BARINGO COUNTY GOVERMENT

Hospital Road,
KABARNET
E-mail:cdhbaringo@gmail.com

Office of the Governor
P. O. Box 53 – 30400
Tel. +254 (0) 53-22115 / 053-0202140705
KABARNET – KENYA

Standard Tender Document

TENDER NAME: Proposed Purchase Of Motorbikes For Tilam Paka And Loruk Loyamorok Ward

……

Name: Baringo County Government

PostalAddress: P.O Box 53-30400 KABARNET

EmailAddress: supplychain@baringo.go.ke ordirectorscm@baringo.go.ke

RequestforQuotationsNo: BRCG/TNR/ICTED/1441892/2023-2024

Contract Name: PROPOSED PURCHASE OF MOTORBIKES FOR TILAM PAKA AND LORUK LOYAMOROK WARD

OPEN TENDER

CLOSING DATE: 1ST FEBRUARY, 2024

AS PER THE DATE INDICATED IN IFMIS

TENDER DOCUMENTS FOR PROCUREMENT OF GOODS

1) ***NAME AND CONTACT ADDRESSES OF PROCURING ENTITY***

DEPARTMENT OF :

P.O.BOX 53-30400

KABARNET INDUSTRY,COMMERCE,TOURISM,COOPERATIVES AND ENTERPRISE DEVELOPMENT

2) Invitation to Tender (ITT) No BRCG/TNR/ICTED/1441892/2023-2024

3) Tender Name. PROPOSED PURCHASE OF MOTORBIKES FOR TILAM PAKA AND LORUK LOYAMOROK WARD

INVITATION TO TENDER

1. **PROCURING ENTITY: County Government of Baringo–Department of INDUSTRY,COMMERCE,TOURISM,COOPERATIVES AND ENTERPRISE DEVELOPMENT -P.o box 53-Kabarnet**

2. **CONTRACT NAMEAND DESCRIPTION:** PROPOSED PURCHASE OF MOTORBIKES FOR TILAM PAKA AND LORUK LOYAMOROK WARD

3. The **CountyGovernmentofBaringo–Departmentof INDUSTRY.COMMERCE.TOURISM.COOPERATIVES AND ENTERPRISE DEVELOPMENT -P.OBOX53-KABARNET** invites tenders for thesupply of goods i.e. PROPOSED PURCHASE OF MOTORBIKES FOR TILAM PAKA AND LORUK LOYAMOROK WARD

4. Tenderingwill beconducted under open competitive method National using a standardized tender document.Tenderingis open toallqualified and interestedTenderers.

5. NOT APPLICABLE-*In case this tender is subject to a Reservation, specify the Group is eligible to tender, Insert e.g.*"Tendering is open to all Small and Medium Enterprises registered appropriately with registerofcompanies andbusinessnames.").

6. *In case tender is subject to Multiple contracts/lots, insert***"Tenderers will be allowed to tender for one ormorelots"-NOT APPLICABLE**

7. Qualified and interested tenderers may obtain further information During office hours *0800to 1700 hours at* the address given below.

Supply ChainManagement Offices
AtAFCBuilding alongKabarnet-EldoretHighway
P.OBox53-30400KABARNETKENYA

8. Tender documentsmay be obtained electronically from our Website (***www.baringo.go.ke***)**.** Tender documents obtainedelectronicallywillbe freeofcharge.

9. Tender documents may be viewed and downloaded for free from the website (***www.baringo.go.ke***)**.**Tenderers who download the tender document must forward their particulars immediately to supplychain@baringo.go.keordirectorscm@baringo.go.keto facilitate any further clarification or addendum.

10. All Tendersmust be accompanied by a ***Tender security of KSH 100,000***

11. TheTenderer shallchronologicallyserialize all pages of the tender documentssubmitted.

12. Completedtendersshouldbe sentthrough***IFMIS onthe date andtimeindicatedin IFMIS*** **13TH FEBRUARY,2024**

1. Tenders willbe opened immediately after the deadline date and time specified above or any dead line date and time specified r. Tenders will.***OPENING WILL BE THROUGH IFMIS***

13. Latetendersubmission willbe locked outbythe IFMIS portal.

14. The addresses referred toabove are:

a. Addressforobtainingfurtherinformation andfor purchasingtender documents

i. Procuring Entity:**CountyGovernmentofBaringo–**
INDUSTRY,COMMERCE,TOURISM,COOPERATIVES AND ENTERPRISE DEVELOPMENT

ii. Physical address for hand Courier Delivery to an office or Tender **SupplyChain ManagementOfficesAtAFCBuilding basementalong Kabarnet-EldoretHighway**

iii. Postal Address**P.O Box53-30400KABARNETKENYA**

iv. Insert Designation Director – Supply Chain Management, e-mail supplychain@baringo.go.ke or directorscm@baringo.go.ke.

vi

A. Addressfor Submission ofTenders. – NOT APPLICABLE

1) Name ofProcuringEntity

2) Postal Address(includeDesignation of Officer tobe attentioned)

3) Physical address for handCourier Deliverytoanoffice orTender Box (City, StreetName, Building, Floor Number and Room)

B. AddressforOpening ofTenders.-NOTAPPLICABLE

1) Name ofProcuringEntity

2) Physical address forthelocation(City, Street Name, Building, Floor Number and Room)

[Authorized Official(name, designation, Signatureand date)]

Name (OfficialoftheProcuringEntityissuinginvitation)

_____

Designation

_____

Signature

_____

Date

_____

PART 1 - TENDERING PROCEDURES

SECTION I:INSTRUCTIONS TO TENDERERS

A General Provisions

1. Scope of Tender

1.1 TheProcuringEntityasdefinedinthe**TDS**invitestendersforsupplyofgoodsand,ifapplicable,anyRelatedServicesincidentalthereto,asspecifiedinSectionV,SupplyRequirements.Thename,identification,andnumberoflots(contracts)ofthisTenderDocumentarespecifiedinthe**TDS**.

1.2 Throughoutthistenderingdocument:

a) theterm"inwriting"meanscommunicatedinwrittenform(e.g.bymail,e-mail,fax,includingifspecifiedinthe**TDS**,distributedorreceivedthroughtheelectronic-procurementsystemusedbytheProcuringEntity)withproofofreceipt;

b) ifthecontextsorequires,"singular"means"plural"andviceversa;

c) "Day" means calendar day, unless otherwise specified As "Business Day".ABusinessDayisanydaythatisanofficialworkingdayoftheProcuringEntity.It excludes official public holidays.

2. Fraud and Corruption

2.1 TheProcuringEntityrequirescompliancewiththeprovisionsofthePublicProcurementandAssetDisposalAct,2015,Section62"Declarationnottoengageincorruption".Thetendersubmittedbyapersonshallincludeadeclarationthatthepersonshallnotengageinanycorruptorfraudulentpracticeandadeclarationthatthepersonorhisorhersub-contractorsarenotdebarredfromparticipatinginpublicprocurementproceedings.

2.2 TheProcuringEntityrequirescompliancewiththeprovisionsoftheCompetitionAct2010,regardingcollusivepracticesincontracting.Anytendererfoundtohaveengagedincollusiveconductshallbedisqualifiedandcriminaland/orcivilsanctionsmaybeimposed.Tothiseffect,Tendersshallberequiredtocompleteandsignthe"CertificateofIndependentTenderDetermination"annexedtotheFormofTender.

2.3 UnfairCompetitiveAdvantage-Fairnessandtransparencyinthetenderprocessrequirethatthefirmsortheir Affiliatescompetingforaspecificassignmentdonotderiveacompetitiveadvantagefromhavingprovidedconsultingservicesrelatedtothistender.Tothatend,theProcuringEntityshallindicateinthe**DataSheet**andmakeavailabletoallthefirmstogetherwiththistenderdocumentallinformationthatwouldinthatrespectgivesuchfirmanyunfaircompetitiveadvantageovercompetingfirms.

3. Eligible Tenderers

3.1 ATenderermaybeafirmthatisaprivateentity,anindividual,astate-ownedenterpriseorinstitutionsubjecttoITT3.7,oranycombinationofsuchentitiesintheformofajointventure(JV)underanexistingagreementorwiththeintenttoenterintosuchanagreementsupportedbyaletterofintent.Publicemployeesandtheircloserelatives*(spouses,children,brothers,sistersandunclesandaunts)*arenoteligibletoparticipateinthetender.

Inthecaseofajointventure,allmembersshallbejointlyandseverallyliablefortheexecutionoftheentireContractinaccordancewiththeContractterms.TheJVshallnominateaRepresentativewhoshallhavetheauthoritytoconductallbusinessforandonbehalfofanyandallthemembersoftheJVduringtheTenderingprocessand,intheeventtheJVisawardedtheContract,duringcontractexecution.ThemaximumnumberofJVmembersshallbespecifiedinthe**TDS.**

3.2 PublicOfficersoftheProcuringEntity,theirSpouses,Child,Parent,BrothersorSister.Child,Parent,BrotherorSisterofaSpousetheirbusinessassociatesoragentsandfirms/organizationsinwhichtheyhaveasubstantialorcontrollinginterestshallnotbeeligibletotenderorbeawardedacontract.PublicOfficersarealsonotallowedtoparticipateinanyprocurementproceedings.

3.3 ATenderer shall not have a conflict of interest.AnyTendererfoundtohaveaconflictofinterestshallbedisqualified.ATenderermaybeconsideredtohaveaconflictofinterestforthepurposeofthisTenderingprocess,iftheTenderer:

a) directlyorindirectlycontrols,iscontrolledbyorisundercommoncontrolwithanotherTenderer;or

b) receivesorhasreceivedanydirectorindirectsubsidyfromanotherTenderer;or

c) hasthesame-representativeorownershipasanotherTenderer;or

d) hasarelationshipwithanotherTenderer,directlyorthroughcommonthirdparties,thatputsitinapositiontoinfluencetheTenderofanotherTenderer,orinfluencethedecisionsoftheProcuringEntityregardingthisTenderingprocess;or

e) oranyofitsaffiliatesparticipatedasaconsultantinthepreparationofthedesignortechnicalspecificationsofthegoodsthatarethesubjectoftheTender;or

f) oranyofitsaffiliateshasbeenhired(orisproposedtobehired)bytheProcuringEntityorProcuringEntityfortheContractimplementation;or

g) wouldbeprovidinggoods,works,ornon-consultingservicesresultingfromordirectlyrelatedtoconsultingservicesforthepreparationorimplementationoftheprojectspecifiedintheTDSITT1.1thatitprovidedorwereprovidedbyanyaffiliatethatdirectlyorindirectlycontrols,iscontrolledby,orisundercommoncontrolwiththatfirm;orhasaclosebusinessorfamilyrelationshipwithaprofessionalstaffoftheProcuringEntity(oroftheprojectimplementingagency,who:(i)aredirectlyorindirectlyinvolvedinthepreparationofthetenderingdocumentorspecificationsoftheContract,and/ortheTenderevaluationprocessofsuchContract;or(ii)wouldbeinvolvedintheimplementationorsupervisionofsuchContractunlesstheconflictstemmingfromsuchrelationshiphasbeenresolvedinamanneracceptabletotheProcuringEntity throughouttheTenderingprocessandexecutionoftheContract.

3.4 Atendererershallnotbeinvolvedincorrupt,coercive,obstructive,collusiveorfraudulentpractice.Atendererthatisproventohavebeeninvolvedinanyofthesepracticesshallbeautomaticallydisqualified.

3.5 AfirmthatisaTenderer(eitherindividuallyorasaJVmember)shallnotsubmitmorethanoneTender,exceptforpermittedalternativeTenders.This includes participation as a subcontractor.SuchparticipationshallresultinthedisqualificationofallTendersinwhichthefirmisinvolved.AfirmthatisnotaTendereroraJVmember,mayparticipateasasubcontractorinmorethanoneTender.Membersofajointventuremaynotalsomakeanindividualtender,beasubcontractorinaseparatetenderorbepartofanotherjointventureforthepurposesofthesameTender.

3.6 ATenderermayhavethenationalityofanycountry,subjecttotherestrictionspursuanttoITT3.9.ATendershallbeemedtohavethenationalityofacountryiftheTendererisconstituted,incorporatedorregisteredinandoperatesinconformitywiththeprovisionsofthelawsofthatcountry,asevidencedbyitsarticlesofincorporation(orequivalentdocumentsofconstitutionorassociation)anditsregistrationdocuments,asthecasemaybe.ThiscriterionalsoshallapplytothedeterminationofthenationalityofproposedsubcontractorsorsubconsultantsforanypartoftheContractincludingrelatedServices.

3.7 ATendererthathasbeendebarredbythePPRAfromparticipatinginpublicprocurementshallbeineligibletotenderorbeawardedacontract.Thelistofdebarredfirmsandindividualsisavailablefromthe PPRA's website www.ppra.go.ke

3.8 Tenderersthatarestate-ownedenterprisesorinstitutionsmaybeeligibletocompeteandbeawardedaContract(s)onlyiftheyare(i)alegalpublicentityofthestateGovernmentand/orpublicadministration,(ii)financiallyautonomousandnotreceivinganysignificantsubsidiesorbudgetsupportfromanypublicentityorGovernment,and(iii)operatingundercommerciallawandvestedwithlegalrightsandliabilitiessimilartoanycommercialenterprisetoenableitcompetewithfirmsintheprivate sectoronanequalbasis.Publicemployeesandtheircloserelativesarenoteligibletoparticipateinthetender.

3.9 Tenderersmaybeineligibleiftheircountriesoforigin(a)asamatteroflaworofficialregulations,Kenyaprohibitscommercialrelationswiththatcountry,or(b)byanactofcompliancewithadecisionoftheUnitedNationsSecurityCouncil takenunderChapterVIIoftheCharteroftheUnitedNations,Kenyaprohibitsanyimportofgoodsorcontractingforsupplyofgoodsorservicesfromthatcountry,oranypaymentstoanycountry,person,orentityinthatcountry.Atenderershallprovidesuchdocumentaryevidenceofeligibilitysatisfactorytothe ProcuringEntity,asthe ProcuringEntityshall reasonablyrequest.

3.10 Tenderersshallprovidethequalificationinformationstatementthatthetenderer(includingallmembersofajointventureandsubcontractors)isnotassociated,orhavebeenassociatedinthepast,directlyorindirectly,withafirmoranyofitsaffiliateswhichhavebeenengagedbytheProcuringentitytoprovideconsultingservicesforthepreparationofthedesign,specifications,andotherdocumentstobeusedfortheprocurementofthegoodsunderthisInvitationfortenders.

3.11 Wherethelawrequirestendererstoberegisteredwithcertainauthoritiesin Kenya,suchregistrationrequirementsshallbedefinedintheTDS

3.12 TheCompetitionActofKenyarequiresthatfirmswishingtotenderasJointVentureundertakingswhichmayprevent, distortorlessencompetitioninprovisionofservicesareprohibitedunlesstheyareexemptinaccordancewiththeprovisionsofSection25oftheCompetitionAct,2010.JVswillberequiredtoseekforexemptionfromtheCompetitionAuthority.Exemptionshallnotbeaconditionfortender,butitshallbeaconditionofcontractawardandsignature.AJVtenderershallbegivenopportunitytoseeksuchexemptionasaconditionofawardandsignatureofcontract.Applicationfore

xemptionfromtheCompetitionAuthorityofKenyamaybeaccessedfromthewebsitewww.cak.go.ke.

3.13 AKenyantendershallprovideevidenceofhavingfulfilledhis/hertaxobligationsbyproducingacurrenttaxclearancecertificateortaxexemptioncertificateissuedbytheKenyaRevenueAuthority.

4. Eligible Goods and Related Services

4.1 AlltheGoodsandRelatedServicestobesuppliedundertheContractshallhavetheiroriginineligiblecountriesinaccordancewithITT3.9.

4.2 ForpurposesofthisITT,theterm"goods"includescommodities,rawmaterial,machinery,equipment,andindustrialplants;and"relatedservices"includeservicessuchasinsurance,installation,training,andinitialmaintenance.

4.3 Theterm"origin"meansthecountrywherethegoodshavebeenmined,grown,cultivated,produced,manufacturedorprocessed;or,throughmanufacture,processing,orassembly,anothercommerciallyrecognizedarticleresultsthatdifferssubstantiallyinitsbasiccharacteristicsfromitscomponents.

4.4 Aprocuringentityshallensurethattheitemslistedbelowshallbesourcedfrom Kenyaandthereshallbenosubstitutionsfromforeignsources.Theaffecteditemsare:

a) motorvehicles,plantandequipmentwhichareassembledinKenya;
b) furniture,textile,foodstuffs,oilandgas,informationcommunicationtechnology,steel,cement,leather,agro-processedproducts,sanitaryproducts,andothergoodsmadeinKenya;or
c) goods manufactured, mined,extracted orgrowninKenya.

4.5 Anygoods,worksandproductionprocesseswithcharacteristicsthathavebeendeclaredbytherelevantnationalenvironmentalprotectionagencyorbyothercompetentauthorityasharmfultohumanbeingsandtotheenvironmentshallnotbeeligibleforprocurement.

5. Sections of Tendering Document

5.1 ThetenderingdocumentconsistofParts1,2,and3,whichincludeallthesectionsindicatedbelow,andshouldbereadinconjunctionwithanyAddendaissuedinaccordancewithITT8.

PART 1:Tendering Procedures

i) SectionI-InstructionstoTenderers(ITT)
ii) SectionII-TenderingDataSheet(TDS)
iii) SectionIII-EvaluationandQualificationCriteria
iv) SectionIV-TenderingForms

PART 2:Supply Requirements

v) SectionV-ScheduleofRequirements

PART 3:Contract

vi) SectionVI-GeneralConditionsofContract(GCC)

vii) SectionVII-SpecialConditionsofContract(SCC)

viii) SectionVIII-ContractForms

5.2 ThenoticeofInvitationtoTenderorthenoticetotheprequalifiedTenderersissuedbytheProcuringEntityisnotpartofthetenderingdocument.

5.3 UnlessobtaineddirectlyfromtheProcuringEntity,theProcuringEntityisnotresponsibleforthecompletenessofthedocument,responsestorequestsforclarification,theminutesofthepre-tendermeeting(ifany),oraddendatothetenderingdocumentinaccordancewithITT7.

5.4 TheTendererisexpectedtoexamineallinstructions,forms,terms,andspecificationsinthetenderingdocumentandtofurnishwithitsTenderallinformationordocumentationasisrequiredbythetenderingdocument.

6. Clarification of Tendering Document

6.1 ATendererrequiringanyclarificationoftheTenderDocumentshallcontacttheProcuringEntityinwritingattheProcuringEntity'saddressspecifiedinthe**TDS**orraiseitsenquiriesduringthepre-TendermeetingifprovidedforinaccordancewithITT6.4.TheProcuringEntitywillrespondinwritingtoanyrequestf

orclarification,providedthatsuchrequestisreceivednolaterthantheperiodspecifiedinthe**TDS**priortothedeadlinef orsubmissionoftenders.TheProcuringEntityshallforwardcopiesofitsresponsetoalltendererswhohaveacquiredth eTenderdocumentsinaccordancewithITT5.3,includingadescriptionoftheinquirybutwithoutidentifyingitssourc e.Ifsospecifiedinthe**TDS,**theProcuringEntityshallalsopromptlypublishitsresponseatthewebpageidentifiedinthe **TDS.**Shouldtheclarificationresultinchangestotheessentialelementsofthe TenderDocuments,theProcuringEntity shallamendtheTenderDocumentsfollowingtheprocedureunderITT7.

6.2 TheProcuringEntityshallspecifyinthe**TDS**ifapre-tenderconferencewillbeheld,whenandwhere.TheTenderer'sdesignatedrepresentativeisinvitedtoattendapre-Tendermeeting.Thepurposeofthemeetingwillbetoclarifyissuesandtoanswerquestionsonanymatterthatmaybera isedatthatstage.

6.3 TheTendererisrequestedtosubmitanyquestionsinwriting,toreachtheProcuringEntitynotlaterthantheperiodspeci fiedinthe**TDS**beforethemeeting.

6.4 Minutesofthepre-Tendermeeting,ifapplicable,includingthetextofthequestionsaskedbyTenderersandtheresponsesgiven,together withanyresponsespreparedafterthemeeting,willbetransmittedpromptlytoallTendererswhohaveacquiredtheTen derDocumentsinaccordancewithITT6.3.Minutes shall not identify the source of the questions asked.

6.5 TheProcuringEntityshallalsopromptlypublishanonymized(*nonames*)Minutesofthepre-Tendermeetingatthewebpageidentified**intheTDS**.AnymodificationtotheTenderDocumentsthatmaybecomene cessaryasaresultofthepre-TendermeetingshallbemadebytheProcuringEntityexclusivelythroughtheissueofanAddendumpursuanttoITT7a ndnotthroughtheminutesofthepre-Tendermeeting.Nonattendanceatthepre-Tendermeetingwillnotbeacausefordisqualificationofa Tenderer.

7. Amendment of Tendering Document

7.1 AtanytimepriortothedeadlineforsubmissionofTenders,theProcuringEntitymayamendthetenderingdocumentby issuingaddenda.

7.2 Anyaddendumissuedshallbepartofthetenderingdocumentandshallbecommunicatedinwritingtoallwhohaveobta inedthetenderdocumentfromtheProcuringEntityinaccordancewithITT6.3.TheProcuringEntityshallalsoprompt lypublishtheaddendumontheProcuringEntity'swebpageinaccordancewithITT7.1.

7.3 TogiveprospectiveTenderersreasonabletimeinwhichtotakeanaddendumintoaccountinpreparingtheirTenders,t heProcuringEntitymay,atitsdiscretion,extendthedeadlineforthesubmissionofTenders,pursuanttoITT21.2.

C. Preparation of Tenders

8. Cost of Tendering

8.1 TheTendershallbearallcostsassociatedwiththepreparationandsubmissionofitsTender,andtheProcuringEntity shallnotberesponsibleorliableforthosecosts,regardlessoftheconductoroutcomeoftheTenderingprocess.

9. Language of Tender

9.1 TheTender,aswellasallcorrespondenceanddocumentsrelatingtotheTenderexchangedbytheTendererandthePro curingEntity,shallbewritteninEnglishLanguage**.**Supportingdocumentsandprintedliteraturethatarepartoftheten dermaybeinanotherlanguageprovidedtheyareaccompaniedbyanaccuratetranslationoftherelevantpassagesintot heEnglishLanguage**,**inwhichcase,forpurposesofinterpretationoftheTender,suchtranslationshallgovern.

10. Documents Comprising the Tender

10.1 TheTendershallcomprisethefollowing:

a) FormofTenderpreparedinaccordancewithITT11;

b) PriceSchedules:completedinaccordancewithITT11andITT13;

c) TenderSecurityorTender-SecuringDeclaration,inaccordancewithITT18.1;

d) AlternativeTender:ifpermissible,inaccordancewithITT12;

e) Authorization:writtenconfirmationauthorizingthesignatoryoftheTendertocommittheTenderer,inaccorda

ncewithITT19.3;

f) Qualifications:documentaryevidenceinaccordancewithITT16.2establishingtheTendererqualificationstoperformtheContractifitsTenderisaccepted;

g) TendererEligibility:documentaryevidenceinaccordancewithITT16.1establishingtheTenderereligibilitytotender;

h) EligibilityofGoodsandRelatedServices:documentaryevidenceinaccordancewithITT15,establishingtheeligibilityoftheGoodsandRelatedServicestobesuppliedbytheTenderer;

i) Conformity:documentaryevidenceinaccordancewithITT15.2thattheGoodsandRelatedServicesconformtothetenderdocument;and

j) any otherdocumentrequiredinthe**TDS**.

10.2 InadditiontotherequirementsunderITT10.1,TenderssubmittedbyaJVshallincludeacopyoftheJointVentureAgreemententeredintobyallmembers.Alternatively,aletterofintenttoexecuteaJointVentureAgreementintheeventofasuccessfulTendershallbesignedbyallmembersandsubmittedwiththeTender,togetherwithacopyoftheproposedAgreement.

10.3 TheTendershallfurnishintheFormofTenderinformationoncommissionsgratuities,andfees,ifany,paidortobepaidtoagentsoranyotherpartyrelatingtothisTender.

11. Form of Tender and Price Schedules

11.1 TheFormofTenderandPriceSchedulesshallbepreparedusingtherelevantformsfurnishedinSectionIV,TenderingForms.Theformsmustbecompletedwithoutanyalterationstothetext.Allblankspacesshallbefilledinwiththeinformationrequested.TheTendershallchronologicallyserialisepagesofalltenderdocumentssubmitted.

12. Alternative Tenders

12.1 Unlessotherwisespecified**intheTDS,**alternativeTendersshallnotbeconsidered.

13. Tender Prices and discounts

13.1 ThepricesquotedbytheTendererintheFormofTenderandinthePrice,Schedulesshallconformtotherequirementsspecifiedbelow.

13.2 Alllots(contracts)anditemsmustbelistedandpricedseparatelyinthePriceSchedules.

13.3 ThepricetobequotedintheFormofTenderinaccordancewithITT10.1shallbethetotalpriceoftheTender,includinganydiscountsoffered.

13.4 TheTendershallquoteanydiscountsandindicatethemethodologyfortheirapplicationintheformoftender.Conditional discounts will be rejected.

13.5 PricesquotedbytheTendershallbefixedduringtheperformanceoftheContractandnotsubjecttovariationonanyaccount,unlessotherwisespecified**intheTDS.**ATendersubmittedwithanadjustablepricequotationshallbetreatedasnon-responsiveandshallberejected,pursuanttoITT28.However,ifinaccordancewith**theTDS**,pricesquotedbytheTendershallbesubjecttoadjustmentduringtheperformanceoftheContract,aTendersubmittedwithafixedpricequotationshallnotberejected,butthepriceadjustmentshallbetreatedaszero.

13.6 IfspecifiedinITT1.1,Tendersarebeinginvitedforindividuallots(contracts)orforanycombinationoflots(packages).Unlessotherwisespecified**intheTDS,**pricesquotedshallcorrespondto100%oftheitemsspecifiedforeachlotandto100%ofthequantitiesspecifiedforeachitemofalot.Tendererswishingtoofferdiscountsfortheawardofmorethanone Contractshallspecifyintheir Tenderthepricereductionsapplicabletoeachpackage,oralternatively,toindividual Contractswithinthepackage.DiscountsshallbesubmittedinaccordancewithITT13.4providedtheTendersforalllots(contracts)areopenedatthesametime.

13.7 ThetermsEXW,CIP,CIF,DDPandothersimilartermsshallbegovernedbytherulesprescribedinthecurrenteditionofIncoterms,publishedbytheInternationalChamberofCommerce.

13.8 PricesshallbequotedasspecifiedineachPriceScheduleincludedinSectionIV,TenderingForms.Thedisaggregationofpricecomponentsisrequiredsolelyforthepurposeoffacilitatingthecomparisonof TendersbytheProcuringEntity.

Thisshallnotinanywaylimittheprocuringentity'srighttocontractonanyofthetermsoffered.Inquotingprices,theTenderershallbefreetousetransportationthroughcarriersregisteredinanyeligiblecountry.Similarly,theTenderermayobtaininsuranceservicesfromanyeligiblecountryinaccordancewithITT3.6,EligibleTenders.Pricesshallbeenteredinthefollowingmanner:

a) ForGoodsmanufacturedinKenya:

I) thepriceoftheGoodsquotedEXW(ex-works,ex-factory,exwarehouse,exshowroom,oroff-the-shelf,asapplicable)finaldestinationpointindicatedinthe**TDS**,includingallcustomsdutiesandsalesandothertaxesalreadypaidorpayableonthecomponentsandrawmaterialusedinthemanufactureorassemblyoftheGoods;

ii) anysalestaxandothertaxeswhichwillbepayableinKenyaontheGoodsiftheContractisawardedtotheTenderer;and

iii) thepriceforinlandtransportation,insurance,andotherlocalservicesrequiredtoconveytheGoodstotheirfinaldestinationspecified**intheTDS.**

b) ForGoodsmanufacturedoutsideKenya,tobeimported:

i) thepriceoftheGoods,quotedCIPnamedplaceofdestination,inKenya,asspecified**intheTDS;**

ii) thepriceforinlandtransportation,insurance,andotherlocalservicesrequiredtoconveytheGoodsfromthenamedplaceofdestinationtotheirfinaldestinationspecified**intheTDS;**

c) ForGoodsmanufacturedoutsideKenya,alreadyimported:

i) thepriceoftheGoods,includingtheoriginalimportvalueoftheGoods;plus,anymark-up(orrebate);plus,anyotherrelatedlocalcost,andcustomdutiesandotherimporttaxesalreadypaidortobepaidontheGoodsalreadyimported;

ii) thecustomdutiesandotherimporttaxesalreadypaid(needtobesupportedwithdocumentaryevidence)ortobepaidontheGoodsalreadyimported;

iii) anysalesandothertaxesleviedinKenyawhichwillbepayableontheGoodsiftheContractisawardedtotheTenderer;and

iv) thepriceforinlandtransportation,insurance,andotherlocalservicesrequiredtoconveytheGoodsfromthenamedplaceofdestinationtotheirfinaldestination(ProjectSite)specified**intheTDS.**

d) forRelatedServices,otherthaninlandtransportationandotherservicesrequiredtoconveytheGoodstotheirfinaldestination,wheneversuchRelatedServicesarespecifiedintheScheduleofRequirements,thepriceofeachitemcomprisingtheRelatedServices(inclusiveofanyapplicabletaxes).

14. Currencies of Tender and Payment

14.1 Thecurrency(ies)oftheTender,thecurrency(ies)ofawardandthecurrency(ies)ofcontractpaymentsshallbethesame**.**

14.2 The Tenderer shall quote in Kenya shillings.Ifallowedinthe**TDS**,theTenderermayexpresstheTenderpriceinanycurrency,provideditshallusenomorethantwoforeigncurrenciesinadditiontotheKenyaShilling.

14.3 TheratesofexchangetobeusedbytheTendershallbebasedontheexchangeratesprovidedbytheCentralBankofKenyaonthedate30dayspriortotheactualdateoftenderopening.

15. DocumentsEstablishingtheEligibilityandConformityoftheGoodsandRelatedServices

15.1 ToestablishtheeligibilityoftheGoodsandRelatedServicesinaccordancewithITT15,Tendersshallcompletethecountryoforigindeclarationsinthe PriceScheduleForms,includedinSectionIV,TenderingForms.

15.2 ToestablishtheconformityoftheGoodsandRelatedServicestothetenderingdocument,theTendershallfurnishaspartofitsTenderthedocumentaryevidencethattheGoodsconformtothetechnicalspecificationsandstandardsspecifiedinSectionVII,ScheduleofRequirements.

15.3 Thedocumentaryevidencemaybeintheformofliterature,drawingsordata,andshallconsistofadetailedescriptionoftheessentialtechnicalandperformancecharacteristicsoftheGoodsandRelatedServices,demonstratingsubstantialresponsivenessoftheGoodsandRelatedServicestothetechnicalspecification,andifapplicable,astatementofdeviationsandexceptionstotheprovisionsoftheSectionVII,ScheduleofRequirements.

15.4 TheTendershallalsofurnishalistgivingfullparticulars,includingavailablesourcesandcurrentpricesofspareparts,specialtools,etc.,necessaryfortheproperandcontinuingfunctioningoftheGoodsduringtheperiod**specifiedinthe TDS**followingcommencementoftheuseofthegoodsbytheProcuringEntity.

15.5 Standardsforworkmanship,process,material,andequipment,aswellasreferencestobrandnamesorcataloguenumbersspecifiedbytheProcuringEntityintheScheduleofRequirements,areintendedtobedescriptiveonlyandnotrestrictive.TheTenderermayofferotherstandardsofquality,brandnames,and/orcataloguenumbers,providedthatitdemonstrates,totheProcuringEntity'ssatisfaction,thatthesubstitutionsensuresubstantialequivalenceoraresuperiortoth

osespecifiedintheSectionVII,ScheduleofRequirements.

16. Documents Establishing the Eligibility and Qualifications of the Tenderer

16.1 ToestablishTenderereligibilityinaccordancewithITT4,TenderersshallcompletetheFormofTender,includedinSectionIV,TenderingForms.

16.2 ThedocumentaryevidenceoftheTendererqualificationstoperformtheContractifitsTenderisacceptedshallestablishtotheProcuringEntity'ssatisfaction:

a) that,ifrequired**intheTDS**,aTendererthatdoesnotmanufactureorproducetheGoodsitofferstosupplyshallsubmittheManufacturer'sAuthorizationusingtheformincludedinSectionIV,TenderingFormstodemonstratethatithasbeendulyauthorizedbythemanufacturerorproduceroftheGoodstosupplytheseGoodsinKenya;

b) that,ifrequired**intheTDS**,incaseofaTenderernotdoingbusinesswithintheKenya,theTendererisorwillbe(ifawardedtheContract)representedbyanAgentinthecountryequippedandabletocarryouttheSupplier'smaintenance,repairandspareparts-stockingobligationsprescribedintheConditionsofContractand/orTechnicalSpecifications;and

c) thattheTenderermeetseachofthequalificationcriterionspecifiedinSectionIII,EvaluationandQualificationCriteria.

17. Period of Validity of Tenders

17.1 TendersshallremainvalidfortheTenderValidityperiodspecified**intheTDS**.TheTenderValidityperiodstartsfromthedatefixedfortheTendersubmissiondeadline(asprescribedbytheProcuringEntityinaccordancewithITT21.1).ATendervalidforashorterperiodshallberejectedbytheProcuringEntityasnon-responsive.

17.2 Inexceptionalcircumstances,priortotheexpirationoftheTendervalidityperiod,theProcuringEntitymayrequestTendererstoextendtheperiodofvalidityoftheirTenders.The request and the responses shall be made in writing.IfaTenderSecurityisrequestedinaccordancewithITT18,itshallalsobeextendedforacorrespondingperiod. ATenderer may refuse the request without forfeiting its Tender Security.ATenderergrantingtherequestshallnotberequiredorpermittedtomodifyitsTender,exceptasprovidedinITT17.3.

17.3 Iftheawardisdelayedbyaperiodexceedingthenumberofdaystobespecifiedinthe**TDS**daysbeyondtheexpiryoftheinitialtendervalidityperiod,theContractpriceshallbedeterminedasfollows:

a) inthecaseof**fixedprice**contracts,theContractpriceshallbethetenderpriceadjustedbythefactorspecified**intheTDS**;

b) inthecaseof**adjustableprice**contracts,noadjustmentshallbemade;orinanycase,tenderevaluationshallbebasedonthetenderpricewithouttakingintoconsiderationtheapplicablecorrectionfromthoseindicatedabove.

18. Tender Security

18.1 TheTenderershallfurnishaspartofitsTender,eitheraTender-SecuringDeclarationoraTenderSecurity,asspecified**intheTDS,**inoriginalformand,inthecaseofaTenderSecurity**,**intheamountandcurrencyspecified**intheTDS.**

18.2 ATenderSecuringDeclarationshallusetheformincludedinSectionIV,TenderingForms.

18.3 IfaTenderSecurityisspecifiedpursuanttoITT18.1,theTenderSecurityshallbeademandguaranteeinanyofthefollowingformsattheTendereroption:

i) cash;

ii) abankguarantee;

iii) aguaranteebyaninsurancecompanyregisteredandlicensedbytheInsuranceRegulatoryAuthoritylistedbytheAuthority;or

iv) aletterofcredit;or

v) guaranteebyadeposittakingmicro-financeinstitution,Saccosociety,theYouthEnterpriseDevelopmentFundortheWomenEnterpriseFund.

18.4 Ifanunconditionalguaranteeisissuedbyanon-BankfinancialinstitutionlocatedoutsideKenya,theissuingnon-BankfinancialinstitutionshallhaveacorrespondentfinancialinstitutionlocatedinKenyatomakeitenforceableunlesstheProcuringEntityhasagreedinwriting,priortoTendersubmission,thatacorrespondentfinancialinstitutionisnotrequired.Inthecaseofabankguarantee,theTenderSecurityshallbesubmittedeitherusingtheTenderSecurityFormincludedinSectionIV,TenderingForms,orinanothersubstantiallysimilarformatapprovedbytheProcuringEntitypriortoTendersubmission.TheTenderSecurityshallbevalidforthirty (30)daysbeyondtheoriginalvalidityperiodoftheTender,orbeyondanyperiodofextensionifrequestedunderITT17.

2.

18.5 IfaTenderSecurityisspecifiedpursuanttoITT18.1,anyTendernotaccompaniedbyasubstantiallyresponsiveTenderSecurityshallberejectedbytheProcuringEntityasnon-responsive.

18.6 IfaTenderSecurityisspecifiedpursuanttoITT18.1,theTenderSecurityofunsuccessfulTenderersshallbereturnedaspromptlyaspossibleuponthesuccessfulTenderersigningtheContractandfurnishingthePerformanceSecuritypursuanttoITT46.TheProcuringEntityshallalsopromptlyreturnthetendersecuritytothetendererswheretheprocurementproceedingsareterminated,alltendersweredeterminednon-responsiveorabidderdeclinestoextendtendervalidityperiod.

18.7 TheTenderSecurityofthesuccessfulTenderershallbereturnedaspromptlyaspossibleoncethesuccessfulTendererhassignedtheContractandfurnishedtherequiredPerformanceSecurity.

18.8 TheTenderSecuritymaybeforfeitedortheTenderSecuringDeclarationexecuted:
a) ifaTendererwithdrawsitsTenderduringtheperiodofTendervalidityspecifiedbytheTendererintheFormofTender,oranyextensionthereto providedbytheTenderer;or
b) ifthesuccessfulTendererfailsto:
   i) signtheContractinaccordancewithITT45;or
   ii) furnish aPerformanceSecurityinaccordancewithITT46.

18.9 WheretendersecuringdeclarationisexecutedtheProcuringEntityshallrecommendtothePPRAthatPPRAdebarstheTendererfromparticipatinginpublicprocurementasprovidedinthelaw.

18.10 TheTenderSecurityorTender-SecuringDeclarationofaJVmustbeinthenameoftheJVthatsubmitstheTender.IftheJVhasnotbeenlegallyconstitutedintoalegallyenforceableJVatthetimeofTendering,theTenderSecurityorTender-SecuringDeclarationshallbeinthenamesofallfuturemembersasnamedintheletterofintentreferredtoinITT3.1andITT10.2.

18.11 Atenderershallnotissueatendersecuritytoguaranteeitself.

19. Format and Signing of Tender

19.1 TheTenderershallprepareoneoriginalofthedocumentscomprisingtheTenderasdescribedinITT11andclearlymarkit“ORIGINAL.”AlternativeTenders,ifpermittedinaccordancewithITT12,shallbeclearlymarked“ALTERNATIVE.”Inaddition,theTenderershallsubmitcopiesoftheTender,inthenumber**specifiedintheTDS**andclearlymarkthem“COPY.”Intheeventofanydiscrepancybetweentheoriginalandthecopies,theoriginalshallprevail.

19.2 Tenderersshallmarkas“CONFIDENTIAL”informationintheirTenderswhichisconfidentialtotheirbusiness.Thismayincludeproprietaryinformation,tradesecrets,orcommercialorfinanciallysensitiveinformation.

19.3 TheoriginalandallcopiesoftheTendershallbetypedorwritteninindelibleinkandshallbesignedbyapersondulyauthorizedtosignonbehalfoftheTenderer.Thisauthorizationshallconsistofawrittenconfirmation**asspecifiedintheTDS**andshallbeattachedtotheTender.Thenameandpositionheldbyeachpersonsigningtheauthorizationmustbetypedorprintedbelowthesignature.AllpagesoftheTenderwhereentriesoramendmentshavebeenmadeshallbesignedorinitialedbythepersonsigningtheTender.

19.4 IncasetheTendererisaJV,theTendershallbesignedbyanauthorizedrepresentativeoftheJVonbehalfoftheJV,andsoastobelegallybindingonallthemembersasevidencedbyapowerofattorneysignedbyeachmembers'legallyauthorizedrepresentatives.

19.5 Anyinter-lineation,erasures,oroverwritingshallbevalidonlyiftheyaresignedorinitialedbythepersonsigningtheTender.

D. Submission and Opening of Tenders

20 Sealing and Marking of Tenders

20.1 Dependingonthesizesorquantitiesorweightofthetenderdocuments,atenderermayuseanenvelope,packageorcontainer.TheTenderershalldelivertheTenderinasinglesealedenvelope,orinasinglesealedpackage,orinasinglesealedcontainerbearingthenameandReferencenumberoftheTender,addressedtotheProcuringEntityandawarningnottoopenbeforethetimeanddateforTenderopeningdate.Withinthesingleenvelope,packageorcontainer,theTenderershallplacethefollowingseparate,sealedenvelopes:
a) inanenvelopeorpackageorcontainermarked“ORIGINAL”,alldocumentscomprisingtheTender,asdescribedinITT11;and

b) inanenvelopeorpackageorcontainermarked“COPIES”,allrequiredcopiesoftheTender;and
c) ifalternativeTendersarepermittedinaccordancewithITT12,andifrelevant:
   i) inanenvelopeorpackageorcontainermarked“ORIGINAL– ALTERNATIVETENDER”,thealternativeTender;and
   ii) intheenvelopeorpackageorcontainermarked“COPIES- ALTERNATIVETENDER”,allrequiredcopiesofthealternativeTender.

20.2 Theinnerenvelopesorpackagesorcontainersshall:
a) bear thenameandaddressoftheProcuringEntity.
b) bearthenameandaddressoftheTenderer;and
c) bear thenameandReferencenumberoftheTender.

20.3 Whereatenderpackageorcontainercannotfitinthetenderbox,theprocuringentityshall:
a) Specify in the **TDS where** such documents should be received.
b) maintainarecordoftendersreceivedandissueacknowledgementreceiptnotetoeachtendererspecifyingtimeanddateofreceipt.
c) Ensurealltendersreceivedarehandedovertothetenderopeningcommitteeforopeningatthespecifiedopening placeandtime.

20.4 Ifanenvelopeorpackageorcontainerisnotsealedandmarkedasrequired,the*ProcuringEntity*willassumenoresponsibilityforthemisplacementorprematureopeningoftheTender.Tenders misplaced or opened prematurely will not be accepted.

21. Deadline for Submission of Tenders

21.1 TendersmustbereceivedbytheProcuringEntityattheaddressandnolaterthanthedateandtimespecified**intheTDS.** WhensospecifiedintheTDS,TendererssshallhavetheoptionofsubmittingtheirTenderselectronically.TendererssubmittingTenderselectronicallyshallfollowtheelectronicTendersubmissionprocedures**specifiedintheTDS**.

21.2 TheProcuringEntitymay,atitsdiscretion,extendthedeadlineforthesubmissionofTendersbyamendingthetenderingdocumentinaccordancewithITT7,inwhichcaseallrightsandobligationsoftheProcuringEntityandTendererspreviouslysubjecttothedeadlineshallthereafterbesubjecttothedeadlineasextended.

22. Late Tenders

22.1 TheProcuringEntityshallnotconsideranyTenderthatarrivesafterthedeadlineforsubmissionofTenders.AnyTenderreceivedbytheProcuringEntityafterthedeadlineforsubmissionofTendersshallbedeclaredlate,rejected,andreturnedunopenedtotheTenderer.

23. Withdrawal, Substitution, and Modification of Tenders

23.1 ATenderermaywithdraw,substitute,ormodifyitsTenderafterithasbeensubmittedbysendingawrittennotice,dulysignedbyanauthorizedrepresentative,andshallincludeacopyoftheauthorization(thepowerofattorney)inaccordancewithITT19.3,(exceptthatwithdrawalnoticesdonotrequirecopies).Thecorrespondingsubstitutionormodificationoftheirtendermustaccompanytherespectivewrittennotice.Allnoticesmustbe:
a) preparedandsubmittedinaccordancewithITT20and21(exceptthatwithdrawalnoticesdonotrequirecopies), andinaddition,therespectiveenvelopesshallbeclearlymarked“WITHDRAWAL,”“SUBSTITUTION,”or “MODIFICATION;”and
b) receivedbytheProcuringEntitypriortothedeadlineprescribedforsubmissionofTenders,inaccordancewithITT22.

23.3 TendersrequestedtobewithdrawninaccordancewithITT23.1shallbereturnedunopenedtotheTenderers.

23.4 NoTendermaybewithdrawn,substituted,ormodifiedintheintervalbetweenthedeadlineforsubmissionofTendersandtheexpirationoftheperiodofTendervalidityspecifiedbytheTendererontheFormofTenderoranyextensionthereof.

24. Tender Opening

24.1 ExceptasinthecasesspecifiedinITT23,theProcuringEntityshall,attheTenderopening,publiclyopenandreadoutall Tendersreceivedbythedeadlineatthedate,timeandplacespecified**intheTDS**inthepresenceofTenderers'designatedrepresentativeswhochoosetoattend,includingtoattendanyspecificelectronictenderopeningproceduresifelectro

nictenderingispermittedinaccordancewithITT21.1,shallbeasspecified**intheTDS.**

24.2 First,envelopesmarked"WITHDRAWAL"shallbeopenedandreadoutandtheenvelopewiththecorrespondingTe ndershallnotbeopened,butreturnedtotheTenderer.Ifthewithdrawalenvelopedoesnotcontainacopyofthe"powero fattorney"confirmingthesignatureasapersondulyauthorizedtosignonbehalfoftheTenderer,thecorrespondingTe nderwillbeopened.NoTenderwithdrawalshallbepermittedunlessthecorrespondingwithdrawalnoticecontainsav alidauthorizationtorequestthewithdrawalandisreadoutatTenderopening.

24.3 Next,envelopesmarked"SUBSTITUTION"shallbeopenedandreadoutandexchangedwiththecorrespondingTen derbeingsubstituted,andthesubstitutedTendershallnotbeopened,butreturnedtotheTenderer.NoTendersubstituti onshallbepermittedunlessthecorrespondingsubstitutionnoticecontainsavalidauthorizationtorequestthesubstitut ionandisreadoutatTenderopening.

24.4 Next,envelopesmarked"MODIFICATION"shallbeopenedandreadoutwiththecorrespondingTender.NoTender modificationshallbepermittedunlessthecorrespondingmodificationnoticecontainsavalidauthorizationtorequest themodificationandisreadoutatTenderopening.

24.5 Next,allremainingenvelopesshallbeopenedoneatatime,readingout:thenameoftheTendererandwhetherthereisa modification;thetotalTenderPrices,perlot(contract)ifapplicable,includinganydiscountsandalternativeTenders;t hepresenceorabsenceofaTenderSecurity,ifrequired;andanyotherdetailsastheProcuringEntitymayconsiderappr opriate.

24.6 OnlyTenders,alternativeTendersanddiscountsthatareopenedandreadoutatTenderopeningshallbeconsideredfurt herforevaluation.TheFormofTenderandpagesoftheBillsofQuantitiesaretobeinitialedbythemembersofthetender openingcommitteeattendingtheopening.Thenumberofrepresentativesoftheprocuringentitytosignshallbespeci fiedintthe**TDS.**

24.7 TheProcuringEntityshallneitherdiscussthemeritsofanyTendernorrejectanyTender(exceptforlateTenders,inacc ordancewithITT22.1).

24.8 TheProcuringEntityshallpreparearecordoftheTenderopeningthatshallinclude,asaminimum:

a) thenameoftheTendererandwhetherthereisawithdrawal,substitution,ormodification;
b) theTenderPrice,perlot(contract)ifapplicable,includinganydiscounts;
c) anyalternativeTenders;
d) thepresenceorabsenceofaTenderSecurityorTender-SecuringDeclaration,ifonewasrequired;
e) number ofpagesofeachtenderdocumentsubmitted.

24.9 TheTenderers'representativeswhoarepresentshallberequestedtosigntherecord.TheomissionofaTenderersignat ureontherecordshallnotinvalidatethecontentsandeffectoftherecord.Acopyofthetenderopeningregistershallbeis suedtoaTendereruponrequest.

E. Evaluation and Comparison of Tenders

25. Confidentiality

25.1 InformationrelatingtotheevaluationofTendersandrecommendationofcontractaward,shallnotbedisclosedtoTen derersoranyotherpersonsnotofficiallyconcernedwiththetenderingprocessuntiltheinformationonIntentiontoAw ardtheContractistransmittedtoallTenderersinaccordancewithITT41.

25.2 AnyeffortbyaTenderertoinfluencetheProcuringEntityintheevaluationorcontractawarddecisionsmayresultinthe rejectionofitsTender.

25.3 NotwithstandingITT25.2,fromthetimeofTenderopeningtothetimeofContractAward,ifanyTendererwishestoco ntacttheProcuringEntityonanymatterrelatedtotheTenderingprocess,itshoulddosoinwriting.

26. Clarification of Tenders

26.1 Toassistintheexamination,evaluation,comparisonoftheTenders,andqualificationoftheTenderers,theProcuring Entitymay,atitsdiscretion,askanyTendererforaclarificationofitsTender.AnyclarificationsubmittedbyaTenderer inrespecttoitsTenderandthatisnotinresponsetoarequestbytheProcuringEntityshallnotbeconsidered.TheProcuri ngEntity'srequestforclarificationandtheresponseshallbeinwriting.Nochange,includinganyvoluntaryincreaseor decrease,inthepricesorsubstanceoftheTendershallbesought,offered,orpermittedexcepttoconfirmthecorrectiono farithmeticerrorsdiscoveredbytheProcuringEntityintheEvaluationoftheTenders,inaccordancewithITT30.

IfaTendererdoesnotprovideclarificationsofitsTenderbythedateandtimesetintheProcuringEntity'srequestforclar

ification,itsTendermayberejected.

27. Deviations, Reservations, and Omissions

27.1 DuringtheevaluationofTenders,thefollowingdefinitionsapply:

a) “Deviation”isadeparturefromtherequirementsspecifiedintheTenderingdocument;

b) “Reservation”isthesettingoflimitingconditionsorwithholdingfromcompleteacceptanceoftherequirement sspecifiedinthetenderingdocument;and

c) “Omission”isthefailuretosubmitpartoralloftheinformationordocumentationrequiredinthetenderingdocu ment.

28. Determination ofResponsiveness

28.1 TheProcuringEntity'sdeterminationofaTender'sresponsivenessistobebasedonthecontentsoftheTenderitself,asd efinedinITT28.2.

28. AsubstantiallyresponsiveTenderisonethatmeetstherequirementsofthetenderingdocumentwithoutmaterialdevia tion,reservation,oromission.Amaterialdeviation,reservation,oromissionisonethat:

a) ifaccepted,would:

i) affectinanysubstantialwaythescope,quality,orperformanceoftheGoodsandRelatedServicesspecifiedi ntheContract;or

ii) limitinanysubstantialway,inconsistentwiththetenderingdocument,theProcuringEntity'srightsortheT endererobligationsundertheContract;or

b) ifrectified,wouldunfairlyaffectthecompetitivepositionofotherTendererspresentingsubstantiallyresponsiv eTenders.

28.2 TheProcuringEntityshallexaminethetechnicalaspectsoftheTendersubmittedinaccordancewithITT15andITT16 ,inparticular,toconfirmthatallrequirementsofSectionVII,ScheduleofRequirementshavebeenmetwithoutanymat erialdeviationorreservation,oromission.

28.3 IfaTenderisnotsubstantiallyresponsivetotherequirementsoftenderingdocument,itshallberejectedbytheProcurin gEntityandmaynotsubsequentlybemaderesponsivebycorrectionofthematerialdeviation,reservation,oromission.

29. Non-conformities, Errors and Omissions

29.1 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntitymaywaiveanynon-conformitiesintheTender.

29.2 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntitymayrequestthattheTendersubmitthenecess aryinformationordocumentation,withinareasonableperiodoftime,torectifynonmaterialnon-conformitiesoromissionsintheTenderrelatedtodocumentationrequirements.Suchomissionshallnotberelatedtoa nyaspectofthepriceoftheTender.FailureoftheTenderertocomplywiththerequestmayresultintherejectionofitsTen der.

29.3 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntityshallrectifyquantifiablenonmaterialnon-conformitiesrelatedtotheTenderPrice.Tothiseffect,theTenderPriceshallbeadjusted,forcomparisonpurposesonly ,toreflectthepriceofamissingornon-conformingitemorcomponentinthemannerspecified**intheTDS**.Theadjustmentshallbebasedonthe***average***priceo ftheitemorcomponentasquotedinothersubstantiallyresponsiveTenders.Ifthepriceoftheitemorcomponentcannot bederivedfromthepriceofothersubstantiallyresponsiveTenders,theProcuringEntityshalluseitsbestestimate.

30. Arithmetical Errors

30.1 Thetendersumassubmittedandreadoutduringthetenderopeningshallbeabsoluteandfinalandshallnotbethesubject ofcorrection,adjustmentoramendmentinanywaybyanypersonorentity.

30.2 ProvidedthattheTenderissubstantiallyresponsive,theProcuringEntityshallhandleerrorsonthefollowingbasis:

a) Anyerrordetectedifconsideredamajordeviationthataffectsthesubstanceofthetender,shallleadtodisqualific ationofthetenderasnon-responsive.

b) Anyerrorsinthesubmittedtenderarisingfromamiscalculationofunitprice,quantity,subtotalandtotalbidprice shallbeconsideredasamajordeviationthataffectsthesubstanceofthetenderandshallleadtodisqualificationof thetenderasnon-responsive.and

c) ifthereisadiscrepancybetweenwordsandfigures,theamountinwordsshallprevail.

30.3 Tenderersshallbenotifiedofanyerrordetectedintheirbidduringthenotificationofaward.

31. Conversion to Single Currency

31.1 Forevaluationandcomparisonpurposes,thecurrency(ies)oftheTendershallbeconvertedinasinglecurrencyasspec ified**intheTDS.**

32. Margin of Preference and Reservations

32.1 Amarginofpreferencemaybeallowedonlocallymanufacturedgoodsonlywhenthecontractisopentointernationalte ndering,wherethetenderislikelytoattractforeigngoodsandwherethecontractexceedsthethresholdspecifiedinthe Regulations.

32.2 Forpurposesofgrantingamarginofpreferenceonlocallymanufacturedgoodsunderinternationalcompetitivetender ing,aprocuringentityshallnotsubjecttheitemslistedbelowtointernationaltenderandhencenomarginofpreferences hallbeallowed.Theaffecteditemsare:

a) motorvehicles,plantandequipmentwhichareassembledinKenya;

b) furniture,textile,foodstuffs,oilandgas,informationcommunicationtechnology,steel,cement,leatheragro-processing,sanitaryproducts,andothergoodsmadeinKenya;or

c) goods manufactured,mined,extractedorgrowninKenya.

32.3 Amarginofpreferenceshallnotbeallowedunlessitisspecifiedsointhe**TDS**.

32.4 Contractsprocuredonbasisofinternationalcompetitivetenderingshallnotbesubjecttoreservationstospecificgroup ssasprovidedinITT32.5.

32.5 Whereitisintendedtoreserveacontracttoaspecificgroupofbusinesses(thesegroupsareSmallandMediumEnterpris es,WomenEnterprises,YouthEnterprisesandEnterprisesofpersonslivingwithdisability,asthecasemaybe),andw hoareappropriatelyregisteredassuchbytheauthoritytobespecifiedinthe**TDS**,aprocuringentityshallensurethatthei nvitationtotenderspecificallyindicatesthatonlybusinessesorfirmsbelongingtothespecifiedgroupareeligibletoten derasspecifiedinthe**TDS**.No tender shall be reserved to more than one group.IfnotsostatedintheTenderdocuments,theinvitationtotenderwillbeopentoallinterestedtenderers.

33. Evaluation of Tenders

33.1 TheProcuringEntityshallusethecriteriaandmethodologieslistedinthisITTandSectionIII,EvaluationandQualific ationcriteria.No other evaluation criteria or methodologies shall be permitted.Byapplyingthecriteriaandmethodologies,theProcuringEntityshalldeterminetheLowestEvaluatedTe nder.ThisistheTenderoftheTendererthatmeetsthequalificationcriteriaandwhoseTenderhasbeendeterminedtobe :

a) substantiallyresponsivetothetenderdocuments;and

b) the lowestevaluatedprice.

33.2 PriceevaluationwillbedoneforItemsorLots(contracts),asspecified**intheTDS;**andtheTenderPriceasquotedinacc ordancewithITT14.ToevaluateaTender,theProcuringEntityshallconsiderthefollowing:

a) priceadjustmentduetounconditionaldiscountsofferedinaccordancewithITT13.4;
b) convertingtheamountresultingfromapplying(a)and(b)above,ifrelevant,toasinglecurrencyinaccordancewi thITT31;
c) priceadjustmentduetoquantifiablenonmaterialnon-conformitiesinaccordancewithITT29.3;and
d) anyadditionalevaluationfactorsspecified**intheTDS**andSectionIII,EvaluationandQualificationCriteria.

33.3 TheestimatedeffectofthepriceadjustmentprovisionsoftheConditionsofContract,appliedovertheperiodofexecuti onoftheContract,shallnotbeconsideredinTenderevaluation.

33.4 Wherethetenderinvolvesmultiplelotsorcontracts,thetendererwillbeallowedtotenderforoneormorelots(contracts).EachlotorcontractwillbeevaluatedinaccordancewithITT33.2.Themethodologytodeterminethelowestevaluate

dtendererortenderersbasedonelot(contract)orbasedonacombinationoflots(contracts),willbespecifiedinSectionI II,EvaluationandQualificationCriteria.InthecaseofmultiplelotsorcontractS,tendererwillbewillberequiredtoprep aretheEligibilityandQualificationCriteriaFormforeachLot.

33.5 TheProcuringEntity'sevaluationofaTenderwillincludeandconsider:

a) inthecaseofGoodsmanufacturedinKenya,salesandothersimilartaxes,whichwillbepayableonthegoodsifac ontractisawardedtotheTenderer;

b) inthecaseofGoodsmanufacturedoutsideKenya,alreadyimportedortobeimported,customsdutiesandotheri mporttaxesleviedontheimportedGood,salesandothersimilartaxes,whichwillbepayableontheGoodsifthec ontractisawardedtotheTenderer;

33.6 TheProcuringEntity'sevaluationofaTendermayrequiretheconsiderationofotherfactors,inadditiontotheTenderPr icequotedinaccordancewithITT14.Thesefactorsmayberelatedtothecharacteristics,performance,andtermsandco nditionsofpurchaseoftheGoodsandRelatedServices.Theeffectofthefactorsselected,ifany,shallbeexpressedinm onetarytermstofacilitatecomparisonofTenders,unlessotherwisespecifiedinthe**TDS**fromamongstthosesetoutinS ectionIII,EvaluationandQualificationCriteria.Theadditionalcriteriaandmethodologiestobeusedshallbeasspecifi edinITT33.2(d).

34. Comparison of Tenders

34.1 TheProcuringEntityshallcomparetheevaluatedcostsofallsubstantiallyresponsiveTendersestablishedinaccordan cewithITT33.2todeterminetheTenderthathasthelowestevaluatedcost.Thecomparisonshallbeonthebasisoftotalc ost(placeoffinaldestination)pricesforallgoodsandallprices,pluscostofinlandtransportationandinsurancetoplace ofdestination,forgoodsmanufacturedwithintheKenya,togetherwithpricesforanyrequiredinstallation,training,co mmissioningandotherservices.

35. Abnormally Low Tenders

35.1 AnAbnormallyLowTenderisonewheretheTenderprice,incombinationwithotherconstituentelementsoftheTend er,appearsunreasonablylowtotheextentthattheTenderpriceraisesmaterialconcernswiththeProcuringEntityastot hecapabilityoftheTendertoperformtheContractfortheofferedTenderprice.

35.2 IntheeventofidentificationofapotentiallyAbnormallyLowTenderbytheevaluationcommittee,theProcuringEntit yshallseekwrittenclarificationfromtheTenderer,includingadetailedpriceanalysesofitsTenderpriceinrelationtoth esubjectmatterofthecontract,scope,deliveryschedule,allocationofrisksandresponsibilitiesandanyotherrequire mentsofthetenderingdocument.

35.3 Afterevaluationofthepriceanalysis,intheeventthattheProcuringEntitydeterminesthattheTendererhasfailedtode monstrateitscapabilitytoperformthecontractfortheofferedTenderprice,theProcuringEntityshallrejecttheTender .

36. Abnormally High Tenders

36.4 Anabnormallyhighpriceisonewherethetenderprice,incombinationwithotherconstituentelementsofthe Tender,a ppearsunreasonablytoohightotheextentthattheProcuringEntityisconcernedthatit(theProcuringEntity)maynotb egettingvalueformoneyoritmaybepayingtoohighapriceforthecontractcomparedwithmarketpricesorthatgenuine competitionbetweenTenderersiscompromised.

36.5 IncaseofanabnormallyhightenderPrice,theProcuringEntityshallmakeasurveyofthemarketprices,checkiftheesti matedcostofthecontractiscorrectandreviewtheTenderDocumentstocheckifthespecifications,scopeofworkandc onditionsofcontractarecontributorytotheabnormallyhightenders.TheProcuringEntitymayalsoseekwrittenclari ficationfromthetendererontheReasonforthehightenderprice.TheProcuringEntityshallproceedasfollows:

i) Ifthetenderpriceisabnormallyhighbasedonwrongestimatedcostofthecontract,theProcuringEntitymayacce ptornotacceptthetenderdependingontheProcuringEntity'sbudgetconsiderations.

ii) Ifspecifications,scopeofworkand/orconditionsofcontractarecontributorytotheabnormallyhightenderprice s,theProcuringEntityshallrejectalltendersandmayretenderforthecontractbasedonrevisedestimates,specifi cations,scopeofworkandconditionsofcontract,asthecasemaybe.

36.6 IftheProcuringEntitydeterminesthattheTenderPriceisabnormallytoohighbecausegenuinecompetitionbetweent enderersiscompromised(*oftenduetocollusion,corruptionorotherManipulations*),theProcuringEntityshallreject allTendersandshallinstituteorcauserelevantGovernmentAgenciestoinstituteaninvestigationonthecauseoftheco mpromise,beforeretendering.

37. Post-Qualification of the Tenderer

37.1 TheProcuringEntityshalldetermine,toitssatisfaction,whethertheeligibleTendererthatisselectedashavingsubmitt edthelowestevaluatedcostandsubstantiallyresponsiveTender,meetsthequalifyingcriteriaspecifiedinSectionIII, EvaluationandQualificationCriteria.

37.2 ThedeterminationshallbebaseduponanexaminationofthedocumentaryevidenceoftheTendererqualificationssub mittedbytheTenderer,pursuanttoITT15and16.Thedeterminationshallnottakeintoconsiderationthequalification sofotherfirmssuchastheTenderersubsidiaries,parententities,affiliates,subcontractors(otherthanspecializedsubc ontractorsifpermittedinthetenderingdocument),oranyotherfirm(s)differentfromtheTenderer.

37.3 AnaffirmativedeterminationshallbeaprerequisiteforawardoftheContracttotheTenderer.Anegativedeterminatio nshallresultindisqualificationoftheTender,inwhicheventtheProcuringEntityshallproceedtotheTendererwhooff ersasubstantiallyresponsiveTenderwiththenextlowestevaluatedcosttomakeasimilardeterminationofthatTender erqualificationstoperformsatisfactorily.

38. Lowest Evaluated Tender

38.1 HavingcomparedtheevaluatedpricesofTenders,theProcuringEntityshalldeterminetheLowestEvaluatedTender. TheLowestEvaluatedTenderistheTenderoftheTendererthatmeetstheQualificationCriteriaandwhoseTenderhas beendeterminedtobe:

a) mostresponsivetotheTenderdocument;and
b) the lowestevaluatedprice.

39. ProcuringEntity'sRighttoAcceptAnyTender,andtoRejectAnyorAllTenders.

39.1 TheProcuringEntityreservestherighttoacceptorrejectanyTender,andtoannultheTenderingprocessandrejectallT endersatanytimepriortonotificationAward,withouttherebyincurringanyliabilitytoTenderers.Incaseofannulmen t,allTendersshallbenotifiedwithreasonsandallTenderssubmittedandspecifically,tendersecurities,shallbepro mptlyreturnedtotheTenderers.

F. Award of Contract

40. Award Criteria

40.1 TheProcuringEntityshallawardtheContracttothesuccessfultendererwhosetenderhasbeendeterminedtobetheLo westEvaluatedTenderinaccordancewithproceduresinSection3:EvaluationandQualificationCriteria.

41. Procuring Entity's Right to Vary Quantities at Time of Award

41.1 The Procuring Entity reserves the right at the time of Contract award to increase or decrease, by the percentage (s) for items as indicated **in the TDS.**

42. Notice of Intention to enter into a Contract

UponawardofthecontractandPriortotheexpiryoftheTenderValidityPeriodtheProcuringEntityshallissueaNotific ationofIntentiontoEnterintoaContract/Notificationofawardtoalltenderers whichshallcontain,ataminimum,thefo llowinginformation:

a) thenameandaddressoftheTenderersubmittingthesuccessfultender;

b) theContractpriceofthesuccessfultender;

c) astatementofthereason(s)thetenderoftheunsuccessfultenderertowhomtheletterisaddressedwasunsuccessf ul,unlessthepriceinformationin(c)abovealreadyrevealsthereason;

d) theexpirydateoftheStandstillPeriod;and

e) instructionsonhowtorequestadebriefingand/orsubmitacomplaintduringthestandstillperiod;

43. Standstill Period

43.1 TheContractshallnotbeawardedearlierthantheexpiryofaStandstillPeriodof14daystoallowanydissatisfiedcandid atetolaunchacomplaint.WhereonlyoneTenderissubmitted,theStandstillPeriodshallnotapply.

43.2 Wherestandstillperiodapplies,itshallcommencewhentheProcuringEntityhastransmittedtoeachTendertheNoti

ficationofIntentiontoEnterintoaContracttothesuccessfulTenderer.

44. Debriefing by the Procuring Entity

44.1 OnreceiptoftheProcuringEntity'sNotificationofIntentiontoEnterintoaContractreferredtoinITT41,anunsuccessful tenderermaymakeawrittenrequesttotheProcuringEntityforadebriefingonspecificissuesorconcernsregardingtheirtender.TheProcuringEntityshallprovidethedebriefingwithinfivedaysofreceiptoftherequest.

44.2 DebriefingsofunsuccessfulTenderersmaybedoneinwritingorverbally.TheTendershallbearitsowncostsofattendingsuchadebriefingmeeting.

45. Letter of Award

PriortotheexpiryoftheTenderValidityPeriodanduponexpiryoftheStandstillPeriodspecifiedinITT42,uponaddressingacomplaintthathasbeenfiledwithintheStandstillPeriod,theProcuringEntityshalltransmittheLetterofAwardtothesuccessfulTenderer.Theletterofawardshallrequestthesuccessfultenderertofurnishthe PerformanceSecurity within21daysofthedateoftheletter.

46. Signing ofContract

46.1 Upontheexpiryofthefourteendaysof theNotificationofIntentiontoenterintocontractanduponthepartiesmeetingtheirrespectivestatutoryrequirements,theProcuringEntityshallsendthesuccessfulTenderertheContractAgreement.

46.2 Withinfourteen(14)daysofreceiptoftheContractAgreement,thesuccessfulTendershallsign,date,andreturnittothe ProcuringEntity.

46.3 Thewrittencontractshallbeenteredintowithintheperiodspecifiedinthenotificationofawardandbeforeexpiryofthetendervalidityperiod.

47. Performance Security

47.1 Withintwenty-one(21)daysofthereceiptofLetterofAcceptancefromtheProcuringEntity,thesuccessfulTenderer,ifrequired,shallfurnishthePerformanceSecurityinaccordancewiththeGCC18,usingforthatpurposethePerformanceSecurityFormincludedinSectionX,ContractForms.IfthePerformanceSecurityfurnishedbythesuccessfulTendererisinthe formofabond,itshallbeissuedbyabondingorinsurancecompanythathasbeendeterminedbythesuccessfulTenderertobeacceptabletotheProcuringEntity.AforeigninstitutionprovidingabondshallhaveacorrespondentfinancialinstitutionlocatedinKenya,unlesstheProcuringEntityhasagreedinwritingthatacorrespondentfinancialinstitutionisnot required.

47.2 FailureofthesuccessfulTenderertosubmittheabove-mentionedPerformanceSecurityorsigntheContractshallconstitutesufficientgroundsfortheannulmentoftheawardandforfeitureoftheTenderSecurity.InthateventtheProcuringEntitymayawardtheContracttotheTendererofferingthenextlowestEvaluatedTender.

47.3 Performancesecurityshallnotberequiredforacontract,ifsospecifiedinthe**TDS**.

48. Publication of Procurement Contract

48.1 Withinfourteendaysaftersigningthecontract,theProcuringEntityshallpublishandpublicizetheawardedcontractatitsnoticeboards,entitywebsite;andontheWebsiteoftheAuthorityinmannerandformatprescribedbytheAuthority.At the minimum, the notice shall contain the following information:

a) nameandaddressoftheProcuringEntity;
b) nameandreferencenumberofthecontractbeingawarded,asummaryofitsscopeandtheselectionmethodused;
c) thenameofthesuccessfulTenderer,thefinaltotalcontractprice,thecontractduration.
d) datesofsignature,commencementandcompletionofcontract;
e) namesofallTenderersthatsubmittedTenders,andtheirTenderpricesasreadoutatTenderopening;

49. Procurement Related Complaints and Administrative Review

49.1 TheproceduresformakingaProcurement-relatedComplaintareasspecifiedinthe**TDS**.

49.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II – TENDER DATA SHEET (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ITT Reference	ParticularsOfAppendixTo Instructions ToTenders
A. General	
ITT1.1	The reference number of the Invitation for Tenders is: **BRCG/TNR/ICTED/1441892/2023-2024** The Procuring Entity is: **CountyGovernmentofBaringo –Departmentof INDUSTRY,COMMERCE,TOURISM,COOPERATIVES AND ENTERPRISE DEVELOPMENT** ThenameoftheContractis: **PURCHASE OF MOTORBIKES FOR LOYAMOROK** **32 Row Detectors Upgradable & echo machine Series**Thenumberandidentificationoflots(contracts)comprisingthisInvitationforTenders is:~~**NOTAPPLICABLE**~~
ITT1.2(a)	**Electronic–Procurement System** TheProcuringEntityshallusethefollowingelectronic-procurementsystemtomanage this Tendering process:**IFMIS**and documentsare tobe foundon ***www.baringo.go.ke***. Theelectronic-procurementsystemshallbeusedtomanagethefollowingaspectsof the Tendering process:**Tenderingdocument,submissionsofTenders,openingof Tenders, Evaluationof tender, awarding oftender.**
ITT2.3	TheInformation madeavailable oncompetingfirms isas follows: ~~**NOT APPLICABLE THE TENDERIS OPEN ANDFAIRTO ALLBIDDERS**~~ Thefirms thatprovided consultingservicesforthe contractbeingtendered forare: ~~**NOT APPLICABLE THE TENDERIS OPEN ANDFAIR TO ALLBIDDERS**~~
ITT3.1	MaximumnumberofmembersintheJointVenture (JV)shallbe:***NOT APPLICABLE***
ITT3.7	A list of debarred firms and individuals is available on the PPRA's website: www.ppra.go.ke
ITT3.11	Tenderersshallberequiredtobetoberegisteredwith **KENYAREGISTAROF COMPANIES**
	~~**B. Contents ofTendering Document**~~
ITT6.1	(a)Addresswhereto send enquiries is :**Supply ChainManagementOfficesatAFC Building (Basement)along Kabarnet-EldoretHighway**to reach the Procuring Entitynotlaterthan**5 DAYS BEFORE THE CLOSING DATE** (b)TheProcuringEntitypublishitsresponseatthewebsite ***www.baringo.go.ke***.
ITT6.2	**NOT APPLICABLE** A pre-tender conference will **NOT be held** at
ITT6.3	ThequestionstoreachtheProcuringEntitynotlaterthan **5 DAYS BEFORE THE CLOSING DATE**
ITT6.5	**NOT APPLICABLE** The Minutes of the Pre-Tender meeting shall be published on the at the website
	~~**C. PreparationofTenders**~~
ITT10 (j)	TheTenderershallsubmitthefollowingadditionaldocumentsinitsTender:**NOT APPLICABLE**
ITT12.1	AlternativeTenders ***SHALL NOT BE*** considered.
ITT13.5	ThepricesquotedbytheTenderer**SHALLNOT**besubjecttoadjustmentduringthe performanceof the Contract
ITT13.6	Pricesquotedforeachlot(contract)shallcorrespondatleast**to*[insertfigure]***percent of the items specifiedforeach lot(contract).**NOTAPPLICABLE**

	Pricesquoted foreach itemofa lotshallcorrespond atleast to***[insertfigure]***percentof the quantities specified forthisitemofalot.**NOTAPPLICABLE**
ITT13.8(a)(i)	Placeoffinaldestination:***ALL REPLIES SHOULD GOTHROUGHIFMIS***

ITT Reference and (iii)	ParticularsOfAppendixTo Instructions ToTenders
ITT 13.8 (a) (iii)	Final Destination(ProjectSite): **BARINGO COUNTY GOVERNMENT INDUSRY COMMERCE TOURISM AND ENTERPRISE DEVELOPMENT**
ITT 13.8 (b) (i)	Named place ofdestination, inKenya is**BARINGO COUNTY** P.O.BOX 53-30400 KABARNET
ITT 13.8 (b) (ii)	Thepriceforinlandtransportation,insurance,andotherlocalservicesrequiredto conveytheGoodsfromthenamedplaceofdestinationtotheirfinaldestinationwhich is**NOTAPPLICABLE**
13.8 (c)(iv)	Theplace offinaldestination (ProjectSite)is**BARINGO COUNTY - KABARNET**
ITT14.2	Foreign currencyrequirements**NOTALLOWED**
ITT15.4	PeriodoftimetheGoodsareexpectedtobefunctioning(forthepurposeofspare parts):**NOTAPPLICABLE**
ITT16.2 (a)	Manufacturer's authorization is**REQUIRED**.
ITT16.2 (b)	AftersalesserviceisNOT**REQUIRED**
ITT17.1	TheTendervalidityperiodshallbe **120**days.
ITT17.3	**NOT APPLICABLE** (a) TheNumberofdaysbeyondtheexpiryoftheinitialtendervalidityperiod willbe days. (b)TheTenderpriceshallbe adjusted bythe followingpercentagesofthetenderprice: *(i)* By %oft*helocalcurrencyportionoftheContractpriceadjustedto reflectlocal inflation during the period ofextension, and* *(ii)By% theforeigncurrencyportionoftheContractpriceadjustedto reflecttheinternationalinflation duringthe period ofextension.*
ITT18.1	A *TenderSecurity**SHALLBE*** required. ATender-SecuringDeclaration**SHALLBE**required. IfaTenderSecurityshallberequired,theamountandcurrencyoftheTenderSecurity shallbe **KSH 1,000,000**
ITT19.1	In additiontothe originalof theTender,the numberofcopiesis**:NOTAPPLICABLE**
ITT19.3	The written confirmation ofauthorization to sign on behalfof theTenderershallconsist of**:COMPANYDIRECTORS ORCOMPANYREPRESENTATIVES**
	D. Submission andOpening ofTenders
ITT20.3	Atenderpackageorcontainerthatcannotfitinthetenderboxshallbereceivedas follows:**NOTAPPLICABLE**
ITT21.1	For **Tender submission purposes** only, the ProcuringEntity's addressis: Attention:**DIRECTORSUPPLY CHAIN MANAGEMENT** PostalAddress:**P.O BOX53 KABARNET** PhysicalAddress:**SupplyChainManagementOfficesatAFCBuilding(Basement) alongKabarnet-EldoretHighway** Telephone:**N/A** Electronic mail address: supplychain@baringo.go.keordirectorscm@baringo.go.ke **The deadlinefor Tendersubmission is:** Date:Pleasecheckon the IFMIS portal. Time:Pleasecheckon the IFMIS portal.(*Kenyatime).*

tenderers**SHALL** have theoption ofsubmittingtheirTenders electronically. TheelectronicTendering submission proceduresshallbe**sent through IFMIS**

ITT Reference	ParticularsOfAppendixTo Instructions ToTenders
ITT24.1	TheTenderopeningshalltake placeat:**OPENING WILLBE THROUGHIFMIS** Attention:**NOT APPLICABLE** PostalAddress:*[insertaddress]* PhysicalAddress:City, Street, Buildingname, FloorNumberand Roomnumber. Date: ***[insertday,month, and year,e.g. 15 June, 2008]-NOTAPPLICABLE*** Time:***[inserttime,andidentifyifa.m.orp.m.e.g.10:30a.m.][Dateandtimeshould be thesame as thosegivenforthe deadlineforsubmission ofTenders(ITT 22).]*** The electronic Tender opening procedures shall be: ***SHALL BE DONE BY UNSEALERS DURINGEVALUATION***
ITT24.6	Thenumberofrepresentativesof the ProcuringEntityto sign is**NOTAPPLICABLE**
E. Evaluation and Comparison ofTenders	
ITT29.3	Themannerofrectifyquantifiablenonmaterialnonconformitiesdescribed below: **NOT APPLICABLE**
ITT31.1	ThecurrencythatshallbeusedforTenderevaluationandcomparisonpurposesto convertatthesellingexchangerateallTenderpricesexpressedinvariouscurrencies intoa single currencyis:**NOT APPLICABLE** Thesourceofexchange rate shallbe:**NOTAPPLICABLE** Thedate fortheexchange rateshallbe:**NOT APPLICABLE**
ITT32.3	**NOT APPLICABLE** Amarginofpreferenceand/orreservation***[inserteither"shall"or"shallnot"]***apply and specifythe details. Ifamarginofpreferenceapplies,theapplicationmethodologyshallbedefinedin Section III– Evaluation and Qualification Criteria.
ITT32.5	**NOT APPLICABLE** The invitationtotenderisextendedtothefollowing groupthatqualify forReservations whoshall be dulyregistered with
ITT33.2	**NOT APPLICABLE** **Priceevaluationwillbe donefor (*specify Items or Lots(contracts*)**
ITT33.2 (d)	**NOT APPLICABLE** Additionalevaluationfactors are
ITT33.6	**NOT APPLICABLE** **(a)*[insertanyotherspecificcriteriainSectionIII,EvaluationandQualification Criteria]***
	F. Award ofContract
ITT41.1	**NOT APPLICABLE** Themaximumpercentagebywhich quantitiesmaybe increasedis:***[insertpercentage]*** Themaximumpercentagebywhich quantitiesmaybe decreased is:***[insertpercentage]***
ITT41.1	**NOT APPLICABLE-** TheProcuringEntityshallincreaseordecreasethequantityofGoodsandRelated Servicesbyanamountnotexceed % andwithoutanychangeinthe unitprices orotherterms and
ITT47.3	Performance securityifso requiredshallbe inthesumof **10% (TEN PERCENT)** OF THE BID SUM_____

ITT49.1	The proceduresformaking aProcurement-related Complaintaredetailed in the "Notice ofIntentiontoAwardtheContract"hereinandarealsoavailablefromthePPRA Website www.ppra.go.ke.

23

ITT Reference	ParticularsOfAppendixTo Instructions ToTenders
	IfaTendererwishestomakeaProcurement-relatedComplaint,theTendershould submititscomplaintfollowingtheseprocedures,inwriting(bythequickestmeans available,thatis eitherby emailorfax),to: For the attention:**Director Supply Chain Management** Title/position:**Director Supply Chain Management** ProcuringEntity: **BaringoCounty Government** Emailaddress:**supplychain@baringo.go.keordirectorscm@baringo.go.ke** In summary, a Procurement-related Complaintmaychallenge anyof the following: **1.** theterms oftheTenderingDocuments;and **2.** the ProcuringEntity'sdecision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provisions

1.1 WhereveraTendererisrequiredtostateamonetaryamount,TenderersshouldindicatetheKenyaShillingequivalentusingtherateofexchangedeterminedasfollows:

a) Forbusinessturnoverorfinancialdatarequiredforeachyear-Exchangerateprevailingonthelastdayoftherespectivecalendaryear(inwhichtheamountsforthatyearistobeconverted)wasoriginallyestablished.

b) Valueofsinglecontract-Exchangerateprevailingonthedateofthecontractsignature.

c) Exchangeratesshallbetakenfromthepubliclyavailablesourceidentifiedin**theITT14.3.**AnyerrorindeterminingtheexchangeratesintheTendermaybecorrectedbytheProcuringEntity.

1.2 ThissectioncontainsthecriteriathattheProcuringEntityProcuringEntityshallusetoevaluatetenderandqualifytenderers.Nootherfactors,methodsorcriteriashallbeusedotherthanthosespecifiedinthistenderdocument.TheTenderershallprovideallthe informationrequestedintheformsincludedinSectionIV,TenderingForms.TheProcuringEntityshouldusetheStandardTenderEvaluationReportforGoodsandWorksforevaluatingTenders.

2. Evaluation of Tenders (ITT 33)

2.1 SuccessfulTenderorTenders

TheProcuringEntityshallusethecriteriaandmethodologieslistedinthisSectiontoevaluateTenders.Byapplyingthesecriteriaandmethodologies,theProcuringEntityshalldeterminethesuccessfulTenderorTenderswhichhas/havebeendeterminedto:

a) besubstantiallyresponsivetothetenderdocuments;

b) offerthelowestevaluatedcosttotheProcuringEntityforallitemsofGoodstobeprocuredbasedoneitherasingleContractorallmultipleContractscombined,asthecasemaybe,inaccordancewiththeITT13.6invitingTenderpricesanddiscounts,andprovisionsmadeoftheTenderDocumentforevaluationoftendersandawardofcontract(s);and

c) beofferedbyTendererorTenderersthatsubstantiallymeetthequalificationcriteriaapplicableforContractorcombinedContractsforwhichtheyareselected.

2.2 EvaluationofTenders

Preliminary examination for Determination of Responsiveness

TheProcuringEntitywillstartbyexaminingalltenderstoensuretheymeetinallrespectstheeligibilitycriteriaandothermandatoryrequirementsintheITT,andthatthetenderiscompleteinallaspectsinmeetingtherequirementsprovidedforinthepreliminaryevaluationcriteriaoutlinedbelow.TheStandardTenderEvaluationReportDocumentforGoodsandWorksforevaluatingTendersprovidesveryclearguideonhowtodealwithreviewoftheserequirements.TendersthatdonotpassthePreliminaryExaminationwillbeconsiderednon-responsiveandwillnotbeconsideredfurther.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
23	***SECTION A).*** **MANDATORY REQUIREMENTS**
	M1. MUST Attach Certificate of Incorporation or Business Name Registration
	M2. Attach Valid Tax Compliance Certificate.
	M3. MUST Attach dully filled business questionnaire
	M4.MUST attach current company CR12/13 certificate printed within the last one year
	M5.MUST Attach dully filled Anti-corruption declaration form
	M6. MUST Attach Valid Business permit
	M7. Dully filled& stamped form of tender
	M9. Bid document **MUST** be Serialized.
	M10 MUST submit tenders in the correct Format (All forms filled, signed and rubber stamped. i.e. Tender form, Business Questionnaire, price schedule, Corruption declaration form.
	M11. Dully filled BENEFICIAL OWNERSHIP DISCLOSURE FORM.
	M12.Bid security of KSH 100,000 of the bid sum
	Note: Failure to meet the above requirements shall render the tenderer none responsive and shall not proceed to technical stage of evaluation.
2.1.1	**OPEN TENDER.**
2.18.1	**TENDER CLOSING DATE: WEDNESDAY 10TH FEBRUARY,2024 AT 12.00 NOON.**

PRICE EVALUATION

ConsistentwithandinadditiontothecriterialistedinITT33.3andITT29.3;andITT34anditssubparagraphsthefollowingcriteriashallapply:

22.1 Evaluation of Technical aspects of the Tender

TheProcuringEntityshallevaluatetheTechnicalaspectsoftheTendertodeterminecompliancewiththeProcuringEntity'srequirementsunderSectionV'ScheduleofRequirement'andwhethertheTendersaresubstantiallyresponsivetotheTechnicalSpecificationsandotherRequirements.
[TheProcuringEntitywillhighlightherein anyparticulardetails,characteristics,functionalguarantees or

otherrequirementsunderthespecifications,whichtheTendererisrequiredtospecificallyconfirmorprovidedetailsasperSectionV,SupplyRequirementsorotherpartsoftheTenderDocument.Tofacilitate,atemplatemaybeattachedorclearlydescribedallinformationandlistofdocumentationtobesubmittedbyTenderstoenableevaluationofTechnicalpartsoftheTender

TECHNICAL EVALUATION CRITERIA

Technical Evaluation shall comprise scoring of bidders under various attributes in the table below – Table of Scoring Matrix. To earn maximum scores, a bidder must (1) provide supporting documents as per criteria (2) provide very precise/specific and relevant information as per criteria (3) provide as many/much information as possible to earn more points. A bidder must score a minimum of **30 points** to be considered for Financial Evaluation

Table of Scoring Matrix

s/no	Sub-Factor	Requirement	Maximum score	Awarded score
1.	Financial Situation			
	Audited financial reports for the past three years (2020, 2021 & 2022)	Audited financial report for 2021	5	
		Audited financial report for 2022	5	
		Audited financial report for 2023	5	
	FINANCIAL CAPACITY		**15**	
3	Proof of previous supplies of similar magnitude		**10**	
4.	SPECIFICATIONS	Dully filled and stamped Specifications	**10**	
	TOTAL SCORES		**35**	

NOTE: Only tenders that score 30% on technical evaluation will qualify to have their proposals for financial evaluation. Those scoring below 30% will be disqualified at this stage. Award will be given to the lowest evaluated responsive bidder.

NOTE: DUE TAKEN SHALL BE UNDERTAKEN ON THE LOWEST EVALUATED RESPONSIVE BIDDER PRIOR TO AWARD.

222 EvaluationofCommercialTermsandConditionsoftheTender(ITT33.1(a)):

ThePROCURINGENTITYshalldeterminewhethertheTendersaresubstantiallyresponsivetotheCommercialandContractualTermsandConditions(e.g.Performance securities, Payment and delivery schedules).

[ThePROCURINGENTITYwillhighlightherein anyparticularrequirementsundertheContractwhichtheTendererisrequiredtospecificallyconfirmorprovideinformationtoenableevaluationofCommercialTermsandConditionsoftheTender](N/A)

223 Evaluation Criteria (Other Factors) (ITT 33.6)

ThePROCURINGENTITY'sevaluationofaTendermaytakeintoaccount,inadditiontotheTenderPricequotedinaccordancewithITT13.8,oneormoreofthefollowingfactorsasspecifiedinITT33.2(d)andinTDSITT33.6**,**usingthefollowingcriteriaandmethodologies.

a) Delivery schedule

TheGoodsspecifiedintheListofGoodsarerequiredtobedeliveredwithintheacceptabletimerange(aftertheearliestandbeforethefinaldate,bothdatesinclusive)specifiedinSectionV,ScheduleofRequirements.Nocreditwillbegiventodeliveriesbeforetheearliestdate,andTendersofferingdeliveryafterthefinaldateshallbetreatedasnon-responsive.Withinthisacceptableperiod,anadjustmentof[insertheadjustmentfactor],willbeadded,forevaluationpurposesonly,totheTenderpriceofTendersofferingdeliverieslaterthanthe“EarliestDeliveryDate”specifiedinSectionV,ScheduleofRequirements.

[Anadjustmentfactorof0.5%perweekofdelaywouldbereasonable.However,theadjustmentfactorshouldnotbemorethantherateofLiquidatedDamagestobeappliedincaseofdelayindeliveryofGoodsandServicesundertheContractconditions.]

b) **Deviation in payment schedule**.*[insertoneofthefollowing]*

i. tenderersshallstatetheirTenderpriceforthepaymentscheduleoutlinedintheSCC.Tendersshallbeevaluatedonthebasisofthisbaseprice.tenderersare,however,permittedtostateanalternativepaymentscheduleandindicatethereductioninTenderpricetheywishtoofferforsuchalternativepaymentschedule.ThePROCURINGENTITYmayconsiderthealternativepaymentscheduleandthereducedTenderpriceofferedbythetendererselectedonthebasisofthebasepriceforthepaymentscheduleoutlinedintheSCC.

or

ii. TheSCCstipulatesthepaymentschedulespecifiedbythePROCURINGENTITY.IfaTenderdeviatefromthescheduleandifsuchdeviationisconsideredacceptabletothePROCURINGENTITY,theTenderwillbeevaluatedbycalculatinginterestearnedforanyearlierpaymentsinvolvedinthetermsoutlinedintheTenderascomparedwiththosestipulatedintheSCC,attherateperannum[insertadjustmentrate].

c) **Cost of major replacement components**, mandatory spare parts, and service.*[insertoneofthefollowings]*
Thelistofitemsandquantitiesofmajorassemblies,components,andselectedspareparts,likelytoberequiredduringtheinitialperiodofoperationspecifiedintheTDS15.4,isintheListofGoods.Anadjustmentequaltothetotalcostoftheseitems,attheunitpricesquotedineachTender,shallbeaddedtotheTenderprice,forevaluationpurposesonly.

or
ThePROCURINGENTITYwilldrawupalistofhigh-usageandhigh-valueitemsofcomponentsandspareparts,alongwithestimatedquantitiesofusageintheinitia

28

lperiodofoperationspecifiedintheTDS15.4.Thetotalcostoftheseitemsandquantitieswillb ecomputedfromsparepartsunitpricessubmittedbythetendererandaddedtotheTenderprice,

forevaluationpurposesonly.

or

TendershallprovidealongwithitsTender,thelistofrecommendedsparepartsforGoodsoffer edindicatingforeachitemofsparepartthe recommendedquantityandunit,andtotalCIPfinaldestinationpricesrequiredduringtheinitialperiodofoperationspecifiedintheTDS15.4.Thepricesofferedshallnotexceedtheprevailingpricechargedtootherpartiesbythe Tenderer.Thecostofsuchsparepartswillnotbetakenintoaccountfortenderevaluation.TheProcuringEntitymayawardthecontractforsparepartstothe Tendererthatissuccessfulforthesupplyof Goods,byselectingatitsoption,fromtheTender'slistofrecommendedspareparts,suchitemsandquantitiesagainsteachastheProcuringEntitymaydeemappropriateattheunitpricesindicatedbytheTendererbutnotexceeding----%(present)ofthecostofGoods[normallynotmorethan10%or15%.]

d) **AvailabilityinKenya**ofsparepartsandaftersalesservicesforequipmentofferedintheTender.

AnadjustmentequaltothecosttotheProcuringEntityofestablishingtheminimumservicefacilitiesandpartsinventoriesifquotedseparately,shallbeaddedtotheTenderprice,forevaluationpurposesonly.

e) Life Cycle Costs

IfspecifiedinTDS33.6,anadjustmenttoconsidertheadditionallifecyclecostsfortheperiodspecifiedbelow,suchastheoperatingandmaintenancecostsoftheGoods,willbeaddedtotheTenderprice,forevaluationpurposesonly.Theadjustmentwillbeevaluatedinaccordancewiththemethodologyspecifiedbelowandthefollowinginformation:

[NotetoProcuringEntity:Lifecyclecostingshouldbeusedwhenthecostsofoperationand/ormaintenanceoverthespecifiedlifeofthegoodsareestimatedtobeconsiderableincomparisonwiththeinitialcostandmayvaryamongdifferentTenders.Lifecyclecostsshallbeevaluatedonanetpresentvaluebasis.Iflifecyclecostsapply,thenspecifythefactorsrequiredtodeterminethemforevaluationpurposes.

[Eitheramendthefollowingtextasrequired,ordeleteiflifecyclecostisnotapplicable]

i) numberofyearsforlifecyclecostdetermination*[insertthenumberofyearsofeconomiclifeofGoods];*

ii) thediscountratetobeappliedtodeterminethenetpresentvalueofthelife-cycle-costis*[insertthediscountrate*];

iii) theannualoperatingandmaintenancecosts(recurrentcosts)shallbedeterminedonthebasisofthefollowingmethodology:*[insertmethodologyE.G.Thisshouldincludefactorsthatwillbeusedfordeterminationoflife-cycle-costsuchascostsofoperationandmaintenance,residualvalueattheendofeconomiclifeofGoods,majorelementsthatwillbeusedfordeterminationofcostofoperationandmaintenancesuchasfuel,power,labor,spareparts,etc.unitpricesofelementssuchasfuel,power,etc.,quantityofannualusagesuchasKmsorHoursofoperationofGoods,FormulaforcalculationofLCC,etc*];

iv) andthefollowinginformationisrequiredfromtenderers*[insertanyinformationrequiredfromtenderers,includingpricese.g.Guaranteedfueland/orpowerconsumption,costoflabour,spareparts,etc*].

f) **Performanceandproductivityoftheequipment**:*[**insertoneofthefollowings**]*

i) Performance and productivity of the equipment.AnadjustmentrepresentingthecapitalizedcostofadditionaloperatingcostsoverthelifeofthegoodswillbeaddedtotheTenderprice,forevaluationpurposesifspecifiedintheTDS33.6.TheadjustmentwillbeevaluatedbasedonthedropintheguaranteedperformanceorefficiencyofferedintheTenderbelowthenormof100,usingthemethodologyspecifiedbelow.*[Insert the methodology and criteria if applicable e.g.TheFollowingaspectscouldbeconsideredintheformulationofthismethodologyandcriteria:(i)Tenderpricefortheequipment;ii)PriceofsparepartsrequiredforAAAyearsofopera*

*tions,iii)Adjustmentstotenderpriceforomissions,deviationsandexceptionstotechnicalandcommercialconditionsinthetenderdocuments;iv)Capitalizedcostsavingsduetotheequipmentefficiencyattherateof**XXX**(specifycurrencyandamount)foreach**YYY%(**percent)abovethe**minimumZZZ%(**percent)efficiency;v)Capitalizedcostfortheauxiliarypowerconsumptionat**PPP**(specifycurrencyandamount)perKWforAAAyears;andvi)Applicablediscountrateof**BBB%**.]*

or

ii) AnadjustmenttoconsidertheproductivityofthegoodsofferedintheTenderwillbeaddedtotheTenderprice,forevaluationpurposesonly,ifspecifiedinITT33.6.TheadjustmentwillbeevaluatedbasedonthecostperunitoftheactualproductivityofgoodsofferedintheTenderwithrespecttominimumrequiredvalues,usingthemethodologyspecifiedbelow.

[Insert the methodology and criteria if applicable E.G.Theevaluationandcomparisonofresponsivetendersshallbebasedonthetotallifecyclecostfor XXX years,perunitofoutput.Thelifecyclecostshallbethesumoftheinitialpurchasepriceoftheequipmentandthecostofoperationinelectricenergyfor XXX yearsofoperationatunitcostof AAA (specifycurrencyandamount)perkwh,discountedtonetpresentvalueat YYY percent.]

g) Specific additional criteria

[Otherspecificadditionalcriteriatobeconsideredintheevaluation,andtheevaluationmethodshallbedetailedinTDS34.6][Ifspecific**sustainableprocurementtechnicalrequirements** havebeenspecifiedinSectionVII-Specification,**either**statethat(i)thoserequirementswillbeevaluatedonapass/fail(compliancebasis)**or**otherwise(ii)inadditiontoevaluatingthoserequirementsonapass/fail(compliancebasis),ifapplicable,specifythemonetaryadjustmentstobeappliedtoTenderPricesforcomparisonpurposesonaccountofTendersthatexceedthespecifiedminimumsustainableprocurementtechnicalrequirements.]

22.4. Multiple Contracts (ITT 33.4)

Multiple contracts will be permitted in accordance with ITT 33.4.TenderersareevaluatedonbasisofLotsandthelowestevaluatedtendercombinationforeachLot.TheProcuringEntitywillselectoneOptionofthetwoOptionslistedbelowforawardofContracts.

OPTION 1

i) IfatendererwinsonlyoneLot,thetendererwillbeawardedacontractforthatLot,providedthetendermeetstheEligibilityandQualificationCriteriaforthatLot.

ii) IfatendererwinsmorethanoneLot,thetenderwillbeawardedcontractsforallwonLots,providedthetendermeetstheaggregateEligibilityandQualificationCriteriaforalltheLots.Thetendererwillbeawardedthecombinationofwonlotsforwhichthetendererqualifiesandtheotherswillbeconsideredforawardtosecondlowestthetenderers.

OPTION 2

TheProcuringEntitywillconsiderallpossiblecombinationsofwonLots[contract(s)]anddeterminethecombinationswiththelowestevaluatedprice.TenderswillthenbeawardedtotheTendererorTenderersinthecombinationsprovidedthetendermeetstheaggregateEligibilityandQualificationCriteriaforallthewonLots.

22.5. AlternativeTenders (ITT13.1)*AnalternativeifpermittedunderITT13.1,willbeevaluatedasfollows:[insertoneofthefollowing]*

"ATenderermaysubmitanalternativeTenderonlywithaTenderforthebasecase.TheProcuringEn

30

tityshallonlyconsiderthealternativeTendersofferedbytheTendererwhoseTenderforthebasecase wasdeterminedtobetheLowestEvaluatedTender."

or

"ATenderermaysubmitanalternativeTenderwithorwithoutaTenderforthebasecase.TheProcuri ngEntityshallconsiderTendersofferedforalternativesasspecifiedintheTechnicalSpecifications ofSectionV,ScheduleofRequirements.AllTendersreceived,forthebasecase,aswellasalternative Tendersmeetingthespecifiedrequirements,shallbeevaluatedontheirownmeritsinaccordancewit hthesameprocedures,asspecifiedintheITT33."

3. MARGIN OF PREFERENCE-NOT APPLICABLE

3.1 IftheTDSsospecifies,theProcuringEntitywillgrantamarginofpreferenceof15%(fifteenpercent)t oTenderersofferinggoodsmanufactured,mined,extracted,grown,assembledorsemi-processedinKenya.Goodsassembledorsemi-processedinKenyashallhavealocalcontentofnotlessthan40%.

3.2 Themarginofpreferencewillbeappliedinaccordancewith,andsubjectto,thefollowingprovisions:

a) Tenderersapplyingforsuchpreferenceongoodsofferedshallprovide,aspartofthedataforqu alification,suchinformation,includingdetailsofthegoodsproducedinKenya,soastodeterm inewhether,accordingtotheclassificationestablishedbytheProcuringEntity,aparticularcat egoryofgoodsorgroupofgoodsqualifiesforamarginofpreference.

b) AfterTendershavebeenreceivedandreviewedbytheProcuringEntity,goodsofferedinthere sponsiveTendersshallbeassessedtoascertaintheyaremanufactured,mined,extracted,grow n,assembledorsemi-processedinKenya.Responsivetendersshallbeclassifiedintothefollowinggroups:

i) **GroupA:**TendersofferinggoodsmanufacturedinKenya,forwhich(a)labour,rawma terials,andcomponentsfromwithinKenyaaccountformorethanforty(40)percentofth heEx-Worksprice;and (b)theproductionfacilityinwhichtheywillbemanufacturedorassembledhasbeen engagedinmanufacturingorassemblingsuchgoodsatleastsincethedateofTender Submission date;

ii) **GroupB:**AllotherTendersofferingGoodsmanufacturedinKenya;

iii) **GroupC:**TendersofferingGoodsmanufacturedoutsideKenyathathavebeenalready importedorthatwillbeimported.

c) TofacilitatethisclassificationbytheProcuringEntity,theTendershallcompletewhichever versionofthePriceSchedulefurnishedintheTenderDocumentsisappropriate.Incorrectclas sificationmayrendertheTendernon-responsiveasnoreclassificationwillbepermittedafterTenderopening.Tenderersshallprovi decorrectinformationespeciallywithrespecttoduties,taxesetc.paidonpreviouslyimported Goodsandpercentageoflocallabour,materialsandcomponentsforGoodsmanufacturedinK enyaasanyfalseinformationwhichcannotbesupportedbydocumentationmayrendertheTe ndernon-responsivebesidesothersanctionsforprovidingfalsifiedinformation.

d) TheProcuringEntitywillfirstreviewtheTenderstoconfirmtheappropriatenessoftheTender groupclassificationtowhichTenderersassignedtheirTendersinpreparingtheirTenderFor msandPriceSchedules.

e) AllevaluatedTendersineachgroupwillthenbecomparedtodeterminethelowestevaluatedT enderofeachgroup.SuchlowestevaluatedTendersshallbecomparedwitheachotherandifas aresultofthiscomparisonaTenderfromGroupAorGroupBisthelowest,itshallbeselectedfor theaward.

f) IfasaresultoftheprecedingcomparisonthelowestevaluatedTenderisaTenderfromGroupC ,allTendersfromGroupCshallbefurthercomparedwiththelowestevaluatedTenderfromGr oupAafteraddingtotheevaluatedpriceofgoodsofferedineachTenderfromGroupC,forthep urposeofthisfurthercomparisononly,anamountequalto15%(fifteenpercent)oftherespecti veCIPTenderpriceforgoodstobeimportedandalreadyimportedgoods.Bothpricesshallincl udeunconditionaldiscountsandbecorrectedforarithmeticalerrors.IftheTenderfromGroup Aisthelowest,itshallbeselectedforaward.Ifnot,thelowestevaluatedTenderfromGroupCsh allbeselectedasperparagraph(e)above."

31

33 Post-Qualification Criteria (ITT 37.1)

32

Incasethetenderwasnotsubjecttopre-qualification,thetenderthathasbeendeterminedtobethelowestevaluatedtenderershallbeconsideredforcontractaward,subjecttomeetingeachofthefollowingconditions(postqualificationCriteriaappliedonaGO/NOGObasis).TheProcuringEntityshallcarryoutthepost-qualificationoftheTendererinaccordancewithITT37,usingonlytherequirementsspecifiedherein.RequirementsnotincludedinthetextbelowshallnotbeusedintheevaluationoftheTenderer'squalifications.Theminimumqualificationrequirementsformultiplecontractswillbethesumoftheminimumrequirementsforrespectiveindividualcontracts,unlessotherwisespecified.

3.4 If the Tenderer is a manufacturer

a) FinancialCapability

i) TheTenderershalldemonstratethatithasaccessto,orhasavailable,liquidassets,unencumberedrealassets,linesofcredit,andotherfinancialmeans(independentofanycontractualadvancepayment)sufficienttomeetthesupplycashflowofKenyaShillings _____ [orequivalent].

ii) MinimumaverageannualsupplyturnoverofKenyaShillings _____*[insertamount,specifyafigureabout2.5timesthetotalTenderprice)]or*equivalentcalculatedastotalcertifiedpaymentsreceivedforcontractsofgoodsmanufacturedandsuppliedwithinthelast _____ _____*[insertnumberofyears).*Incaseofmultiplecontracts,limitationwillbeplacedonthenumberofitem(s)thatwillbeawardedtotheTenderer.

b) Experience and Technical Capacity

TheTenderershallfurnishdocumentaryevidencetodemonstratethatitmeetsthefollowingexperiencerequirement(s)usingtheformprovidedinSectionIV.IncasetheTendererisaJV,experienceanddemonstratedtechnicalcapacityofonlytheJVshallbetakenintoaccountandnotofindividualmembersnortheirindividualexperience/capacitywillbeaggregatedunlessallmembersoftheJVhavebeenmanufacturingandsupplyingGoodsofferedintheTendertothesametechnology,processing,design,materials,specifications,modelnumber,etc.inallrespectssuchthatGoodsmanufacturedhavethesamefunctionalcharacteristics,performanceparameters,outputsandotherguaranteesandfullyinterchangeablewhichshallbedocumentedalongwithotherrequireddocumentsdemonstratingcapacitytothesatisfactionoftheProcuringEntityincaseindividualmembersclaimexperience.Otherwise,documentsevidencingexperienceandtechnicalcapacityshallbeinthenameoftheJVthatsubmittedtheTender.WherevertheWords“SimilarGoods”havebeenuseditincludesupgrades,latestandimprovedversionsormodelsofsimilarspecificationsandtechnology.Refer to Form Exp-1 to provide the required information.

i) TheTenderershallbemanufacturingsimilarGoodsforthelast _____(*specifythenumberofyearstocoverasufficientlylongperiodrangingfrom2to5yearsdependingupontheGoodstobeprocured*).

ii) TheTenderershallfurnishdocumentaryevidencetodemonstratesuccessfulcompletionofatleast _____(*Insertnumber*)ofcontractsofsimilarGoodsinthelast _____ _____(*specifynumber*)eachcontractcostingatleastKenyashillings _____equivalentandinvolvingasupplyofatleast _____percentageofrequiredquantity(*usuallythepercentageisabout70-80%*)*insomecaseswhereProcuringEntityrequiresdeliveriesinascheduledmanneroveraspecifiedtime,includeitem(iii)below.*

iii) (**Optional**)Theinstalledcapacitytomanufacture _____numberofitems(*specifytherelevantitemnumber*)shallnotbelessthan _____unitsper _____(*specifyweekormonth*).

c) (Optional)Documentary Evidence of Usage of Goods (When appropriate)

TheTenderershallfurnishdocumentaryevidencesatisfactorytotheProcuringEntitytodemo

33

nstratethatsimilarGoodsasofferedintheTenderhavebeeninsuccessfuluseoroperationforthelast

34

__years.IftheTendererisaJV,theevidenceofdemonstratedusageofGoodssuppliedinthepastshallbeinthenameoftheJV.

3.5 If Tenderer is a Supplier:

IfaTendererisaSupplierofferingtheGoodsonbehalfoforfromaManufacturerunderManufacturer'sAuthorizationForm(SectionIV,TenderingForms),theManufacturershalldemonstratetheabovequalifications4.2(b)(i),(ii),and(iii)andtheTenderershalldemonstrateitmeetsthefollowingcriteria.

i) TheTenderershalldemonstratethatithasaccessto,orhasavailable,liquidassets,unencumberedrealassets,linesofcredit,andotherfinancialmeans(independentofanycontractualadvancepayment)sufficienttomeetthesupplycashflowofKenyaShillings_____

ii) Minimumaverageannualsupplyturnoverof KenyaShillings _____*[insertamount]*orequivalentcalculatedastotalcertifiedpaymentsreceivedforcontractsinprogressand/orcompletedwithinthelast*[insertofyear]*years,dividedby*[insertnumberofyears]* years**.**

iii) Hassatisfactorilyandsubstantiallycompletedatleast _____(*specify number*)contract(s)ofasimilarnatureeitherwithinKenya,theEastAfricanCommunityorabroad,asaprimesupplierorajointventuremember,eachofaminimumvalueinKenyashillings _____equivalent.

3.6 History of non-performing contracts:

Tenderer(Supplieror/andmanufacturer,andeachmemberofJVincasetheTenderisaJV,shalldemonstratethatNon-performanceofacontractdidnotoccurasaresultofthedefaultoftheTenderer,manufacturerorthememberofJVasthecasemaybe,inthelast_____(*specifyyears*).The required information shall be furnished as per form CON-2].

3.7 Pending Litigation

Financialpositionandprospectivelong-termprofitabilityoftheSingleTenderer,andinthecasetheTenderisaJV,ofeachmemberoftheJV,shallremainsoundaccordingtocriteriaestablishedwithrespecttoFinancialCapabilityunderparagraphI(i)aboveassumingthatallpendinglitigationwillberesolvedagainsttheTenderer.Tenderershallprovideinformationonpendinglitigationsasper FormCON-2.

4.6. Litigation History

Thereshallbenoconsistenthistoryofcourt/arbitralawarddecisionsagainsttheTenderer,inthelast_____(*specify years*).Allpartiestothecontractshallfurnishtheinformationontherelated Form(CON-2)aboutanylitigationorarbitrationresultingfromcontractscompletedorongoingunderitsexecutionovertheyearsspecified.Aconsistenthistoryofawardsagainsttheteredororanymemberofa JVmayresultinrejectionofthetender.

35

SECTION IV - TENDERING FORMS

FormofTenderTendererInformationFormTendererJVMembersInformationForm

PriceSchedule:GoodsManufacturedOutsideKenya,tobeImportedPriceSchedule:GoodsManufactured

OutsideKenya,alreadyimportedPriceSchedule:GoodsManufacturedinKenyaPriceandCompletionSche

dule – RelatedServicesFormofTenderSecurity –

DemandGuaranteeFormofTenderSecurity(TenderBond)

Form of Tender-Securing Declaration Manufacturer's Authorization Form

36

FORM OF TENDER

INSTRUCTIONS TOTENDERERS

i) TheTenderermustpreparethisFormofTenderonstationerywithitsletterheadclearlyshowingtheTenderer'scompletenameandbusinessaddress.

ii) AllitalicizedtextistohelpTendererinpreparingthisform.

iii) TenderermustcompleteandsignCERTIFICATEOFINDEPENDENTTENDERDETERMINATIONandtheSELFDECLARATIONOFTHETENDERERattachedtothisFormofTender.

DateofthisTendersubmission:.....*[insertdate(asday,monthandyear)ofTendersubmission]***TenderNameandIdentification**:.....*[insertidentification]***AlternativeNo.**:.....

.....*[insertidentificationNoifthisisaTenderforanalternative]*

To: ..... *[Insert complete name of Procuring Entity]*

a) **Noreservations:**WehaveexaminedandhavenoreservationstotheTenderingdocument,including Addendaissuedinaccordancewith Instructionstotenderers(ITT7);

b) **Eligibility**:WemeettheeligibilityrequirementsandhavenoconflictofinterestinaccordancewithITT3;

c) **Tender/Proposal-SecuringDeclaration**:WehavenotbeensuspendednordeclaredineligiblebytheProcuringEntitybasedonexecutionofaTender-SecuringDeclaration.
or
Proposal-Securing Declaration in Kenya in accordance with ITT3.6;

d) **Conformity:**WeoffertosupplyinconformitywiththeTenderingdocumentandinaccordancewiththeDeliveryScheduleSpecifiedintheScheduleofRequirementsthefollowingGoods:[*insertabriefdescriptionoftheGoodsandRelatedServices*];

e) **TenderPrice**:ThetotalpriceofourTender,excludinganydiscountsofferedinitem(f)belowis:

Option1,incaseofonelot:Totalpriceis: *[i nsert t het ot alpriceoft heTenderi nwordsandfigure*

s,i ndi c
atingthevariousamountsandtherespectivecurrencies];

or

Option2,incaseofmultiplelots:(a)Totalpriceofeachlot[*insertthetotalpriceofeachlotinwordsandfigures,indicatingthevariousamountsandtherespectivecurrencies*];and(b)Totalpriceofalllots(sumofalllots)[*insertthetotalpriceofalllotsinwordsandfigures,indicatingthevariousamountsandtherespectivecurrencies*];

f) **Discounts**:Thediscountsofferedandthemethodologyfortheirapplicationare:

i) The discounts offered are:[*Specify in detail each discount offered.*]

ii) Theexactmethodofcalculationstodeterminethenetpriceafterapplicationofdiscountsareshownbelow:[*Specifyindetailthemethodthatshallbeusedtoapplythediscounts*];

g) **TenderValidityPeriod**:OurTendershallbevalidfortheperiodspecifiedinTDS17.1(asamended,ifapplicable)fromthedatefixedfortheTendersubmissiondeadlinespecifiedinTDS21.1(asamended,ifapplicable),anditshallremainbindinguponusandmaybeacceptedatanytimebeforetheexpirationofthatperiod;

35

(h)

36

PerformanceSecurity:IfourTenderisaccepted,wecommittoobtainaperformancesecurityinaccordancewiththeTenderingdocument;

i) **OneTenderpertenderer**:WearenotsubmittinganyotherTender(s)asanindividualtenderer,and wearenotparticipatinginanyotherTender(s)asaJointVenturemember,orasasubcontractor,andmeettherequirementsofITT3.9,otherthanalternativeTenderssubmittedinaccordancewithITT12;

j) **SuspensionandDebarment**:We,alongwithanyofoursubcontractors,suppliers,consultants,manufacturers,orserviceprovidersforanypartofthecontract,arenotsubjectto,andnotcontrolledbyanyentityorindividualthatissubjectto,atemporarysuspensionoradebarmentimposedbytheProcuringEntity.Further,wearenotineligibleundertheKenyalawsorofficialregulationsorpursuanttoadecisionoftheUnitedNationsSecurityCouncil;

k) **State-ownedenterpriseorinstitution**:*[selecttheappropriateoptionanddeletetheother][Wearenotastate-ownedenterpriseorinstitution]/[Weareastate-ownedenterpriseorinstitutionbutmeettherequirementsofITT3.7];*

l) **Commissions,gratuities,fees:**Wehavepaid,orwillpaythefollowingcommissions,gratuities,orfeeswithrespecttotheTenderingprocessorexecutionoftheContract:*[insertcompletenameofeachRecipient,itsfulladdress,thereasonforwhicheachcommissionorgratuitywaspaidandtheamountandcurrencyofeachsuchcommissionorgratuity]*

Name of Recipient	Address	Reason	Amount

(Ifnonehasbeenpaidoristobepaid,indicate“none.”)

m) **BindingContract**:WeunderstandthatthisTender,togetherwithyourwrittenacceptancethereofincludedinyourLetterofAcceptance,shallconstituteabindingcontractbetweenus,untilaformalcontractispreparedandexecuted;

n) **ProcuringEntityNotBoundtoAccept**:Weunderstandthatyouarenotboundtoacceptthelowestevaluatedcost Tender,theBestEvaluatedTenderoranyotherTenderthatyoumayreceive;and

o) **FraudandCorruption**:WeherebycertifythatwehavetakenstepstoensurethatnopersonactingforusoronourbehalfengagesinanytypeofFraudandCorruption.

(p) **CodeofEthicalConduct**:WeundertaketoadherebytheCodeofEthicsforPersonsParticipatinginPublicProcurementandAssetDisposal,copyavailablefrom_____(*specifywebsite*)duringtheprocurementprocessandtheexecutionofanyresultingcontract.

(q) **Collusivepractices**:Weherebycertifyandconfirmthatthetenderisgenuine,non-collusiveandmadewiththeintentionofacceptingthecontractifawarded.Tothiseffectwehavesignedthe“CertificateofIndependenttenderDetermination”attachedbelow.

(r) We,theTenderer,havecompletedfullyandsignedthefollowingFormsaspartofourTender:

a) Tenderer'sEligibility;ConfidentialBusinessQuestionnaire– toestablishwearenotinanyconflicttointerest.

b) CertificateofIndependentTenderDetermination– todeclarethatwecompletedthetenderwithoutcolludingwithothertenderers.

c) Self-DeclarationoftheTenderer– todeclarethatwewill,ifawardedacontract,notengageinanyformoffraudandcorruption.

37

d) DeclarationandcommitmenttotheCodeofEthicsforPersonsParticipatinginPublicProcurementandAssetDisposal.

38

Further,weconfirmthatwehavereadandunderstoodthefullcontentandscopeoffraudandcorruptionasinformedin**"Appendix1-FraudandCorruption**"attachedtotheFormofTender.

Name ofthetenderer:*[*insertcompletenameofthetenderer*]

NameofthepersondulyauthorizedtosigntheTenderonbehalfofthetenderer:**[*insertcompletenameofpersondulyauthorizedtosigntheTender*]

TitleofthepersonsigningtheTender:[*insertcompletetitleofthepersonsigningtheTender*]**Signatureofthe**

personnamedabove:[*insertsignatureofpersonwhosenameandcapacityareshownabove*]**Datesigned**[*ins*

ertdateofsigning]**dayof**[*insertmonth*],[*insertyear*]

***:InthecaseoftheTendersubmittedbyaJointVenturespecifythenameoftheJointVentureastenderer.

**:PersonsigningtheTendershallhavethepowerofattorneygivenbythetenderer.Thepowerofattorneyshallbeattachedwiththe TenderSchedules.

39

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I,theundersigned,insubmittingtheaccompanyingLetterofTendertothe _____
_____*[NameofProcuringEntity]*
for:
_____*[Nameandnumberoftender]*inresponsetotherequestfortendersmadeby:_____
_____*[NameofTenderer]*dohere bymakethefollowingstatementsthatIcertifytobetrueandcompleteineveryrespect:

I certify, on behalf of_____*[Name ofTenderer]*that:

1. IhavereadandIunderstandthecontentsofthisCertificate;

2. IunderstandthattheTenderwillbedisqualifiedifthisCertificateisfoundnottobetrueandcompleteineveryrespect;

3. IamtheauthorizedrepresentativeoftheTendererwithauthoritytosignthisCertificate,andtosubmittheTender onbehalfoftheTenderer;

4. ForthepurposesofthisCertificateandtheTender,Iunderstandthattheword“competitor”shallincludeanyindividualororganization,otherthantheTenderer,whetherornotaffiliatedwiththeTenderer,who:
   a) hasbeenrequestedtosubmitaTenderinresponsetothisrequestfortenders;
   b) couldpotentiallysubmitatenderinresponsetothisrequestfortenders,basedontheirqualifications,abilitiesorexperience;

5. TheTendererdisclosesthat[checkoneofthefollowing,asapplicable]:
   a) TheTendererhasarrivedattheTenderindependentlyfrom,andwithoutconsultation,communication,agreementorarrangementwith,anycompetitor;
   b) theTendererhasenteredintoconsultations,communications,agreementsorarrangementswithoneormorecompetitorsregardingthisrequestfortenders,andtheTendererdiscloses,intheattacheddocument(s),completedetailsthereof,includingthenamesofthecompetitorsandthenatureof,andreasonsfor,suchconsultations,communications,agreementsorarrangements;

6. Inparticular,withoutlimitingthegeneralityofparagraphs(5)(a)or(5)(b)above,therehasbeennoconsultation, communication,agreementorarrangementwithanycompetitorregarding:
   a) prices;
   b) methods,factorsorformulasusedtocalculateprices;
   c) theintentionordecisiontosubmit,ornottosubmit,atender;or
   d) thesubmissionofatenderwhichdoesnotmeetthespecificationsoftherequestforTenders;exceptasspecificallydisclosedpursuanttoparagraph(5)(b)above;

7. Inaddition,therehasbeennoconsultation,communication,agreementorarrangementwithanycompetitorregardingthequality,quantity,specificationsordeliveryparticularsoftheworksorservicestowhichthisrequestfortendersrelates,exceptasspecificallyauthorizedbytheprocuringauthorityorasspecificallydisclosedpursuanttoparagraph(5)(b)above;

8. thetermsoftheTenderhavenotbeen,andwillnotbe,knowinglydisclosedbytheTenderer,directlyorindirectly,toanycompetitor,priortothedateandtimeoftheofficialtenderopening,oroftheawardingoftheContract,whichevercomesfirst,unlessotherwiserequiredbylaworasspecificallydisclosedpursuanttoparagraph(5)(b)above.

Name

_____

Title

40

Date

[Name,titleandsignatureofauthorizedagentofTendererandDate]

41

SELF-DECLARATIONFORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I ..... of Post Office Box.....being a resident of..... in the Republic of.....do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of.....*(insert name of the Company)* who is a Bidder in respect of **Tender No.**..... for..... *(insert tendertitle/description)* for.....*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

…….	……..….	……
(Title)	(Signature)	(Date)

Bidder Official Stamp

42

FORM SD2

SELFDECLARATIONTHATTHEPERSON/TENDERERWILLNOTENGAGEINANYCORRUPTORFRAUDULENTPRACTICE

I, …….... of P.O.Box.....being a residentof..... intheRepublicof..... do hereby make a statementasfollows:-

1. THATIamtheChiefExecutive/ManagingDirector/PrincipalOfficer/Directorof..... .....……...……*(insertnameoftheCompany)*whoisaBidderinrespectof**TenderNo**.....for.....*(Insert tender title/description) f*or..... *(insertnameoftheProcuringentity)*anddulyauthorizedandcompetenttomakethisstatement.

2. THATtheaforesaidBidder,itsservantsand/oragents/subcontractorswillnotengageinanycorruptorfraudulentpracticeandhasnotbeenrequestedtopayanyinducementtoanymemberoftheBoard,Management,Staffand/oremployeesand/oragentsof……..*(insertnameoftheProcuringentity)*whichistheprocuringentity.

3. THATtheaforesaidBidder,itsservantsand/oragents/subcontractorshavenotofferedanyinducementtoanymemberoftheBoard,Management,Staffand/oremployeesand/oragentsof……..*(nameoftheprocuringentity).*

4. THATtheaforesaidBidderwillnotengage/hasnotengagedinanycorrosivepracticewithotherbiddersparticipatinginthesubjecttender.

5. THATwhatisdeponedtohereinaboveistruetothebestofmyknowledgeinformationandbelief.

…… ……...… ……(Title) (Signature) (Date)

Bidder’s Official Stamp

43

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I..... (Person) on behalf of (***Name of the Business/Company/Firm***).....declarethatIhavereadandfullyunderstoodthecontentsofthePublicProcurement&AssetDisposalAct,2015,RegulationsandtheCodeofEthicsforpersonsparticipatinginPublicProcurementandAssetDisposalandmyresponsibilitiesundertheCode.

IdoherebycommittoabidebytheprovisionsoftheCodeofEthicsforpersonsparticipatinginPublicProcurementandAssetDisposal.

Name of Authorized signatory.....

Sign…….....

Position.....

Office address…….Telephone…….....…….

E-mail…….....……

Name of theFirm/Company…….....……

Date…….....……

(Company Seal/RubberStampwhereapplicable)

WitnessName…….....……

…….

Sign…….....……

Date…….....……

44

APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall notbemodified)

1. Purpose

1.1 TheGovernmentofKenya'sAnti-CorruptionandEconomicCrimelawsandtheirsanction'spoliciesandprocedures,PublicProcurementandAssetDisposalAct*(no.33of2015)*anditsRegulation,andanyotherKenya'sActsorRegulationsrelatedtoFraudandCorruption,andsimilaroffences,shallapplywithrespecttoPublicProcurementProcessesandContractsthataregovernedbythelawsofKenya.

2. Requirements

2.1 TheGovernmentofKenyarequiresthatallpartiesincludingProcuringEntities,Tenderers,(applicants/proposers),Consultants,ContractorsandSuppliers;anySub-contractors,Sub-consultants,ServiceprovidersorSuppliers;anyAgents(whetherdeclaredornot);andanyoftheirPersonnel,involvedandengagedinprocurementunderKenya'sLawsandRegulation,observethehigheststandardofethicsduringtheprocurementprocess,selectionandcontractexecutionofallcontracts,andrefrainfromFraudandCorruptionandfullycomplywithKenya'slawsandRegulationsasperparagraphs1.1above.

2.2 Kenya's publicprocurementandassetdisposalact*(no.33of2015)*underSection66describesrulestobefollowedandactionstobetakenindealingwithCorrupt,Coercive,Obstructive,CollusiveorFraudulentpractices,andConflictsofInterestinprocurementincludingconsequencesforoffencescommitted.Afewoftheprovisionsnotedbelowhighlight Kenya'spolicyofnotoleranceforsuchpracticesandbehavior:

1) apersontowhomthisActappliesshallnotbeinvolvedinanycorrupt,coercive,obstructive,collusiveorfraudulentpractice;orconflictsofinterestinanyprocurementorassetdisposalproceeding;
2) Apersonreferredtoundersubsection(1)whocontravenestheprovisionsofthatsub-sectioncommitsanoffence;
3) Withoutlimitingthegeneralityofthesubsection(1)and(2),thepersonshallbe—
   a) disqualifiedfromenteringintoacontractforaprocurementorassetdisposalproceeding;or
   b) ifacontracthasalreadybeenenteredintowiththeperson,thecontractshallbevoidable;
4) Thevoidingofacontractbytheprocuringentityundersubsection(7)doesnotlimitanylegalremedytheprocuringentitymayhave;
5) Anemployeeoragentoftheprocuringentityoramemberoftheboardorcommitteeoftheprocuringentitywhohasaconflictofinterestwithrespecttoaprocurement:-
   a) shallnottakepartintheprocurementproceedings;
   b) shallnot,afteraprocurementcontracthasbeenenteredinto,takepartinanydecisionrelatingtotheprocurementorcontract;and
   c) shallnotbeasubcontractorforthebiddertowhomwasawardedcontract,oramemberofthegroupofbidderstowhomthecontractwasawarded,butthesubcontractorappointedshallmeetalltherequirementsofthisAct.
6) Anemployee,agentormemberdescribedinsubsection(1)whorefrainsfromdoinganythingprohibitedunderthatsubsection,butforthatsubsection,wouldhavebeenwithinhisorherduties shalldisclosetheconflictofinteresttotheprocuringentity;
7) Ifapersoncontravenessubsection(1)withrespecttoaconflictofinterestdescribedinsubsection(5)(a)andthecontractisawardedtothepersonorhisrelativeortoanotherpersoninwhomoneofthemhadadirectorindirectpecuniaryinterest,thecontractshallbeterminatedandallcostsincurredbythepublicentityshallbemadegoodbytheawardingofficer.Etc.

2.3 IncompliancewithKenya'slaws,regulationsandpoliciesmentionedabove,theProcuringEntity:

a) Definesbroadly,forthepurposesoftheaboveprovisions,thetermssetforthbelowasfollows:
   i) "corruptpractice"istheoffering,giving,receiving,orsoliciting,directlyorindirectly,ofanythingofvaluetoinfluenceimproperlytheactionsofanotherparty;

45

ii) "fraudulentpractice"isanyactoromission,includingmisrepresentation,thatknowingly orrecklesslymisleads,orattemptstomislead,apartytoobtainfinancialorotherbenefit ortoavoidanobligation;

iii) "collusivepractice"isanarrangementbetweentwoormorepartiesdesignedtoachieve animproperpurpose,includingtoinfluenceimproperlytheactionsofanotherparty;

iv) "coercivepractice"isimpairingorharming,orthreateningtoimpairorharm,directlyor indirectly,anypartyorthepropertyofthepartytoinfluenceimproperlytheactionsofapa rty;

v) "obstructivepractice"is:

- deliberatelydestroying,falsifying,altering,orconcealingofevidencematerialtot heinvestigationormakingfalsestatementstoinvestigatorsinordertomateriallyi mpedeinvestigationbyPublicProcurementRegulatoryAuthority(PPRA)orany otherappropriateauthorityappointedbyGovernmentofKenyaintoallegationsof acorrupt,fraudulent,coercive,orcollusivepractice;and/orthreatening,harassin g,orintimidatinganypartytopreventitfromdisclosingitsknowledgeofmattersre levanttotheinvestigationorfrompursuingtheinvestigation;or

- actsintendedtomateriallyimpedetheexerciseofthePPRA'sortheappointedauth ority'sinspectionandauditrightsprovidedforunderparagraph2.3e.below.

b) Definesmorespecifically,inaccordancewiththeaboveprocurementActprovisionssetforthf orfraudulentandcollusivepracticesasfollows:

"fraudulentpractice"includesamisrepresentationoffactinordertoinfluenceaprocuremento rdisposalprocessortheexerciseofacontracttothedetrimentoftheprocuringentityorthetendere rorthecontractor,andincludescollusivepracticesamongsttendererspriortooraftertenders ubmissiondesignedtoestablishtenderpricesatartificialnon-competitivelevelsandtodeprivetheprocuringentityofthebenefitsoffreeandopencompetiti on.

c) Rejectsaproposalforaward[1]ofacontractifPPRAdeterminesthatthefirmorindividualrecom mendedforaward,anyofitspersonnel,oritsagents,oritssub-consultants,sub-contractors,serviceproviders,suppliersand/ortheiremployees,has,directlyorindirectly,en gagedincorrupt,fraudulent,collusive,coercive,orobstructivepracticesincompetingforthe contractinquestion;

d) PursuanttotheKenya'sabovestatedActsandRegulations,maysanctionordebarorrecomme ndtoappropriateauthority(ies)forsanctioninganddebarmentofafirmorindividual,asapplic ableundertheActsandRegulations;

e) RequiresthatclausebeincludedinTenderdocumentsandRequestforProposaldocumentsre quiring(i)Tenderers(applicants/proposers),Consultants,Contractors,andSuppliers,andth eirSub-contractors,Sub-consultants,Serviceproviders,Suppliers,Agentspersonnel,permitthePPRAoranyotherap propriateauthorityappointedbyGovernmentofKenyatoinspect[2]allaccounts,recordsandot herdocumentsrelatingtotheprocurementprocess,selectionand/orcontractexecution,andto havethemauditedbyauditorsappointedbythePPRAoranyotherappropriateauthorityappoi ntedbyGovernmentofKenya;and

f) PursuanttoSection62oftheaboveAct,requiresApplicants/Tendererstosubmitalongwiththe irApplications/Tenders/Proposalsa"Self-DeclarationForm"asincludedintheprocurementdocumentdeclaringthattheyandallparties involvedintheprocurementprocessandcontractexecutionhavenotengaged/willnotengage inanycorruptorfraudulentpractices.

[1] *~~Fortheavoidanceofdoubt,aparty'sineligibilitytobeawardedacon~~tractshallinclude,withoutlimitation,(i)applyingforpre-qualification,expressinginterestinaconsultancy,andtendering,eitherdirectlyorasanominatedsub-*

46

contractor,nominatedconsultant,nominatedmanufacturerorsupplier,ornominatedserviceprovider,inrespectofsuchcontra ct,and(ii)enteringintoanaddendumoramendmentintroducingamaterialmodificationtoanyexistingcontract.

47

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

48

TENDERER INFORMATION FORM

[Thetendershallfillinthis Forminaccordancewiththeinstructionsindicatedbelow.Noalterationstoitsformatshallbepermittedandnosubstitutionsshallbeaccepted.]

Date:……*[insertdate(asday,monthandyear)ofTendersubmission*]

Tender Name and Identification:..... [*Insert identification*

Alternative No.:.....*[insertidentificationNoifthisisaTenderforanalternative]*Page_____of_

_____pages

1. Tenderer's Name *[insert Tenderer's legal name]*
2. In case of JV, legal name of each member: *[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration: *[insert actual or intended country of registration]*
4. Tenderer's year of registration: *[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration: *[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information Name: *[insert Authorized Representative's name]* Address: *[insert Authorized Representative's Address]* Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]* Email Address: *[insert Authorized Representative's email address]*
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]* ☐ For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. ☐Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.4. ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. ☐ In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law (iii) Establishing that the tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

49

TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESSQUESTIONNAIREFORM

a) InstructiontoTenderer

Tenderisinstructedtocompletetheparticularsrequiredin thisForm,*oneformforeachentityifTenderisaJV*. Tendererisfurtherremindedthatitisanoffencetogivefalseinformationonthis Form.

A. Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Name of the Tenderer	
3	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	
8		

General and Specific Details

b) Sole Proprietor, provide the following details.

Name in full_____

Age_____Nationality _____

Country of Origin_____Citizenship_____

c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

i) Private or public Company _____

ii) State the nominal and issued capital of the Company-

50

Nominal Kenya Shillings (Equivalent) ……

51

Issued Kenya Shillings (Equivalent) ……

iii) Give details of Directors as follows.

	Names of Director	**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				

(e) DISCLOSURE OF INTEREST- Interest of the Firm in the Procuring Entity.

(i) Are there any person/persons in …… (*Name of Procuring Entity)* who has an interest or relationship in this firm? Yes/No……

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(ii) Conflict of interest disclosure

	Type of Conflict	**Disclosure YES OR NO**	**If YES provide details of the relationship with Tenderer**
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another Tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		

52

7	Tenderer has a close business or		

53

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

(f) Certification

On behalf of the Tenderer, I certify that the information given above is correct.

Full Name_____

Title or Designation_____

(Signature) *(Date)*

54

TENDERER'S JVMEMBERSINFORMATIONFORM

[Thetendershallfillinthisforminaccordancewiththeinstructionsindicatedbelow.Thefollowingtables hallbefilledinforthetendererandforeachmemberofaJointVenture]].

Date:.....*[insertdate(asday,monthandyear)ofTendersubmission]*.

TenderNameandIdentification:.....*[insertidentification*AlternativeNo.:..... ....*[insertidentificationNoifthisisaTenderforanalternative]*.

Page_____of_____pages

1. Tenderer's Name: *[insert Tenderer's legal name]*
2. Tenderer's JV Member's name: *[insert JV's Member legal name]*
3. Tenderer's JV Member's country of registration: *[insert JV's Member country of registration]*
4. Tenderer's JV Member's year of registration: *[insert JV's Member year of registration]*
5. Tenderer's JV Member's legal address in country of registration: *[insert JV's Member legal address in country of registration]*
6. Tenderer's JV Member's authorized representative information Name: *[insert name of JV's Member authorized representative]* Address: *[insert address of JV's Member authorized representative]* Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Member authorized representative]* Email Address: *[insert email address of JV's Member authorized representative]*
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]* ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. ☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6. 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Price Schedule Forms

*[The tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

55

Price Schedule: Goods Manufactured Outside Kenya, to be Imported

(Group C Tenders, goods to be imported)
Currencies in accordance with ITT 15

Date:
ITT No:

Alternative No: _____

Page N° of

1 Line Item N°	2 Description of Goods	3 Country of Origin	4 Delivery as defined by Incoterms	5 Quantity and physical unit	6 Unit price [insert *place of destination*] in accordance with ITT 14.8(b)(i)	7 CIP Price per line item (Col. 5x6)	8 Price per item for inland transportation and other services required in Kenya to convey the Goods to their final destination specified in TDS	9 Total Price per Line item (Col. 7+8)
[insert number of the item]	*[insert name of good]*	*[insert country of origin of the Good]*	*[insert quoted Delivery Date]*	*[insert number of units to be supplied and name of the physical unit]*	*[insert unit price CIP per unit]*	*[insert total CIP price per line item]*	*[insert the corresponding price per line item]*	*[insert total price of the line item]*
							Total Price	

Name of tenderer *[insert complete name of tenderer]* Signature of tenderer *[signature of person signing the Tender]* Date *[Insert Date]*

Price Schedule: Goods Manufactured Outside Kenya, already imported*

(Group C Tenders, Goods already imported)
Currencies in accordance with ITT 15

Date: ITT No:
Alternative No:
Page N° of

1	2	3	4	5	6	7	8	9	10	11	12
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price including Custom Duties and Import Taxes paid, in accordance with ITT 14.8(c)(i)	Custom Duties and Import Taxes paid per unit in accordance with ITT 14.8(c)(ii), [to be supported by documents]	Unit Price net of custom duties and import taxes, in accordance with ITT 14.8 (c) (iii) (Col. 6 minus Col.7)	Price per line item net of Custom Duties and Import Taxes paid, in accordance with ITT 14.8(c)(i) (Col. 5-8)	Price per line item for inland transportation and other services required in Kenya to convey the goods to their final destination, as specified in TDS in accordance with ITT 14.8 (c)(v)	Sales and other taxes paid or payable per item if Contract is awarded (in accordance with ITT 14.8(c)(iv)	Total Price per line item (Col. 9+10)
[insert number of the item]	*[insert name of Goods]*	*[insert country of origin of the Good]*	*[insert quoted Delivery Date]*	*[insert number of units to be supplied and name of the physical unit]*	*[insert unit price per unit]*	*[insert custom duties and taxes paid per unit]*	*[insert unit price net of custom duties and import taxes]*	*[insert price per line item net of custom duties and import taxes]*	*[insert price per line item for inland transportation and other services required in* Kenya*]*	*[insert sales and other taxes payable per item if Contract is awarded]*	*[insert total price per line item]*
										Price	

Name of tenderer [*insert complete name of tenderer*] Signature of tenderer [*signature of person signing the Tender*] Date [*insert date*]

* *[For previously imported Goods, the quoted price shall be distinguishable from the original import value of these Goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which have been and/or have to be paid by the Procuring Entity. For clarity, the tenderers are asked to quote the price including import duties, and additionally to provide the import duties and the price net of import duties which is the difference of those values.]*

Price Schedule: Goods Manufactured in Kenya

Kenya _____	(Group A and B Tenders) Currencies in accordance with ITT 15	Date: ITT No: _____ Alternative No: _____ Page N° _____ of _____

1	2	3	4	5	6	7	8	9	10
Line Item N°	Description of Goods	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price EXW	Total EXWprice per line item (Col. 4○5)	Price per line item for inland transportation and other services required in Kenya to convey the Goods to their final destination	Cost of local labor, raw materials and components from with origin in Kenya % of Col. 5	Sales and other taxes payable per line item if Contract is awarded (in accordance with ITT 14.8(a)(ii)	Total Price per line item (Col. 6+7)
[insert number of the item]	*[insert name of Good]*	*[insert quoted Delivery Date]*	*[insert number of units to be supplied and name of the physical unit]*	*[insert EXW unit price]*	*[insert total EXW price per line item]*	*[insert the corresponding price per line item]*	*[Insert cost of local labor, raw material and components from within the Purchase's country as a % of the EXW price per line item]*	*[insert sales and other taxes payable per line item if Contract is awarded]*	*[insert total price per item]*

Name of tenderer [*insert complete name of tenderer*] Signature of tenderer [*signature of person signing the Tender*] Date [*insert date*]

Price and Completion Schedule - Related Services

		Currencies in accordance with ITT 15			Date: ITT _____ Alternative No: _____ Page N° 6 _____ of _____	
1	2	3	4	5		7
Service N°	Description of Services (excludes inland transportation and other services required in Kenya to convey the goods to their final destination)	Country of Origin	Delivery Date at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6 or estimate)
[insert number of the Service]	*[insert name of Services]*	*[insert country of origin of the Services]*	*[insert delivery date at place of final destination per Service]*	*[insert number of units to be supplied and name of the physical unit]*	*[insert unit price per item]*	*[insert total price per item]*
				Total Tender Price		

Name of tenderer [*insert complete name of tenderer*] Signature of tenderer [*signature of person signing the Tender*] Date [*insert date*]

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary:_____ Request forTendersNo:_____ Date:_____ TENDER GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that_____(here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of_____ under Request for Tenders No._____("the ITT").

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

_____

[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas …… [*Name of the tenderer]* (hereinafter called "the tenderer") has submitted its tender dated …… [*Date of submission of tender]* for the …… *[Name and/or description of the tender]* (hereinafter called "the Tender") for the execution of under Request for Tenders No. _____ ("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [**Name of Insurance Company**] having our registered office at …… (hereinafter called "the Guarantor"), are bound unto …….. [*Name of Procuring Entity*](hereinafter called "the Procuring Entity") in the sum of …… (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns,jointly and severally, firmly by these presents.

   Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____	_____
[Date]	*[Signature of the Guarantor]*
_____	_____
[Witness]	*[Seal]*

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORM OF TENDER-SECURING DECLARATION

[TheBiddershallcompletethisForminaccordancewiththeinstructionsindicated]

Date:.....*[insertdate(asday,monthandyear)ofTenderSubmission]*

Tender No.:..... *[Insert numberoftenderingprocess]*

To:.....*[insertcompletenameofPurchaser*

*]*I/We,theundersigned,declarethat:

1. I/Weunderstandthat,accordingtoyourconditions,bidsmustbesupportedbyaTender-SecuringDeclaration.

2. I/WeacceptthatI/wewillautomaticallybesuspendedfrombeingeligiblefortenderinginanycontractwiththePurchaserfortheperiodoftimeof.....*[insertnumberofmonthsoryears]*startingon.....*[insertdate]*,ifweareinbreachofourobligation(s)underthebidconditions,becausewe–
(a)havewithdrawnourtenderduringtheperiodoftendervalidityspecifiedbyusintheTenderingDataSheet;or(b)havingbeennotifiedoftheacceptanceofourBidbythePurchaserduringtheperiodofbidvalidity,(i)failorrefusetoexecutetheContract,ifrequired,or(ii)failorrefusetofurnishthePerformanceSecurity,inaccordancewiththeinstructionstotenders.

3. I/WeunderstandthatthisTenderSecuringDeclarationshallexpireifwearenotthesuccessfulTenderer(s),uponthearlierof:

   a) ourreceiptofacopyofyournotificationofthenameofthesuccessfulTenderer;or

   b) thirty days aftertheexpirationofourTender.

4. I/WeunderstandthatifIam/weare/inaJointVenture,theTenderSecuringDeclarationmustbeinthenameoftheJointVenturethatsubmitsthebid,andtheJointVenturehasnotbeenlegallyconstitutedatthetimeofbidding,theTenderSecuringDeclarationshallbeinthenamesofallfuturepartnersasnamedintheletterofintent.

Signed:……..…….....

Capacity/title(directororpartnerorsoleproprietor,etc.)…….…….....

Name:…….....

Dulyauthorizedtosignthebidforandonbehalfof:.....*[insertcompletenameofTenderer]*.Dated

on.....day of.....*[Insert date of signing]*.

Seal orstamp.

MANUFACTURER'S AUTHORIZATION FORM

[ThetendershallrequiretheManufacturertofillinthisForminaccordancewiththeinstructionsindicated.Thisletterofauthorizationshouldbeontheletterhead oftheManufacturerandshouldbesignedbyapersonwiththeproperauthoritytosigndocumentsthatarebindingontheManufacturer.Thetendershallincludeitinits Tender,ifsoindicatedinthe ***TDS.****]*

Date:.....*[insertdate(asday,monthandyear)ofTendersubmission]*

ITTNo.:.....*[insertnumberofITTprocess]* AlternativeNo.:.....*[inser*

tidentificationNoifthisisaTenderforanalternative]

To: ..... *[Insert complete name of Procuring*

*Entity]*WHEREAS

We.....*[insertcompletenameofManufacturer]*,whoareofficialmanufacturersof.....*[inserttypeofgoodsmanufactured]*,havingfactoriesat[insertfulladdressofManufacturer'sfactories],doherebyauthorize*[insertcompletenameoftenderer]*tosubmitaTenderthepurposeofwhichistoprovidethefollowingGoods,manufacturedbyus..... .....*[insertnameandorbriefdescriptionoftheGoods]*,andtosubsequentlynegotiateandsigntheContract.

WeherebyextendourfullguaranteeandwarrantyinaccordancewithClause28oftheGeneralConditionsofContract,withrespecttotheGoodsofferedbytheabovefirm.

Signed:..... *[Insert signature(s) of authorized representative(s) of the Manufacturer]*

Name:.....*[Insertcompletename(s)ofauthorizedrepresentative(s)oftheManufacturer]*

Title:..... *[Insert title]*

Dated on_____day of_____,_____*[insert date of signing]*

MANUFACTURER'S AUTHORIZATION FORM

PART 2: SUPPLY REQUIREMENTS

Section V - Schedule of Requirements

Notes for Preparing the Schedule of Requirements

TheScheduleofRequirementsshallbeincludedintheTenderingdocumentbytheProcuringEntity,andshallcover,atamini mum,adescriptionofthegoodsandservicestobesuppliedandthedeliveryschedule.

TheobjectiveoftheScheduleofRequirementsistoprovidesufficientinformationtoenabletendererstopreparetheirTende rsefficientlyandaccurately,inparticular,thePriceSchedule,forwhichaformisprovidedinSectionIV.Inaddition,theSche duleofRequirements,togetherwiththePriceSchedule,shouldserveasabasisintheeventofquantityvariationatthetimeofa wardofcontractpursuanttoITT42.1.

Thedateorperiodfordeliveryshouldbecarefullyspecified,takingintoaccount(a)theimplicationsofdeliverytermsstipula tedintheInstructionstotendererspursuanttothe*Incoterms*rulesthat“delivery”takesplacewhengoodsaredelivered**tothe finalplaceofdelivery**,and(b)thedateprescribedhereinfromwhichtheProcuringEntity'sdeliveryobligationsstart(i.e.,no ticeofaward,contractsignature,openingorconfirmationoftheletterofcredit).

1. List of Goods and Delivery Schedule

[TheProcuringEntityshallfillinthistable,withtheexceptionofthecolumn"Tenderer'sofferedDeliverydate"tobefilledbythetenderer]

Line Item N°	**Description of Goods**	**Quantity**	**Physical unit**	**Final Destination as specified in TDS**	**Delivery (as per Incoterms) Date**		
					Earliest Delivery Date	**Latest Delivery Date**	**Tenderer's offered Delivery date [*to be provided by the tenderer*]**
[insert item No]	*[insert description of Goods]*	*[insert quantity of item to be supplied]*	*[insert physical unit for the quantity]*	*[insert place of Delivery]*	*[insert the number of days following the date of effectiveness the Contract]*	*[insert the number of days following the date of effectiveness the Contract]*	*[insert the number of days following the date of effectiveness the Contract]*

2. List of Related Services and Completion Schedule

[This table shall be filled in by the Procuring Entity. The Required Completion Dates should be realistic, and consistent with the required Goods Delivery Dates (as per Incoterms)].

Service	Description of Service	Quantity[1]	Physical Unit	Place where Services shall be performed	Final Completion Date(s) of Services
[insert Service No]	*[insert description of Related Services]*	*[insert quantity of items to be supplied]*	*[insert physical unit for the items]*	*[insert name of the Place]*	*[insert required Completion Date(s)]*

[1] If applicable

3. Technical Specifications

3.1 ThepurposeoftheTechnicalSpecifications(TS),istodefinethetechnicalcharacteristicsoftheGoodsandRelatedServicesrequiredbytheProcuringEntity.TheProcuringEntityshallpreparethedetailedTSconsiderthat:

i) TheTSconstitutethebenchmarksagainstwhichtheProcuringEntitywillverifythetechnicalresponsiveness ofTendersandsubsequentlyevaluatetheTenders.Therefore,well-definedTSwillfacilitatepreparationofresponsiveTendersbytenderers,aswellasexamination,evaluation,a ndcomparisonoftheTendersbytheProcuringEntity.

ii) TheTSshallrequirethatallgoodsandmaterialstobeincorporatedinthegoodsbenew,unused,andofthemostr ecentorcurrentmodels,andthattheyincorporateallrecentimprovementsindesignandmaterials,unlessprov idedforotherwiseinthecontract.

iii) The TS shall make use of best practices.Samplesofspecificationsfromsuccessfulsimilarprocurementsinthesamecountryorsectormayp rovideasoundbasisfordraftingtheTS.

iv) The PPRA encourages the use of metric units.

v) Standardizingtechnicalspecificationsmaybeadvantageous,dependingonthecomplexityofthegoodsandth erepetitivenessofthetypeofprocurement.TechnicalSpecificationsshouldbebroadenoughtoavoidrestricti onsonworkmanship,materials,andequipmentcommonlyusedinmanufacturingsimilarkindsofgoods.

vi) Standardsforequipment,materials,andworkmanshipspecifiedintheTenderingdocumentshallnotberestri ctive.Recognized international standards should be specified as much as possible.Referencetobrandnames,cataloguenumbers,orotherdetailsthatlimitanymaterialsoritemstoaspecificmanufacturershouldbeavoidedasfaraspossible.Whereunavoidable,suchitemdescriptionshouldalwaysbefollowedbythewords“orsubstantiallyequivalent.”Whenotherparticularstandardsorcodesofpractice arereferredtointheTS,whetherfromtheProcuringEntity'sorfromothereligiblecountries,astatementshoul dfollowotherauthoritativestandardsthatensureatleastasubstantiallyequalquality,thenthestandardsmenti onedintheTSwillalsobeacceptable.

vii) Referencetobrandnamesandcataloguenumbersshouldbeavoidedasfaraspossible;whereunavoidablethewords“oratleastequivalent”shallalwaysfollowsuchreferences.

viii) TechnicalSpecificationsshallbefullydescriptiveoftherequirementsinrespectof,butnotlimitedto,thefollowing:

a) StandardsofmaterialsandworkmanshiprequiredfortheproductionandmanufacturingoftheGoods. b) Any sustainable procurement technical requirements shall be clearly specified.

3.2

Toencouragetenderers'innovationinaddressingsustainableprocurementrequirements,aslongastheTenderevaluationcriteriaspecifythemechanismformonetaryadjustmentsforthepurposeofTendercomparisons,tenderersmay beinvitedtoofferGoodsthatexceedsthespecifiedminimumsustainableprocurementrequirements.

i) Detailed tests required (type and number).

ii) Otheradditionalworkand/orRelatedServicesrequiredtoachievefulldelivery/completion.

iii) DetailedactivitiestobeperformedbytheSupplier,andparticipationoftheProcuringEntitythereon.

iv) ListofdetailedfunctionalguaranteescoveredbytheWarrantyandthespecificationoftheliquidateddamagestobeappliedintheeventthatsuchguaranteesarenotmet.

3.3

TheTSshallspecifyallessentialtechnicalandperformancecharacteristicsandrequirements,includingguaranteed oracceptablemaximumorminimumvalues,asappropriate.Whenevernecessary,theProcuringEntityshallinclude anadditionalad-hocTenderingform(tobeanAttachmenttotheLetterofTender),wherethetenderershallprovidedetailedinformation onsuchtechnicalperformancecharacteristicsinrespecttothecorrespondingacceptableorguaranteedvalues.

3.4

WhentheProcuringEntityrequeststhatthetendererprovidesinitsTenderapartoralloftheTechnicalSpecifications, technicalschedules,orothertechnicalinformation,theProcuringEntityshallspecifyindetailthenatureandextentof therequiredinformationandthemannerinwhichithastobepresentedbythetendererinitsTender.

SPECIFICATION NO.
TENDERER'S NAME: NO:
TENDER NO: ITEM NO: QTY:
DESCRIPTION : MOTOR CYCLE, TRAIL 150-175 CC (BOXER)

TENDERER'S Column to be completed by tenderer

SPECIFICATION	REQUIREMENT	TENDER'S
MAKE	BOXER	----------
MODEL	----------	----------
COUNTRY OF ORIGIN	----------	----------
MANUFACTURER'S LITERATURE,AUTHORITY AND SPECIFICATIONS IN ORIGINAL FORM SUPPLIED	Yes (Mandatory)	----------Y/N

1. GENERAL

a. A standard production, Motorbike trail boxer of latest design in class, in current production, proven performance, durable and strong	Yes (Mandatory)	----------Y/N
b. Capable of operating in tropical road conditions and off road conditions including tough terrain of Baringo.	Yes (Mandatory)	
c. Supplied new.	Yes	----------Y/N

	(Mandatory)	

2. **DIMENSIONS AND WEIGHTS**

a. Overall length, approx.	2,100mm	----------mm
b. Overall width, approx.	900mm	----------mm
c. Overall height, approx.	1,100mm	----------mm
d. Seat(saddle) height, approx.	850mm	----------mm
e. Wheel base, approx.	1,300mm	----------mm
f. Ground Clearance ,approx.	250mm	----------mm
g. Dry weight, approx.	100kg	----------KG

Tenderer's Signature Official rubber stamp
SPECIFICATION NO.
TENDERER'S NAME: NO:
TENDER NO: ITEM NO: QTY:
DESCRIPTION : MOTOR CYCLE, TRAIL 150-175 CC (BOXER)

TENDERER'S Column to be completed by tenderer

3. ENGINE

SPECIFICATION	REQUIREMENT	TENDER'S
a. Make	----------	----------
b. Model	----------	----------
c. Country of Origin	----------	----------
d. 2/4 Stroke, air –cooled, petrol engine	Yes	----------Y/N
e. Single cylinder	Yes	----------Y/N
f. Piston displacement	150-175cc	----------CC
g. Ignition system	Specify	----------
h. Starter system	Specify	----------
i. Maximum power output/rpm min	16HP/8,500rpm	----------HP
j. Maximum torque/ rpm approx.	16Nm/7,000rpm	----------Nm/rpm
k. Fuel Tank capacity, approx.	7litres	----------Lt

4. TRANSMISSION, BRAKES, TIRES AND SUSPENSION

a. Transmission,speed,min	5 No	----------No
b. Final Transmission	Chain Drive	----------
c. Front and rear brakes	Drum	----------
d. Front and rear tire sizes	2.75-21-4 PR 4.10-18-4 PR	---------- ----------
Front and rear suspension, telescopic forks/motocross	Specify	----------

Tenderer's Signature	Official rubber stamp

SPECIFICATION NO.		
TENDERER'S NAME:		NO:
TENDER NO:	ITEM NO:	QTY:
DESCRIPTION : MOTOR CYCLE, TRAIL 150-175 CC (BOXER)		

TENDERER'S Column to be completed by tenderer

5. ELECTRICAL SYSTEM

a. Full lighting to conform to cap 403 subs 23-Kenya Traffic Act	Yes	----------Y/N
b. Standard, major function gauges(speedometer,Tachometer,odo meter,trip counter ,etc)/ and warning lights) fitted	Yes	----------Y/N

6. MOTORCYCLE WARRANTY

a. Each motorcycle supplied should carry a statement of warranty	Yes (Mandatory)	----------Y/N
b. Motorcycle warranty min,6 Months or 6,000 km or whichever occurs first	Specify	----------Months ----------KM

7. MANUALS AND EQUIPMENT

a. All literature in English language	Yes (Mandatory)	----------Y/N
b. Repair manual/ CD, Supplied	1 no	----------Y/N
C. Parts catalogue/CD,Supplied	1 no	----------Y/N
d. Riders handbook and service schedule supplied	1no per m/cycle	----------Y/N
e. Motorcycle fitted with 2 No rear view mirrors	Yes	----------Y/N
f. Suitable size box at rear carrier with lock and key to carry small parcels	Yes (Mandatory)	----------Y/N

Tenderer's Signature	Official rubber stamp

SPECIFICATION NO.		
TENDERER'S NAME:		NO:
TENDER NO:	ITEM NO:	QTY:
DESCRIPTION : MOTOR CYCLE, TRAIL 150-175 CC (BOXER)		

TENDERER'S Column to be completed by tenderer

g. Motorcycle supplied with suitable crash helmet 2NO and eyes protector 2NO	Yes (Mandatory)	----------Y/N
h. Gloves and reflector jackets 2 sets supplied	Yes (Mandatory)	----------Y/N

8. OTHER REQUIREMENT

a. Motor cycle to be registered by Registrar of motor vehicles	Yes (Mandatory)	----------Y/N
b. Motorcycle to be inspected by the Chief mechanical and Transport Engineer prior to delivery to the user.	Yes	----------Y/N
c. Firms Status(Franchise holder/dealer/agent) and proof thereof	Specify	----------
d. Availability of spare parts	Indicate Motor cycle dealers who stock spare parts	----------
e. Indicate names and physical addresses of dealers/agents where back-up service can be obtained.	Specify	----------
f. Body construction and all fitments to conform to CAP 403 Kenya Traffic Act	Yes (Mandatory)	----------Y/N

Tenderer's Signature	Official rubber stamp

PART 2:
TABLE A. SCHEDULE OF REQUIREMENT/SCHEDULE OF RATES

S/NO.	ITEM DESCRIPTION	UNIT ISSUE	QTY	TOTAL COST	NO OF DAYS TO DELIVER	REMARKS
	Please quote for; Supply of MOTORBIKES FOR LOYAMOROK CO-OPERATIVES					
1.	SUPPLY OF MOTORBIKES FOR LOYAMOROK CO-OPERATIVES	NO	19			
	GRAND TOTAL					

3.5 IfasummaryoftheTechnicalSpecifications(TS)hastobeprovided,theProcuringEntityshallinsertinformationinthetablebelow.Thetendershallprepareasimilartabletojustifycompliancewiththerequirements.

SummaryofTechnicalSpecifications: TheGoodsandRelatedServicesshallcomplywithfollowingTechnicalSpecificationsandStandards:

Post delivery maintenance for 3 years

Pre-installation review and advice for modification of intended building site (if any)

Detailed Technical Specifications and Standards [*insert whenever necessary*].[*Insert detailed description of TS*]

4. Drawings-NOT APPLICABLE This Tendering document

includes.....*[Insert "thefollowing"or "no"]*

drawings.[Ifdocumentsshallbeincluded,insertthefollowingListofDrawings].

List of Drawings		
Drawing No.	**Drawing Name**	**Purpose**

5. Inspections and Tests

The following inspections and tests shall be performed:.....*[Insert list of inspections and tests]*

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

74

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. Definitions

IntheConditionsofContract("theseConditions"),whichincludeSpecialConditions,PartsAandB,andtheseGeneralConditions,thefollowingwordsandexpressionsshallhavethemeaningsstated.Wordsindicatingpersonsorpartiesincludecorporationsandotherlegalentities,exceptwherethecontextrequiresotherwise.

a) "Contract"meanstheContractAgreemententeredintobetweentheProcuringEntityandtheSupplier,togetherwiththeContractDocumentsreferredtotherein,includingallattachments,appendices,andalldocumentsincorporatedbyreferencetherein.

b) "ContractDocuments"meansthedocumentslistedintheContractAgreement,includinganyamendmentsthereto.

c) "ContractPrice"meansthepricepayabletotheSupplierasspecifiedintheContractAgreement,subjecttosuchadditionsandadjustmentstheretoordeductionstherefrom,asmaybemadepursuanttotheContract.

d) "Day" means calendar day.

e) "Completion"meansthefulfilmentoftheRelatedServicesbytheSupplierinaccordancewiththetermsandconditionssetforthintheContract.

f) "GCC" means the General Conditions of Contract.

g) "Goods"meansallofthecommodities,rawmaterial,machineryandequipment,and/orothermaterialsthattheSupplierisrequiredtosupplytotheProcuringEntityundertheContract.

h) "ProcuringEntity"meanstheProcuringEntitypurchasingtheGoodsandRelatedServices,as**specifiedinthe SCC.**

i) "RelatedServices"meanstheservicesincidentaltothesupplyofthegoods,suchasinsurance,delivery,installation,commissioning,trainingandinitialmaintenanceandothersuchobligationsoftheSupplierundertheContract.

j) "SCC" means the Special Conditions of Contract.

k) "Subcontractor"meansanyperson,privateorgovernmententity,oracombinationoftheabove,towhomanypartoftheGoodstobesuppliedorexecutionofanypartoftheRelatedServicesissubcontractedbytheSupplier.

l) "Supplier"meanstheperson,privateorgovernmententity,oracombinationoftheabove,whoseTendertoperformtheContracthasbeenacceptedbytheProcuringEntityandisnamedassuchintheContractAgreement.

m) **"BaseDate"**meansadate30daypriortothesubmissionoftenders.

n) **"Laws"**meansallnationallegislation,statutes,ordinances,andregulationsandby-lawsofanylegallyconstitutedpublicauthority.

o) **"LetterofAcceptance"**meanstheletterofformalacceptance,signedbythecontractor.ProcuringEntity,includinganyannexedmemorandacomprisingagreementsbetweenandsignedbybothParties.

p) **"ProcuringEntity"**meanstheEntitynamedintheSpecialConditionsofContract.

2. Interpretation

2.1. Ifthecontextsorequiresit,singularmeanspluralandviceversa.

2.2. Incoterms

75

a) Unlessinconsistentwithanyprovisionofthe Contract**,**themeaningofanytradetermandtherightsandobligations ofpartiesthereundershallbeasprescribedbyIncoterms**specifiedintheSCC**.

b) ThetermsEXWandCIPandothersimilarterms,whenused,shallbegovernedbytherulesprescribedinthecurr

76

enteditionofIncotermsspecifiedintheSCCandpublishedbytheInternationalChamberofCommerceinParis,France.

3. Contract Documents

Subjecttotheorderofprecedencesetforthin theContractAgreement,alldocumentsformingtheContract(andallpartsthereof)areintendedtobecorrelative,complementary,andmutuallyexplanatory.The Contract Agreement shall be read as a whole.ThedocumentsformingtheContractshallbeinterpretedinthefollowingorderofpriority:

a) theContractAgreement,
b) theLetterofAcceptance,
c) theGeneralConditionsofContract
d) SpecialConditionsofContract
e) theFormofTender,
f) theSpecificationsandSchedulesoftheDrawings(ifany),and
g) theSchedulesofRequirements,PriceScheduleandanyotherdocumentsformingpartoftheContract.

4. Fraud and Corruption

3.1 Thesuppliershallcomplywithanti-corruptionlawsandguidelinesandtheprevailingsanctions,policiesandproceduresassetforthintheLawsofKenya.

3.2 TheSuppliershalldiscloseanycommissions,gratuityorfeesthatmayhavebeenpaidoraretobepaidtoagentsoranyotherpersonwithrespecttotheTenderingprocessorexecutionoftheContract.Theinformationdisclosedmustincludeatleastthenameandaddressoftheagentorotherparty,theamountandcurrency,andthepurposeofthecommission, gratuityorfee.

4.1 Entire Agreement

4.3.1TheContractconstitutestheentireagreementbetweentheProcuringEntityandtheSupplierandsupersedesallcommunications,negotiationsandagreements(whetherwrittenororal)oftheparties withrespecttheretomadepriortothedateofContract.

4.2 Amendment

NoamendmentorothervariationoftheContractshallbevalidunlessitisinwriting,isdated,expresslyreferstotheContract,andissignedbyadulyauthorizedrepresentativeofeachpartythereto.

4.3 Non-waiver

a) SubjecttoGCCSub-Clause4.5(b)below,norelaxation,forbearance,delay,orindulgencebyeitherpartyinenforcinganyoftheter msandconditionsoftheContractorthegrantingoftimebyeitherpartytotheothershallprejudice,affect,orrestricttherightsofthatpartyundertheContract,neithershallanywaiverbyeitherpartyofanybreachofContracto perateaswaiverofanysubsequentorcontinuingbreachofContract.

b) Anywaiverofaparty'srights,powers,orremediesundertheContractmustbeinwriting,dated,andsignedbyanauthorizedrepresentativeofthepartygrantingsuchwaiver,andmustspecifytherightandtheextenttowhich itisbeingwaived.

4.4 Severability

IfanyprovisionorconditionoftheContractisprohibitedorrenderedinvalidorunenforceable,suchprohibition,invalidityorunenforceabilityshallnotaffectthevalidityorenforceabilityofanyotherprovisionsandconditionsoftheContract.

5. Language

5.1 TheContractaswellasallcorrespondenceanddocumentsrelatingtotheContractexchangedbytheSupplierandtheProcuringEntity,shallbewritteninthe**EnglishLanguage.**Supportingdocumentsandprintedliteraturethatarepar

77

toftheContractmaybeinanotherlanguageprovidedtheyareaccompaniedbyanaccurateandcertifiedtranslationof therelevantpassagesinthe**EnglishLanguage,**inwhichcase,forpurposesofinterpretationoftheContract,theEngli shlanguageistranslationshallgovern.

78

5.2 TheSuppliershallbearallcostsoftranslationtothegoverninglanguageandallrisksoftheaccuracyofsuchtranslation,fordocumentsprovidedbytheSupplier.

6. Joint Venture, Consortium orAssociation

6.1IftheSupplierisajointventure,consortium,orassociation,allofthepartiesshallbejointlyandseverallyliabletotheProcuringEntityforthefulfilmentoftheprovisionsoftheContractandshalldesignateonememberofthejointventure,consortium,orassociationtoactasaleaderwithauthoritytobindthejointventure,consortium,orassociation.Thecompositionortheconstitutionofthejointventure,consortium,orassociationshallnotbealteredwithoutthepriorwrittenconsentoftheProcuringEntity.

7. Eligibility

7.1 TheSupplieranditsSubcontractorsshallhavethenationalityofaneligiblecountry.ASupplierorSub-contractorshallbedeemedtohavethenationalityofacountryifitisacitizenorconstituted,incorporated,orregistered,andoperatesinconformitywiththeprovisionsofthelawsofthatcountry.

7.2 AllGoodsandRelatedServicestobesuppliedunderthecontractshallhavetheiroriginineligibleCountries.Forthepurposeofthisclause,originmeansthecountrywherethegoodshavebeengrown,mined,cultivated,produced,manufactured,orprocessed;orthroughmanufacture,processing,orassembly,anothercommerciallyrecognizedarticleresultsthatdifferssubstantiallyinitsbasiccharacteristicsfromitscomponents.

7.3 TheTenderer,ifaKenyanfirm,mustsubmitwithitstenderavalidtaxcompliancecertificatefromtheKenyaRevenue Authority.

8. Notices

8.1 Anynoticegivenbyonepartytotheotherpursuanttothecontractshallbeinwritingtotheaddressspecifiedinthe**SCC**.Theterm“inwriting”meanscommunicatedinwrittenformwithproofofreceipt.

8.2 Anoticeshallbeeffectivewhendeliveredoronthenotice'seffectivedate,whicheverislater.

9. Governing Law

9.1 TheContractshallbegovernedbyandinterpretedinaccordancewiththelawsofKenya.

9.2 Throughouttheexecutionofthecontract,theSuppliershallcomplywiththeimportofgoodsandservicesprohibitionsinKenya:

a) where,asamatteroflaw,complianceofofficialregulations,Kenyaprohibitscommercialrelationswiththatcountryoranyimportofgoodsfromthatcountryoranypaymentstoanycountry,person,orentityinthatcountry;or

b) byanactofcompliancewithadecisionoftheUnitedNationsSecurityCounciltakenunderChapterVIIofthecharteroftheUnitedNations,Kenyaprohibitsanyimportofgoodsfromthatcountryoranypaymentstoanycountry,person,orentity.

10. Settlement of Disputes

10.1 TheProcuringEntityandtheSuppliershallmakeeveryefforttoresolveamicablybydirectnegotiationanydisagreementordisputearisingbetweenthemunderorinconnectionwiththecontract.

10.2 If,afterthirty(30)days,thepartieshavefailedtoresolvetheirdisputeordifferencebysuchmutualconsultation,theneitherthePROCURINGENTITYorthesuppliermaygivenoticetotheotherpartyofitsintentiontocommencearbitration,ashereinafterprovided,astothematterindispute,andnoarbitrationinrespectofthismattermaybecommencedunlesssuchnoticeisgiven.AnydisputeordifferenceinrespectofwhichanoticeofintentiontocommencearbitrationhasbeengiveninaccordancewiththisClauseshallbefinallysettledbyarbitration.Arbitrationmaybecommencedpriortoorafterdeliveryofthegoodsunderthecontract.

10.2 Arbitration proceedings shall be conducted as follows:

10.2.1 AnyclaimordisputebetweenthePartiesarisingoutoforinconnectionwiththecontractnotsettledamicablyinaccordancewithSub-Clause10.1shallbefinallysettledbyarbitration.

10.2.2 Noarbitrationproceedingsshallbecommencedonanyclaimordisputewherenoticeofaclaimordisputehasnotbeengivenbytheapplyingpartywithinthirtydaysoftheoccurrenceordiscoveryofthematterorissuegivingrisetothedispute.

77

10.23 Notwithstandingtheissueofanoticeasstatedabove,thearbitrationofsuchaclaimordisputeshallnotcommenceunless anattempthasinthefirstinstancebeenmadebythepartiestosettlesuchclaimordisputeamicablywithorwithoutthe assistanceofthirdparties.Proof of such attempt shall be required.

78

10.2.4 The Arbitrators shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, or valuations as may in his opinion be desirable in order to determine the rights of the parties and assessand award any sums which ought to have been the subject of or included in any due payments.

10.2.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.

10.2.6 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.

10.2.7 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

10.3 Arbitration Proceedings

10.3.1 Arbitration proceedings with national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person or persons to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

i) Kenya National Chamber of Commerce

ii) Chartered Institute of Arbitrators (Kenya Branch)

iii) The Law Society of Kenya

10.3.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

10.3.3 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

10.4 Arbitration with Foreign Suppliers

10.4.1 Arbitration with foreign suppliers shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

79

10.4.2 Theplaceofarbitrationshallbealocationspecifiedinthe**SCC;**andthearbitrationshallbeconductedinthelanguage forcommunicationsdefinedinSub-Clause1.4[LawandLanguage].

10.5 Alternative Arbitration Proceedings

Alternatively,thePartiesmayreferthemattertotheNairobiCentreforInternationalArbitration(NCIA)whichoffe rsaneutralvenuefortheconductofnationalandinternationalarbitrationwithcommitmenttoprovidinginstitutiona lsupporttothearbitralprocess.

10.6 Failure to Comply with Arbitrator's Decision

10.6.1 TheawardofsuchArbitratorshallbefinalandbindinguponthepartie s.

10.6.1 IntheeventthataPartyfailstocomplywithafinalandbindingArbitrator'sdecision,thentheotherPartymay,withoutprej udicetoanyotherrightsitmayhave,referthemattertoacompetentcourtoflaw.

10.7 Contract operations continue

Notwithstanding any reference to arbitration herein,

a) thepartiesshallcontinuetoperformtheirrespectiveobligationsundertheContractunlesstheyotherwiseagre e;and

b) theProcuringEntityshallpaytheSupplieranymoniesduetheSupplier.

11. Inspections and Audit by the Procuring Entity

11.1 TheSuppliershallkeep,andshallcauseitsSubcontractorstokeep,accurateandsystematicaccountsandrecordsinr espectoftheGoodsinsuchformanddetailsaswillclearlyidentifyrelevanttime,changesandcosts.

11.2 Pursuanttoparagraph2.2ofInstructiontoTenderers,theSuppliershallpermitandshallcauseitssubcontractorstop ermit,theProcuringEntityand/orpersonsappointedbytheProcuringEntityorbyotherstatutorybodiesoftheGover nmenttoinspecttheSiteand/ortheaccountsandrecordsrelatingtotheprocurementprocess,selectionand/orcontra ctexecution,andtohavesuchaccountsandrecordsauditedbyauditorsappointedbytheProcuringEntity.TheSuppl ier'sanditsSubcontractors'attentionisdrawntoSub-Clause3.1whichprovides,interalia,thatactsintendedtomateriallyimpedetheexerciseoftheProcuringEntity'sins pectionandauditrightsconstituteaprohibitedpracticesubjecttocontracttermination,aswellastoadeterminationo fineligibility.

12. Scope ofSupply

12.1 TheGoodsandRelatedServicestobesuppliedshallbeasspecifiedintheScheduleofRequirements.

13. Delivery andDocuments

13.1 SubjecttoGCCSub-Clause33.1,thedeliveryoftheGoodsandcompletionoftheRelatedServicesshallbeinaccordancewiththeListofG oodsandDeliveryScheduleespecifiedintheSupplyRequirements.Thedetailsofshippingandotherdocumentstobe furnishedbytheSupplierarespecifiedinthe**SCC.**

14. Supplier's Responsibilities

14.1 TheSuppliershallsupplyalltheGoodsandRelatedServicesincludedintheScopeofSupplyinaccordance withGCCClause12,andtheDeliveryandCompletionSchedule,asperGCCClause13.

15. Contract Price

15.1 PriceschargedbytheSupplierfortheGoodssuppliedandtheRelatedServicesperformedundertheContractshallno tvaryfromthepricesquotedbytheSupplierinitsTender,withtheexceptionofanypriceadjustmentsauthorizedinth e**SCC.**

15.2 Wherethecontractpriceisdifferentfromthecorrectedtenderprice,inordertoensurethesupplierisnotpaidlessorm

81

orerelativetothecontractprice(*whichwouldbethetenderprice*),anypartialpaymentvaluationbasedonratesinthe scheduleofpricesintheTender,willbeadjustedbyaplusorminuspercentage.Thepercentagealreadyworkedoutdu ringtenderevaluationisworkedoutasfollows:*(correctedtenderprice–tenderprice)/tenderpriceX100*.

16. Terms ofPayment

16.1 TheSuppliershallrequestforpaymentbysubmittinginvoice(s),deliverynote(s)andanyotherrelevantdocuments asspecifiedintheSCCtotheProcuringEntity.

16.2 PaymentsshallbemadepromptlybytheProcuringEntity,butnotlaterthanthirty(30)daysaftersubmissionofaninv oicebytheSupplier,andaftertheProcuringEntityhasacceptedit.

16.3 WhereaProcuringEntityrejectsGoodsandRelatedServices,inpartorwholly,theprocuringEntityshallpromptlyi nformtheSuppliertocollect,replaceorrectifyasappropriateandgivereasonsforrejection.TheSuppliershallsubm itafreshinvoice,deliverynoteandanyotherrelevantdocumentsasspecifiedintheSCC.

16.4 ThecurrenciesinwhichpaymentsshallbemadetotheSupplierunderthisContractshallbethoseinwhichtheTender priceisexpressed.

16.5 IntheeventthattheProcuringEntityfailstopaytheSupplieranypaymentbyitsduedateorwithintheperiodsetforthi ntheSCC,theProcuringEntitymaypaytotheSupplierinterestontheamountofsuchdelayedpaymentattheratesho wnintheSCC,fortheperiodofdelayuntilpaymenthasbeenmadeinfull,whetherbeforeorafterjudgmentorarbitrag eaward.

17. Taxes and Duties

17.1TheSuppliershallbeentirelyresponsibleforalltaxes,duties,licensefees,andothersuchleviesincurredtodelivertheG oodsandRelatedServicestotheProcuringEntityatthefinaldeliverypoint.

17.3Ifanytaxexemptions,reductions,allowancesorprivilegesmaybeavailabletotheSupplierinKenya,theSuppliershalli nformtheProcuringEntityandtheProcuringEntityshalluseitsbesteffortstoenabletheSuppliertobenefitfromany suchtaxsavingstothemaximumallowableextent.

18. Performance Security

18.1 IfrequiredasspecifiedintheSCC,theSuppliershall,withintwenty-eight(28)daysofthenotificationofcontractaward,provideaperformancesecurityfortheperformanceoftheContr actintheamountspecifiedintheSCC.

18.2 TheproceedsofthePerformanceSecurityshallbepayabletotheProcuringEntityascompensationforanylossresul tingfromtheSupplier'sfailuretocompleteitsobligationsundertheContract.

18.3 AsspecifiedintheSCC,thePerformanceSecurity,ifrequired,shallbedenominatedinthecurrency(ies)oftheCont ract,orinafreelyconvertiblecurrencyacceptabletotheProcuringEntity;andshallbeinoneoftheformatsstipulated bytheProcuringEntityintheSCC,orinanotherformatacceptabletotheProcuringEntity.

18.4 ThePerformanceSecurityshallbedischargedbytheProcuringEntityandreturnedtotheSuppliernotlaterthanthirt y(30)daysfollowingthedateofCompletionoftheSupplier'sperformanceobligationsundertheContract,includin ganywarrantyobligations,unlessspecifiedotherwiseintheSCC.

19. Copyright

19.1Thecopyrightinalldrawings,documents,andothermaterialscontainingdataandinformationfurnishedtotheProcuri ngEntitybytheSupplierhereinshallremainvestedintheSupplier,or,iftheyarefurnishedtotheProcuringEntitydir ectlyorthroughtheSupplierbyanythirdparty,includingsuppliersofmaterials,thecopyrightinsuchmaterialsshall remainvestedinsuchthirdparty.

20. Confidential Information

20.1 TheProcuringEntityandtheSuppliershallkeepconfidentialandshallnot,withoutthewrittenconsentoftheotherpa rtyhereto,divulgetoanythirdpartyanydocuments,data,orotherinformationfurnisheddirectlyorindirectlybythe otherpartyheretoinconnectionwiththeContract,whethersuchinformationhasbeenfurnishedpriorto,duringorfo llowingcompletionorterminationoftheContract.Notwithstandingtheabove,theSuppliermayfurnishtoitsSub-

Suppliersuchdocuments,data,andotherinformationitreceivesfromtheProcuringEntitytotheextentrequiredfort
heSubSuppliertoperformitsworkundertheContract,inwhicheventtheSuppliershallobtainfromsuchSubSuppli

83

erundertakingofconfidentialitysimilartothatimposedontheSupplierunderGCCClause20.

20.2 TheProcuringEntityshallnotusesuchdocuments,data,andotherinformationreceivedfromtheSupplierforanypurposesunrelatedtothecontract.Similarly,theSuppliershallnotusesuchdocuments,data,andotherinformationreceivedfromtheProcuringEntityforanypurposeotherthantheperformanceoftheContract.

20.3 TheobligationofapartyunderGCCSub-Clauses20.1and20.2above,however,shallnotapplytoinformationthat:

a) theProcuringEntityorSupplierneedtosharewithotherarmsofGovernmentorotherbodiesparticipatinginthefinancingoftheContract;suchpartiesshalldedisclosedin**theSCC;**

b) noworhereafterentersthepublicdomainthroughnofaultofthatparty;

c) canbeproventohavebeenpossessedbythatpartyatthetimeofdisclosureandwhichwasnotpreviouslyobtained,directlyorindirectly,fromtheotherparty;or

d) otherwiselawfullybecomesavailabletothatpartyfromathirdpartythathasnoobligationofconfidentiality.

20.4 TheaboveprovisionsofGCCClause20shallnotinanywaymodifyanyundertakingofconfidentialitygivenbyeitherofthepartiesheretopriortothedateoftheContractinrespectoftheSupplyoranyparthereof.

20.5 TheprovisionsofGCCClause20shallsurvivecompletionortermination,forwhateverreason,oftheContract.

21. Subcontracting

21.1 TheSuppliershallnotifytheProcuringEntityinwritingofallsubcontractsawardedundertheContractifnotalreadyspecifiedintheTender.Suchnotification,intheoriginalTenderorlatershallnotrelievetheSupplierfromanyofitsobligations,duties,responsibilities,orliabilityundertheContract.

21.2 SubcontractsshallcomplywiththeprovisionsofGCCClauses3and7.

22. Specifications and Standards

22.1 TechnicalSpecificationsandDrawings

a) TheGoodsandRelatedServicessuppliedunderthisContractshallconformtothetechnicalspecificationsandstandardsmentionedinSectionVI,ScheduleofRequirementsand,whennoapplicablestandardismentioned,thestandardshallbeequivalentorsuperiortotheofficialstandardswhoseapplicationisappropriatetotheGoods'countryoforigin.

b) TheSuppliershallbeentitledtodisclaimresponsibilityforanydesign,data,drawing,specificationorotherdocument,oranymodificationthereofprovidedordesignedbyoronbehalfoftheProcuringEntity,bygivinganoticeofsuchdisclaimertotheProcuringEntity.

c) WhereverreferencesaremadeintheContracttocodesandstandardsinaccordancewithwhichitshallbeexecuted,theeditionortherevisedversionofsuchcodesandstandardsshallbethosespecifiedintheScheduleofRequirements.DuringContractexecution,anychangesinanysuchcodesandstandardsshallbeappliedonlyafterapprovalbytheProcuringEntityandshallbetreatedinaccordancewithGCCClause33.

23. Packing and Documents

23.1 TheSuppliershallprovidesuchpackingoftheGoodsasisrequiredtopreventtheirdamageordeteriorationduringtransittotheirfinaldestination,asindicatedintheContract.Duringtransit,thepackingshallbesufficienttowithstand,withoutlimitation,roughhandlingandexposuretoextremetemperatures,saltandprecipitation,andopenstorage.Packingcasesizeandweightsshalltakeintoconsideration,whereappropriate,theremotenessofthegoods'finaldestinationandtheabsenceofheavyhandlingfacilitiesatallpointsintransit.

23.2 Thepacking,marking,anddocumentationwithinandoutsidethepackagesshallcomplystrictlywithsuchspecialrequirementsasshallbeexpresslyprovidedforintheContract,includingadditionalrequirements,ifany,specified**intheSCC**,andinanyotherinstructionsorderedbytheProcuringEntity.

24. Insurance

24.1Unlessotherwisespecifiedin**theSCC,**theGoodssuppliedundertheContractshallbefullyinsured—inafreelyconvertiblecurrencyfromaneligiblecountry—

84

againstlossordamageincidentaltomanufactureoracquisition,transportation,storage,anddelivery,inaccordanc ewiththeapplicableIncotermsorinthemannerspecifiedinthe**SCC.**

85

25. Transportation and Incidental Services

25.1 Unlessotherwisespecifiedinthe**SCC,**responsibilityforarrangingtransportationoftheGoodsshallbeinaccordancewiththespecifiedIncoterms.

25.2 TheSuppliermayberequiredtoprovideanyorallofthefollowingservices,includingadditionalservices,ifany,specified**inSCC:**

a) performanceorsupervisionofon-siteassemblyand/orstart-upofthesuppliedGoods;

b) furnishingoftoolsrequiredforassemblyand/ormaintenanceofthesuppliedGoods;

c) furnishingofadetailedoperationsandmaintenancemanualforeachappropriateunitofthesuppliedGoods;

d) performanceorsupervisionormaintenanceand/orrepairofthesuppliedGoods,foraperiodoftimeagreedbytheparties,providedthatthisserviceshallnotrelievetheSupplierofanywarrantyobligationsunderthisContract;and

e) trainingoftheProcuringEntity'spersonnel,attheSupplier'splantand/oron-site,inassembly,start-up,operation,maintenance,and/orrepairofthesuppliedGoods.

25.3 PriceschargedbytheSupplierforincidentalservices,ifnotincludedintheContractPricefortheGoods,shallbeagreeduponinadvancebythepartiesandshallnotexceedtheprevailingrateschargedtootherpartiesbytheSupplierforsimilarservices

26. Inspections and Tests

26.1 TheSuppliershallatitsownexpenseandatnocosttotheProcuringEntitycarryoutallsuchtestsand/orinspectionsoftheGoodsandRelatedServicesasarespecifiedinthe**SCC.**

26.2 Theinspectionsandtestsmaybeconductedonthepremisesofthe**Supplier**oritsSubcontractor,atpointofdelivery,and/orattheGoods'finaldestination,orinanotherplaceinKenyaasspecifiedinthe**SCC.**SubjecttoGCCSub-Clause26.3,ifconductedonthepremisesoftheSupplieroritsSubcontractor,allreasonablefacilitiesandassistance,includingaccesstodrawingsandproductiondata,shallbefurnishedtotheinspectorsatnochargetotheProcuringEntity.

26.3 TheProcuringEntityoritsdesignatedrepresentativeshallbeentitledtoattendthetestsand/orinspectionsreferredtoinGCCSub-Clause26.2,providedthattheProcuringEntitybearallofitsowncostsandexpensesincurredinconnectionwithsuchattendanceincluding,butnotlimitedto,alltravellingandboardandlodgingexpenses.

26.4 WhenevertheSupplierisreadytocarryoutanysuchtestandinspection,itshallgiveareasonableadvancenotice,including theplaceandtime,totheProcuringEntity.TheSuppliershallobtainfromanyrelevantthirdpartyormanufacturer anynecessarypermissionorconsenttoenabletheProcuringEntityoritsdesignatedrepresentativetoattendthetest and/orinspection.

26.5 TheProcuringEntitymayrequiretheSuppliertocarryoutanytest and/orinspectionnotrequiredbytheContractbutdeemednecessarytoverifythatthecharacteristicsandperformanceoftheGoodscomplywiththetechnicalspecifications codesandstandardsundertheContract,providedthattheSupplier'sreasonablecostsandexpensesincurredinthecarryingoutofsuchtest and/orinspectionshallbeaddedtotheContractPrice.Further,ifsuchtest and/orinspectionimpedestheprogressofmanufacturingand/ortheSupplier'sperformanceofitsotherobligationsundertheContract,dueallowancewillbemadeinrespectoftheDeliveryDatesandCompletionDatesandtheotherobligationssoaffected.

26.6 TheSuppliershallprovidetheProcuringEntitywithareportoftheresultsofanysuchtest and/orinspection.

26.7 TheProcuringEntitymayrejectanyGoodsoranypartthereofthatfailtopassanytest and/orinspectionordonotconformtothespecifications.TheSuppliershalleitherrectifyorreplacesuchrejectedGoodsorpartsthereoformakealterationsnecessarytomeetthespecificationsatnocosttotheProcuringEntity,andshallrepeatthetest and/orinspection,atnocosttotheProcuringEntity,upongivinganoticepursuanttoGCCSub-Clause26.4.

26.8 TheSupplieragreesthatneithertheexecutionofatest and/orinspectionoftheGoodsoranypartthereof,northeattendancebytheProcuringEntityoritsrepresentative,northeissueofanyreportpursuanttoGCCSub-Clause26.6,shallreleasetheSupplierfromanywarrantiesorotherobligationsundertheContract.

86

27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC.** Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract. Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.2 Unless otherwise specified in the **SCC,** the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC,** or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

28.3 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.4 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC,** expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.

28.5 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC,** the Procuring Entity may proceed to take within a reasonable period such remedial actions as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

29. Patent Indemnity

29.1 The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

87

29.3 IftheSupplierfailstonotifytheProcuringEntitywithintwenty-eight(28)daysafterreceiptofsuchnoticethatitintendstoconductanysuchproceedingsorclaim,thentheProcuring Entityshallbefreetoconductthesameonitsownbehalf.

88

29.4 TheProcuringEntityshall,attheSupplier'srequest,affordallavailableassistancetotheSupplierinconductingsuch proceedingsorclaim,andshallbereimbursedbytheSupplierforallreasonableexpensesincurredinsodoing.

29.5 TheProcuringEntityshallindemnifyandholdharmlesstheSupplieranditsemployees,officers,andSubcontractor sfromandagainstanyandallsuits,actionsoradministrativeproceedings,claims,demands,losses,damages,costs, andexpensesofanynature,includingattorney'sfeesandexpenses,whichtheSuppliermaysufferasaresultofanyinf ringementorallegedinfringementofanypatent,utilitymodel,registereddesign,trademark,copyright,orotherinte llectualpropertyrightregisteredorotherwiseexistingatthedateoftheContractarisingoutoforinconnectionwitha nydesign,data,drawing,specification,orotherdocumentsormaterialsprovidedordesignedbyoronbehalfofthePr ocuringEntity.

30. LimitationofLiability

30.1 Excep incasesofcriminalnegligenceorwillfulmisconduct,

a) theSuppliershallnotbeliabletotheProcuringEntity,whetherincontract,tort,orotherwise,foranyindirector consequentiallossordamage,lossofuse,lossofproduction,orlossofprofitsorinterestcosts,providedthatthisexclu sionshallnotapplytoanyobligationoftheSuppliertopayliquidateddamagestotheProcuringEntity,and

b) theaggregateliabilityoftheSuppliertotheProcuringEntity,whetherundertheContract,intortorotherwise,s hallnotexceedthetotalContractPrice,providedthatthislimitationshallnotapplytothecostofrepairingorreplacing defectiveequipment,ortoanyobligationofthesuppliertoindemnifytheProcuringEntitywithrespecttopatentinfri ngement.

31. Change in Laws and Regulations

31.1 UnlessotherwisespecifiedintheContract,ifafterthedateof30dayspriortodateofTendersubmission,anylaw,regu lation,ordinance,orderorbylawhavingtheforceoflawisenacted,promulgated,abrogated,orchangedinKenya(w hichshallbedeemedtoincludeanychangeininterpretationorapplicationbythecompetentauthorities)thatsubseq uentlyaffectstheDeliveryDateand/ortheContractPrice,thensuchDeliveryDateand/orContractPriceshallbecor respondinglyincreasedordecreased,totheextentthattheSupplierhastherebybeenaffectedintheperformanceofa nyofitsobligationsundertheContract.Notwithstandingtheforegoing,suchadditionalorreducedcostshallnotbes eparatelypaidorcreditedifthesamehasalreadybeenaccountedforinthepriceadjustmentprovisionswhereapplica ble,inaccordancewithGCCClause15.

32. Force Majeure

32.1 TheSuppliershallnotbeliableforforfeitureofitsPerformanceSecurity,liquidateddamages,orterminationfordef aultifandtotheextentthatitsdelayinperformanceorotherfailuretoperformitsobligationsundertheContractisther esultofaneventofForceMajeure.

32.2 ForpurposesofthisClause,"ForceMajeure"meansaneventorsituationbeyondthecontroloftheSupplierthatisnot foreseeable,isunavoidable,anditsoriginisnotduetonegligenceorlackofcareonthepartoftheSupplier.Suchevent smayinclude,butnotbelimitedto,actsoftheProcuringEntityinitssovereigncapacity,warsorrevolutions,fires,flo ods,epidemics,quarantinerestrictions,andfreightembargoes.

32.3 IfaForceMajuresituationarises,theSuppliershallpromptlynotifytheProcuringEntityinwritingofsuchconditio nandthecausethereof.UnlessotherwisedirectedbytheProcuringEntityinwriting,theSuppliershallcontinuetoper formitsobligationsundertheContractasfarasisreasonablypractical,andshallseekallreasonablealternativemea nsforperformancenotpreventedbytheForceMajureevent.

33. Change Orders and Contract Amendments

33.1 TheProcuringEntitymayatanytimeordertheSupplierthroughnoticeinaccordanceGCCClause8,tomakechange swithinthegeneralscopeoftheContractinanyoneormoreofthefollowing:

a) drawings,designs,orspecifications,whereGoodstobefurnishedundertheContractaretobespecificallyman ufacturedfortheProcuringEntity;

b) themethodofshipmentorpacking;

c) theplaceofdelivery;and

89

d) theRelatedServicestobeprovidedbytheSupplier.

90

33.2 Ifanysuchchangecausesanincreaseordecreaseinthecostof,orthetimerequiredfor,theSupplier'sperformanceofa nyprovisionsundertheContract,anequitableadjustmentshallbemadeintheContractPriceorintheDelivery/Com pletionSchedule,orboth,andtheContractshallaccordinglybeamended.AnyclaimsbytheSupplierforadjustment underthisClausemustbeassertedwithintwenty-eight(28)daysfromthedateoftheSupplier'sreceiptoftheProcuringEntity'schangeorder.

33.3 PricestobechargedbytheSupplierforanyRelatedServicesthatmightbeneededbutwhichwerenotincludedintheC ontractshallbeagreeduponinadvancebythepartiesandshallnotexceedtheprevailingrateschargedtootherparties bytheSupplierforsimilarservices.

33.4 **ValueEngineering:**TheSuppliermayprepare,atitsowncost,avalueengineeringproposalatanytimeduringthep erformanceofthecontract.Thevalueengineeringproposalshall,ataminimum,includethefollowing;

a) theproposedchange(s),andadescriptionofthedifferencetotheexistingcontractrequirements;

b) afullcost/benefitanalysisoftheproposedchange(s)includingadescriptionandestimateofcosts(includinglif ecyclecosts)theProcuringEntitymayincurinimplementingthevalueengineeringproposal;and

c) adescriptionofanyeffect(s)ofthechangeonperformance/functionality.

33.5 TheProcuringEntitymayacceptthevalueengineeringproposaliftheproposaldemonstratesbenefitsthat:

a) acceleratesthedeliveryperiod;or

b) reducestheContractPriceorthelifecyclecoststotheProcuringEntity;or

c) improvesthequality,efficiencyorsustainabilityoftheGoods;or

d) yieldsanyotherbenefitstotheProcuringEntity,withoutcompromisingthenecessaryfunctionsoftheFaciliti es.

33.6 IfthevalueengineeringproposalisapprovedbytheProcuringEntityandresultsin:

a) areductionoftheContractPrice;theamounttobepaidtotheSuppliershallbethepercentagespecified**intheSC C**ofthereductionintheContractPrice;or

b) anincreaseintheContractPrice;butresultsinareductioninlifecyclecostsduetoanybenefitdescribedin (a) to(d)above,theamounttobepaidtotheSuppliershallbethefullincreaseintheContractPrice.

33.7 Subjecttotheabove,novariationinormodificationofthetermsoftheContractshallbemadeexceptbywrittenamen dmentsignedbytheparties.

34. Extensions of Time

34.1 IfatanytimeduringperformanceoftheContract,theSupplieroritssubcontractorsshouldencounterconditionsimp edingtimelydeliveryoftheGoodsorcompletionofRelatedServicespursuanttoGCCClause13,theSuppliershallp romptlynotifytheProcuringEntityinwritingofthedelay,itslikelyduration,anditscause.Assoonaspracticableafte rreceiptoftheSupplier'snotice,theProcuringEntityshallevaluatethesituationandmayatitsdiscretionextendtheS upplier'stimeforperformance,inwhichcasetheextensionshallberatifiedbythepartiesbyamendmentoftheContra ct.

34.2 ExceptincaseofForceMajeure,asprovidedunderGCCClause32,adelaybytheSupplierintheperformanceofitsD eliveryandCompletionobligationsshallrendertheSupplierliabletotheimpositionofliquidateddamagespursuant toGCCClause26,unlessanextensionoftimeisagreedupon,pursuanttoGCCSub-Clause34.1.

35. Termination

35.1 TerminationforDefault

a) TheProcuringEntity,withoutprejudicetoanyotherremedyforbreachofContract,bywrittennoticeofdefault senttotheSupplier,mayterminatetheContractinwholeorinpart:
   i) iftheSupplierfailstodeliveranyoralloftheGoodswithintheperiodspecifiedintheContract,orwithina nyextensionthereofgrantedbytheProcuringEntitypursuanttoGCCClause34;
   ii) iftheSupplierfailstoperformanyotherobligationundertheContract;or
   iii) iftheSupplier,inthejudgmentoftheProcuringEntityhasengagedinFraudandCorruption,asdefinedin paragraph2.2aoftheAppendixtotheGCC,incompetingfororinexecutingtheContract.

b) IntheeventtheProcuringEntityterminatestheContractinwholeorinpart,pursuanttoGCCClause35.1(a),th eProcuringEntitymayprocure,uponsuchtermsandinsuchmannerasitdeemsappropriate,GoodsorRelated

91

Servicessimilartothoseundeliveredornotperformed,andtheSuppliershallbeliabletotheProcuringEntityf
oranyadditionalcostsforsuchsimilarGoodsorRelatedServices.However,theSuppliershallcontinueperfor

92

manceoftheContracttotheextentnotterminated.

35.2 Termination for Insolvency.

TheProcuringEntitymayatanytimeterminatetheContractbygivingnoticetotheSupplieriftheSupplierbecomesbankruptorotherwiseinsolvent.Insuchevent,terminationwillbewithoutcompensationtotheSupplier,providedthatsuchterminationwillnotprejudiceoraffectanyrightofactionorremedythathasaccruedorwillaccruethereaftertotheProcuringEntity

35.2 Termination for Convenience.

a) TheProcuringEntity,bynoticesenttotheSupplier,mayterminatetheContract,inwholeorinpart,atanytimeforitsconvenience.Thenoticeofterminationshallspecifythatterminationisfortheprocuringentity'sconvenience,theextenttowhichperformanceoftheSupplierundertheContractisterminated,andthedateuponwhichsuchterminationbecomeseffective.

b) TheGoodsthatarecompleteandreadyforshipmentwithintwenty-eight(28)daysaftertheSupplier'sreceiptofnoticeofterminationshallbeacceptedbytheProcuringEntityattheContracttermsandprices.FortheremainingGoods,theProcuringEntitymayelect:

i) tohaveanyportioncompletedanddeliveredattheContracttermsandprices;and/or

ii) tocanceltheremainderandpaytotheSupplieranagreedamountforpartiallycompletedGoodsandRelatedServicesandformaterialsandpartspreviouslyprocuredbytheSupplier.

36. Assignment

36.1 NeithertheProcuringEntitynortheSuppliershallassign,inwholeorinpart,theirobligationsunderthisContract,exceptwithpriorwrittenconsentoftheotherparty.

37. Export Restriction

37.1 Notwithstandinganyobligationunderthecontracttocompleteallexportformalities,anyexportrestrictionsattributabletotheProcuringEntity,toKenya,ortotheuseoftheproducts/goods,systemsorservicestobesupplied,whicharisefromtraderegulationsfromacountrysupplyingthoseproducts/goods,systemsorservices,andwhichsubstantiallyimpedetheSupplierfrommeetingitsobligationsundertheContract,shallreasetheSupplierfromtheobligationtoprovidedeliveriesorservices,alwaysprovided,however,thattheSuppliercandemonstratetothesatisfactionoftheProcuringEntitythatithascompletedallformalitiesinatimelymanner,includingapplyingforpermits,authorizationsandlicensesnecessaryfortheexportoftheproducts/goods,systemsorservicesunderthetermsoftheContract.TerminationoftheContractonthisbasisshallbefortheProcuringEntity'sconveniencepursuanttoSub-Clause35.3.

93

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

ThefollowingSpecialConditionsofContract(SCC)shallsupplementand/oramendtheGeneralConditionsofContract(GCC).Whenever thereisaconflict,theprovisionshereinshallprevailoverthoseintheGCC.

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	The Procuring Entity is: **DEPARTMENT OF trade BARINGO COUNTY GOVERNMENT**
GCC 4.2 (a)	**NOT APPLICABLE-** The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by:
GCC 4.2 (b)	**NOT APPLICABLE**-The version edition of Incoterms shall be *INCOTERMS 2015*
GCC 8.1	For **notices**, the Procuring Entity's address shall be: Attention: **DIRECTOR SUPPLY CHAIN MANAGEMENT** Postal address **(P.O.BOX 53-30400 KABARNET)** Physical Address (full Location Address- **AFC BUILDING ALONG KABARNET ELDORET ROAD**
GCC 10.4.2	The place of arbitration shall be ----------N/A-------- (specify City and Country).
GCC 13.1	**NOT APPLICABLE** Details of Shipping and other Documents to be furnished by the Supplier are *[insert the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory shipping detailsetc* The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.
GCC 15.1	**NOT APPLICABLE** The prices charged for the Goods supplied and the related Services performed s*hall not* be adjustable. If prices are adjustable, the following method shall be used to calculate the price adjustment
GCC 16.1	***Sample provision*** GCC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows: **A. Payment for Goods supplied from abroad:** Payment of foreign currency portion shall be made in *[insert currency of the Contract Price]* in the following manner:N/A (i) **Advance Payment:** Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and, in the form, provided in the Tendering document or another form acceptable to the Procuring Entity.

94

	(ii) **On Shipment:** Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favour of the Supplier in a

95

	(iii) **On Acceptance:** Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Procuring Entity. B. **Payment of local currency portion of a foreign Supplier shall be made in**Kenya shillingswithin thirty (30) days of presentation of claim supported by a certificate from the Procuring Entity declaring that the Goods have been delivered and that all other contracted Services have been performed. **C. Payment for Goods and Services supplied from within Kenya:** Payment for Goods and Services supplied from within Kenya shall be made in __KSH___ *[* as follows: (i) **Advance Payment:** Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against an invoice and a bank guarantee for the equivalent amount and in the form provided in the Tendering document or another form acceptable to the Procuring Entity.-NOT APPLICABLE (ii) **On Delivery:** Eighty (80) percent of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13. The bank guarantee shall then be released. (iii)**On Acceptance:** The remaining ten (10) percent of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Procuring Entity.
GCC 16.5	The payment-delay period after which the Procuring Entity shall pay interest to the supplier shall be----------days **NOT APPLICABLE**
GCC 18.1	The interest rate that shall be applied is A Performance Security OF 10% OF THE BID SUM SHALL BE REQUIRED DURING CONTRACT SIGNING OF THE SUCCESSFUL TENDERER
GCC 18.3	If required, the Performance Security shall be in the form of: **Performance Bond** If required, the Performance security shall be denominated in *[insert "a freely convertible currency acceptable to the Procuring Entity" or "the currencies of payment of the Contract, in accordance with their portions of the Contract Price"]*
GCC 18.4	Discharge of the Performance Security shall take place: *[insert date if different from the one indicated in sub clause GCC 18.4]*
GCC 23.2	The packing, marking and documentation within and outside the packages shall be: *[insert in detail the type of packing required, the markings in the packing and all documentation required]* N/A
GCC 24.1	The insurance coverage shall be as specified in the Incoterms. If not in accordance with Incoterms, insurance shall be as follows: *[insert specific insurance provisions agreed upon, including coverage, currency and amount]*
GCC 25.1	Responsibility for transportation of the Goods shall be as specified in the Incoterms. If not in accordance with Incoterms, responsibility for transportations shall be as follows: *[insert "The Supplier is required under the Contract to transport the Goods to a specified place of final destination within* Kenya*, defined as the Project Site, transport to such place of destination in* Kenya*, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the*

Contract Price"; or any other agreed upon trade terms (specify the respective responsibilities of the Procuring Entity and the Supplier)]N/A

GCC 25.2 Incidental services to be provided are:

[Selected services covered under GCC Clause 25.2 and/or other should be specified with the desired features. The price quoted in the Tender price or agreed with the selected

	Supplier shall be included in the Contract Price.]
GCC 26.1	The inspections and tests shall be: *[insert nature, frequency, procedures for carrying out the inspections and tests]*
GCC 26.2	The Inspections and tests shall be conducted at: BARINGO COUNTY BORESHA BUILDING
GCC 27.1	The liquidated damage shall be: [*insert number]* % per week-NOT APPLICABLE
GCC 27.1	The maximum amount of liquidated damages shall be: *[insert number]* % NOT APPLICABLE
GCC 28.3	The period of validity of the Warranty shall be: *[120]* days For purposes of the Warranty, the place(s) of final destination(s) shall be: *DEPARTMENT OF INDUSTRY, COMMERCE, TOURISM AND ENTERPRISE DEVELOPMENT* ***Sample provision*** GCC 28.3—In partial modification of the provisions, the warranty period shall be _____ hours of operation or _____ months from date of acceptance of the Goods or (_____) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either: (a) make such changes, modifications, and/or additions to the Goods or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with GCC 26.7, **or** (b) pay liquidated damages to the Procuring Entity with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be (_____).
GCC 28.5, GCC 28.6	The period for repair or replacement shall be: *[insert number(s)]*days.-
GCC 33.6	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Supplier shall be ___% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.-**NOT APPLICABLE**

89

-

-

SECTION VIII - CONTRACT FORMS

ThisSectioncontainsformswhich,oncecompleted,willformpartoftheContract.TheformsforPerformanceSecurityand AdvancePaymentSecurity,whenrequired,shallonlybecompletedbythesuccessfultendereraftercontractaward.

FORM No.1:NOTIFICATIONOFINTENTIONTOAWARD

ThisNotificationofIntentiontoAwardshallbesenttoeachTendererthatsubmittedaTender.SendthisNotificationtotheTenderer'sAuthorizedRepresentativenamedintheTenderInformationFormontheformatbelow.

FORMAT

1. FortheattentionofTenderer'sAuthorizedRepresentative

   I) Name:_____*[insertAuthorizedRepresentative'sname]*

   ii) Address:_____*[insertAuthorizedRepresentative'sAddress]*

   iii) Telephone:_____*[insertAuthorizedRepresentative'stelephone/faxnumbers]*

   iv) EmailAddress:_____*[insertAuthorizedRepresentative'semailaddress]*

   [IMPORTANT:insert the date that this Notification is transmitted to Tenderers.The Notification must be sent to all Tenderers simultaneously.Thismeansonthesamedateandasclosetothesametimeaspossible.]

2. Dateoftransmission:_____[*email*]on[*date*]_____(localtime)

   This Notification is sent by _____(*Name and designation*)_____

3. NotificationofIntentiontoAward

   I) Employer:_____*[insertthenameoftheEmployer]*

   ii) Project:_____*[insertnameofproject]*

   iii) Contracttitle:_____*[insertthenameofthecontract]*

   iv) Country:_____*[insertcountrywhereITTisissued]*

   v) ITTNo:_____*[insertITTreferencenumberfromProcurementPlan]*

   ThisNotificationofIntentiontoAward(Notification)notifiesyouofourdecisiontoawardtheabovecontract.The transmission of this Notification begins the Standstill Period.During the Standstill Period, you may:

4. Requestadebriefinginrelationtotheevaluationofyourtender

   SubmitaProcurement-relatedComplaintinrelationtothedecisiontoawardthecontract.

   a) Thesuccessfultenderer

      i) NameofsuccessfulTender_____

      ii) AddressofthesuccessfulTender_____

      iii) ContractpriceofthesuccessfulTenderKenyaShillings_____(inwords _____)

   b) OtherTenderers

   Names of all Tenderers that submitted a Tender.IftheTender'spricewasevaluatedincludetheevaluatedpriceaswellastheTenderpriceasreadout.ForTendersnotevaluated,giveonemainreasontheTenderwasunsuccessful.

91

S/No.	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a)State NE if not evaluated

5. Howtorequestadebriefing

a) DEADLINE:Thedeadlinetorequestadebriefingexpiresatmidnighton[*insertdate*](*localtime*).

b) Youmayrequestadebriefinginrelationtotheresultsoftheevaluationofyour Tender.Ifyoudecidetorequestadebriefingyourwrittenrequestmustbemadewithinthree(5)BusinessDaysofreceiptofthisNotificationofIntentiontoAward.

c) Providethecontractname,referencenumber,nameoftheTenderer,contactdetails;andaddresstherequestfordebriefingasfollows:

I) Attention:_____[*insertfullnameofperson,ifapplicable*]

ii) Title/position:_____[*insert title/position*]

ii) Agency:_____[*insertnameofEmployer*]

iii) Emailaddress:_____[*insertemailaddress*]

d) Ifyourrequestforadebriefingisreceivedwithinthe3Daysdeadline,wewillprovidethedebriefingwithinfive(3)BusinessDaysofreceiptofyourrequest.Ifweareunabletoprovidethedebriefingwithinthisperiod,theStandstillPeriodshallbeextendedbyfive(3)Daysafterthedatethatthedebriefingisprovided.Ifthishappens,wewillnotifyyouandconfirmthedatethattheextendedStandstillPeriodwillend.

e) Thedebriefingmaybeinwriting,byphone,videoconferencecallorinperson.Weshallpromptlyadviseyouinwritinghowthedebriefingwilltakeplaceandconfirmthedateandtime.

f) Ifthedeadlinetorequestadebriefinghasexpired,youmaystillrequestadebriefing.Inthiscase,wewillprovidethedebriefingassoonaspracticable,andnormallynolaterthanfifteen(15)Daysfromthedateofpublicationof theContractAwardNotice.

6. Howtomakeacomplaint

a) Period:Procurement-relatedComplaintchallengingthedecisiontoawardshallbesubmittedbymidnight,[*insertdate*](localtime).

b) Providethecontractname,referencenumber,nameoftheTenderer,contactdetails;andaddresstheProcurement-relatedComplaintasfollows:

I) Attention:_____[*insertfullnameofperson,ifapplicable*]

ii) Title/position:_____[*inserttitle/position*]

iii) Agency:_____[*insertnameofEmployer*]

iv) Emailaddress:_____[*insertemailaddress*]

c) Atthispointintheprocurementprocess,youmaysubmitaProcurement-relatedComplaintchallengingthedecisiontoawardthecontract.Youdonotneedtohaverequested,orreceived,adebriefingbeforemakingthiscomplaint.Yourcomplaintmustbesubmittedwithin theStandstillPeriodandreceivedbyusbeforetheStandstillPeriodends.

d) Furtherinformation:FormoreinformationrefertothePublicProcurementandDisposalsAct2015anditsRegulationsavailablefromtheWebsitewww.ppra.go.keoremailcomplaints@ppra.go.ke.

92

Youshouldreadthesedocumentsbeforepreparingandsubmittingyourcomplaint.

e) Therearefouressentialrequirements:

i) You must be an 'interested party'.Inthiscase,thatmeansaTendererwhosubmittedaTenderinthistenderingprocess,andistherecipientofaNotificationofIntentiontoAward.

ii) Thecomplaintcanonlychallengethedecisiontoawardthecontract.

iii) You must submit the complaint within the period stated above.

iv) Youmustinclude,inyourcomplaint,alloftheinformationrequiredtosupportyourcomplaint.

7. <u>Standstill</u> Period

i) DEADLINE:TheStandstillPeriodisduetoendatmidnighton[*insertdate*](localtime).

ii) TheStandstillPeriodlaststen(14)DaysafterthedateoftransmissionofthisNotificationofIntentiontoAward.

iii) TheStandstillPeriodmaybeextendedasstatedinparagraphSection5(d)above.

IfyouhaveanyquestionsregardingthisNotificationpleasedonothesitatetocontactus.

On behalf of the Employer:

Signature:

_____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

93

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……OF……..…20…….. BETWEEN

……...…….APPLICANT

AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of …….20…….in the matter of Tender No……..…of ……..20….. for .....(Tender description).

REQUEST FOR REVIEW

I/We……,the above named Applicant(s), of address: Physical address…….P. O. Box No……. Tel. No……..Email ……, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED …….(Applicant) Dated on…….day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20….……

SIGNED

Board Secretary

94

FORM NO. 3LETTER OF AWARD

[Use letterhead paper of the Procuring Entity]

_____*[Date]*

To:_____*[name and address of the Supplier]*

Subject:_____***Notification of Award Contract No.***.....

ThisistonotifyyouthatyourTenderdated_____
_____***[insertdate]***forexecutionofthe
_____***[insertnameofthecontractandidentificationnumber,asgivenintheSCC]***fortheAccepte dContractAmountof
_____***[insertamountinnumbersandwordsandnameofcurrency]***,ascorrectedandmodifiedinac cordancewiththeInstructionstotenderersisherebyacceptedbyourAgency.

YouarerequestedtofurnishthePerformanceSecuritywithin30daysinaccordancewiththeConditionsofContract,usingfo rthatpurposetheofthePerformanceSecurityFormincludedinSectionX,ContractForms,oftheTenderingdocument.

Authorized

Signature:_____

Name and Title of

Signatory:_____

Name of Agency:_____

Attachment:Contract Agreement

95

FORM NO.4-CONTRACTAGREEMENT

[Thesuccessfultenderershallfillinthisforminaccordancewiththeinstructionsindicated]

THIS AGREEMENT made the_____*[insert:**number**] day* of_____*[insert:**month**]*, [*insert:**year**]*.BETWEEN(1)____ _____*[insertcompletenameofProcuringEntity*andhavingitsprincipalplaceofbusinessat*[insert:addressofProcuringEntity]*(hereinaftercalled"ProcuringEntity"),oftheonepart;and(2) _____*[insertnameofSupplier**]***,acorporationincorporatedunderthelawsof*[insert:countryofSupplier**]***andhavingitsprincipalplaceofbusinessat _____*[insert:addressofSupplier]*(hereinaftercalled"theSupplier"),oftheotherpart.

1. WHEREAStheProcuringEntityinvitedTendersforcertainGoodsandancillaryservices,viz.,

   _____

   *[insertbriefdescriptionofGoodsandServices]*andhasacceptedaTenderbytheSupplierforthesupplyofthoseGoodsandServices,theProcuringEntityandtheSupplieragreeasfollows:

   i) InthisAgreementwordsandexpressionsshallhavethesamemeaningsasare respectivelyassignedtothemintheContractdocumentsreferredto.

   ii) Thefollowingdocumentsshallbedeemedtoformandbereadandconstruedaspartofthis Agreement.This Agreement shall prevail over all other contract documents.

   a) theLetterofAcceptance

   b) theLetterofTender

   c) the Addenda Nos._____(ifany)

   d) SpecialConditionsofContract

   e) GeneralConditionsofContract

   f) theSpecification(includingScheduleofRequirementsandTechnicalSpecifications)

   g) thecompletedSchedules(includingPriceSchedules)

   h) anyotherdocumentlistedinGCCasformingpartoftheContract

   iii) InconsiderationofthepaymentstobemadebytheProcuringEntitytotheSupplierasspecifiedinthisAgreement,theSupplierherebycovenantswiththeProcuringEntitytoprovidetheGoodsandServicesandtoremedydefectsthereininconformityinallrespectswiththeprovisionsoftheContract.

2. TheProcuringEntityherebycovenantstopaytheSupplierinconsiderationoftheprovisionoftheGoodsandServices andtheremedyingofdefectstherein,theContractPriceorsuchothersumasmaybecomepayableundertheprovisionsoftheContractatthetimesandinthemannerprescribedbytheContract.

3. INWITNESSwhereofthepartiesheretohavecausedthisAgreementtobeexecutedinaccordancewiththelawsofKenyaontheday,monthandyearindicatedabove.

<u>For</u> and on behalf of the Procuring Entity

Signed:_____*[insert signature]*

inthecapacityof_____*[inserttitleorotherappropriatedesignation]*Inthepresenceof____

_____*[insertidentificationofofficialwitness]***<u>ForandonbehalfoftheSupplier</u>**

Signed:_____*[insertsignatureofauthorizedrepresentative(s)oftheSupplier]*inthecapacityof____

_____*[inserttitleorotherappropriatedesignation]*inthepresenceof_____

_____*[insertidentificationofofficialwitness]*

96

FORM NO.5-PERFORMANCESECURITY[Option1-UnconditionalDemandBankGuarantee]

[Guarantor letterhead]

Beneficiary:_____*[insert name and Address of Employer]*

Date:_____*[Insert date of issue]*

Guarantor:_____*[Insertnameandaddressofplaceofissue,unlessindicatedintheletterhead]*

1. Wehavebeen informed that _____(hereinafter called"theContractor")hasenteredinto Contract No._____ _____dated _____with*(nameofEmployer)*_____ _____(theEmployerastheBeneficiary),fortheexecutionof _____(hereinaftercalled"theContract").

2. Furthermore,weunderstandthat,accordingtotheconditionsoftheContract,aperformanceguaranteeisrequired.

3. AttherequestoftheContractor,weasGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysumorsumsnotexceedingintotalanamountof _____(*inwords*),[1]suchsumbeingpayable inthetypesandproportionsofcurrenciesinwhichtheContractPriceispayable,uponreceiptbyusoftheBeneficiary'scomplyingdemandsupportedbytheBeneficiary'sstatement,whetherinthedemanditselforinaseparatesigneddocumentaccompanyingoridentifyingthedemand,statingthattheApplicantisinbreachofitsobligation(s)undertheContract,withouttheBeneficiaryneedingtoproveortoshowgroundsforyourdemandorthesumspecifiedtherein.

4. This guarantee shall expire, no later than the ….Dayof……,2...…[2],andanydemandforpaymentunderitmustbereceivedbyusattheofficeindicatedaboveonorbeforethatdate.

5. TheGuarantoragreestoaone-timeextensionofthisguaranteeforaperiodnottoexceed*[sixmonths][oneyear]*,inresponsetotheBeneficiary'swrittenrequestforsuchextension,suchrequesttobepresentedtotheGuarantorbeforetheexpiryoftheguarantee."

_____

[Name of Authorized Official, signature(s) and seals/stamps]

Note:Allitalicizedtext(includingfootnotes)isforuseinpreparingthisformandshallbedeletedfromthefinalproduct.

97

FORM No.6 - PERFORMANCE SECURITY [Option 2– Performance Bond]

[Note:ProcuringEntitiesareadvisedtousePerformanceSecurity–UnconditionalDemandBankGuaranteeinsteadofPerformanceBondduetodifficultiesinvolvedincallingBondholdertoaction]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____*[insert name and Address of Employer] Date*:_____*[Insert date ofissue]*

PERFORMANCE BOND No.:_____

Guarantor:_____*[Insertnameandaddressofplaceofissue,unlessindicatedintheletterhead]*

1. BythisBond_____asPrincipal(hereinaftercalled"theContractor")and_____]asSurety(hereinaftercalled"theSurety"),areheldandfirmlyboundunto_____]asObligee(hereinaftercalled"theEmployer")intheamountof_____forthepaymentofwhichsumwellandtrulytobemadeinthetypesandproportionsofcurrenciesinwhichtheContractPriceispayable,theContractorandtheSuretybindthemselves,theirheirs,executors,administrators,successorsandassigns,jointlyandseverally,firmlybythesepresents.

2. WHEREAStheContractorhasenteredintoawrittenAgreementwiththeEmployerdatedthe_____dayof,20_____,for_____inaccordancewiththedocuments,plans,specifications,andamendmentsthereto,whichtotheextenthereinprovidedfor,arebyreferencemadeparthereofandarehereinafterreferredtoastheContract.

3. NOW,THEREFORE,theConditionofthisObligationissuchthat,iftheContractorshallpromptlyandfaithfullyperformthesaidContract(includinganyamendmentsthereto),thenthisobligationshallbenullandvoid;otherwise,itshallremaininfullforceandeffect.WhenevertheContractorshallbe,anddeclaredbytheEmployertobe,indefaultundertheContract,theEmployerhavingperformedtheEmployer'sobligationsthereunder,theSuretymaypromptlyremedythedefault,orshallpromptly:

    1) completetheContractinaccordancewithitstermsandconditions;or

    2) obtainatenderortendersfromqualifiedtenderersforsubmissiontotheEmployerforcompletingtheContractinaccordancewithitstermsandconditions,anduponterminationbytheEmployerandtheSuretyofthelowestresponsiveTenderers,arrangeforaContractbetweensuchTenderer,andEmployerandmakeavailableaswork progresses(eventhoughthereshouldbeadefaultorasuccessionofdefaultsunderthe ContractorContracts ofcompletionarrangedunderthisparagraph)sufficientfundstopaythecostofcompletionlesstheBalanceoftheContractPrice;butnotexceeding,includingothercostsanddamagesforwhichtheSuretymaybeliablehereunder,theamountsetforthinthefirstparagraphhereof.Theterm"BalanceoftheContractPrice,"asusedinthisparagraph,shallmeanthetotalamountpayablebyEmployertoContractorunderthe Contract,lesstheamount properlypaidbyEmployertoContractor;or

    3) paytheEmployertheamountrequiredbyEmployertocompletetheContractinaccordancewithitstermsandconditionsuptoatotalnotexceedingtheamountofthisBond.

4. TheSuretyshallnotbeliableforagreatersumthanthespecifiedpenaltyofthisBond.

5. AnysuitunderthisBondmustbeinstitutedbeforetheexpirationofoneyearfromthedateoftheissuingoftheTaking-OverCertificate.NorightofactionshallaccrueonthisBondtoorfortheuseofanypersonorcorporationotherthantheEmployernamedhereinortheheirs,executors,administrators,successors,andassignsoftheEmployer.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day _____of _____ 20_____.

SIGNED ON _____on behalf of _____

98

By ___ in the capacity of _____

In the presence of _____

SIGNED ON _____on behalf of _____

By _____ in the capacity of _____

In the presence of _____

FORM NO. 7 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[Insert name and Address of* Employer*]*

Date: _____ *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: [*Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ *dated* _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ (*in words*___)is to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (*in words* _____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

(a) has used the advance payment for purposes other than the costs of mobilization in respect of the goods; or
(b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number _____ at ----------.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the ___ day of _____, 2___,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

_____

[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

[2] *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM NO. 8 BENEFICIAL OWNERSHIP DISCLOSURE FORM

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.:_____[*insert identification no*] Name of the Assignment:_____*[insert name of the assignment]*

to:_____*[insert complete name of Procuring Entity]*

In response to your notification of award dated_____*[insert date of notification of award]* to furnish additional information on beneficial ownership:_____*[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	**Directly or indirectly holding 25% or more of the shares (Yes / No)**	**Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)**	**Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)**
[include full name (last, middle, first), nationality, country of residence]			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing

body of the Tenderer]"

Name of the Tenderer: .....[insert complete name of the Tenderer]*_____

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]

Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]

Date signed ..... [insert date of signing] day of..... [Insert month], [insert year]