 In case of a lost fuel card; replacement will be immediately after a report is made to supplier to that effect, it will be blocked and replaced at ksh.500

6.3 In the event the fuel card is not functioning, then the station (webmar investments limited (webuye total service station) will provide for invoice for the fuel draw on debt which will be charged later on the fuel card when its operational.

6.4 Motor vehicles, equipments going to draw fuel Must be accompanied with the card and with valid detailed order as per the purchase order

6.5 The supplier to take charge to reduce all cases of fraud. Through issuing of fuel to the specified vehicles.

7.0 Confidentiality.

7.1 The Service Provider, its staff and employees acknowledges that in dealing with the Employer pursuant to this Agreement it may come across information, which is confidential and proprietary to the Employer, disclosure or use of which might result in damage or loss to the business or affairs of the Employer. It is therefore agreed that the Service Provider

shall keep all such information Private and confidential, emphasize the same on its employees and staff and may only disclose the same without the prior written consent of the Employer or unless ordered to do so by an order of a Court of competent jurisdiction or is required by law to do so or unless such information is already in the public domain. For the avoidance of doubt it is agreed that the provisions of this clause shall survive the termination of this Agreement.

8.0. Price and Payments.

8.1 The price applicable for the products supplied to the County Government of Bungoma shall be based on National oil's monthly price formula guided by the Energy Regulatory commission Monthly prices.

8.2 The price for products shall be as communicated by webmar investments limited (webuye total service station) to the County Government of Bungoma from time to time ; which price shall have a specific validity period. This price shall be the prevailing pump price and webmar investments limited (webuye total service station) has agreed to give discount of KSh. per litre.

8.3 The Government of Kenya levies may vary as per Government directive and shall take effect immediately and webmar investments limited (webuye total service station) shall promptly notify the client of such changes. Should the County Government of Bungoma pursue and obtain any exemption from Government of Kenya levies, the County Government of Bungoma shall get the relevant exemption stamps applied on their periodical LPOs to webmar investments limited (webuye total service station) to enable the latter to process corresponding refunds.

8.4 The price for lubricants and LPG product supplied to the client shall be as communicated to the County Government of Bungoma by webmar investments limited (webuye total service station)

8.5 Any changes in price of product shall be communicated by webmar investments limited (webuye total service station) to the County Government of Bungoma from time to time; which price shall have a specific validity period. This price shall be the prevailing price.

8.6 All payments made under this contract entered by both parties shall be in Kenya shillings.

8.7 The County Government of Bungoma shall pay for every order of the products supplied in by way of Electronic fund transfer, Direct Bank deposit or as webmar investments limited (webuye total service station) may elect within thirty (30) days upon receipt of webmar investments limited (webuye total service station)'s statement. webmar investments limited (webuye total service station) reserves the right to review the thirty (30) day credit period from time to time at its absolute discretion based on the County Government of Bungoma's credit period, notify the County Government of Bungoma of such proposed change. webmar investments limited (webuye total service station) shall issue a monthly statement to the County Government of Bungoma noting all invoices raised within a particular month.

8.8 Notwithstanding the above, if there is any increase in any of the components of the price for products, the said increase shall be recoverable by webmar investments limited (webuye total service station) from the County Government of Bungoma against a written demand, supported by sufficient documentary evidence to justify the increase. The County Government of Bungoma reserves the right to reject the recoverability of the price for products from it by webmar investments limited (webuye total service station) if webmar

investments limited {webuye total service station} doesn't provide sufficient documentary evidence to justify the said increase.

8.9 In the event that any amount remains due and unpaid from the County Government of Bungoma to webmar investments limited {webuye total service station}, then webmar investments limited {webuye total service station} shall have the right to charge interest in respect of the overdue payment of one per cent per month {or such other percentage as mutually agreed between the parties from time to time}; whether before or after judgement, on the outstanding amount up to the date of receipt by webmar investments limited {webuye total service station} of the overdue amount.

8.10 In the event of the client failing to make payments for deliveries as aforesaid, webmar investments limited {webuye total service station} shall be at liberty to suspend further deliveries and /or withdraw credit facilities for any deliveries made or to be made.

9.0 Duration and Renewal {Term}.

This contract shall be valid for a period of two (2) Years commencing on the 1st day of February, 2020 {commencement date} and terminating on 1st day of February, 2022 {expiry date}, unless terminated earlier as provided in clause 10 of this contract agreement. Upon expiry of the term, this contract may be renewed upon such terms and for such duration as shall then be agreed, and upon either party giving a thirty (30) days' notice in writing of intention to renew the contract.

10 Termination

10.1 webmar investments limited {webuye total service station} may, without prejudice to any other remedy for breach of contract, by written notice sent to the county Government of Bungoma, terminate this contract in whole or in part forthwith;

- 10.2 If the County Government of Bungoma fails to make any or all payments in accordance with this contract, or within any extension thereof granted by webmar investments limited {webuye total service station}.
- 10.3 The County Government of Bungoma fails to maintain a security as stipulated in the contract;
- 10.4 if the County Government of Bungoma fails to perform any other obligation(s) under the contract;
- 10.5 The County Government of Bungoma is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- 10.6 If the County Government of Bungoma, in the judgment of webmar investments limited {webuye total service station} has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 10.7 Either party shall be entitled to terminate this contract without assigning any reasons by giving a thirty (30) days' written notice to the other party of the intention to terminate.
- 10.8 Termination of this contract for whatever reason shall not affect the accrued rights of the parties arising out of this contract as at the date of termination and, in particular but without limitation, the right to recover damages and all provisions which are expressed to survive this contract shall remain in force and effect.
- 10.9 On the termination of this contract for any reason neither party shall (subject to the accrued rights of either party in respect of any breaches of this contract (have any further obligation under this contract to the other.

11. Contract Administration-Coordinator.

The Client designates the County chief officer, office of the county secretary as Client's Coordinator for purposes of this Agreement. The coordinator will be responsible for the coordination of activities under this Contract agreement, for acceptance and approval of the reports and of other deliverables by the Client and for receiving and approving invoices for payment. The supplier shall liaise with the Contract

Administration-Coordinator to ensure that the scope of the service is clearly defined, the set activities are properly implemented and that the desired deliverables are achieved.

12. Schedule of payments & payment conditions.

The contract price shall be paid monthly in advance, in Kenya Shillings, unless otherwise mutually agreed, after submission by the service provider of invoices (in duplicate) to the Project coordinator and after the project coordinator has certified that the services have been discharged as per the set deliverables.

13. Insurance.

The supplier will be primarily responsible for and shall be taking out any appropriate insurance cover against, among other risks, Personal injury, loss of or damage to the works, materials and plant; and loss of or damage to property in relation to the execution and completion of the services and the remedying of defects therein under this Contract including those for its staff. The Service Provider shall at the earliest opportunity and if requested by the Employer furnish details of such insurance to the Employer for the latter's acknowledgement and records.

14. Notices and communication.

All communication and notices between parties in respect of this contract shall be delivered by hand, sent by registered post/ courier or sent by facsimile transmission (with confirmation posted within 24 hours) at the address given at the beginning of this contract or as provided from time to time to other party; and shall be deemed to be received; if delivered by hand, on the day of the delivery; if sent by facsimile transmission, at the time of transmission; if delivered by courier, two (2) days after the notice was delivered to the courier; if sent by registered post, four (4) days after the envelope containing the notice was delivered into the custody of the postal authorities; PROVIDED ALWAYS that if such date is deemed receipt is not a business day, in which case the date of deemed receipt shall be next succeeding business day.

If to the Client

COUNTY CHIEF OFFICER, OFFICE OF THE COUNTY SECRETARY