REPUBLIC OF KENYA

BARINGO COUNTY GOVERNMENT

TENDER NAME: SUPPLY OF FRUITS AND TREE SEEDLINGS.

BARINGO COUNTY

TENDER NO. BRCG/TNR/017/2021-2022

ISSUED BY:
BARINGO COUNTY GOVERNMENT,
P.O. BOX 53 – 30400,
KABARNET – KENYA.

SEPTEMBER, 2021.

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INVITATIONTOTENDER

PROCURINGENTITY:.BARINGO COUNTY GOVERNMENT,P.O BOX 53-

30400 KABARNET.

CONTRACTNAMEANDDESCRIPTION:..supplyand delivery of :

1. Fruit and tree seedlings.

2. Tenderingwillbeconductedunderopencompetitivemethod(National)usingastandardizedtenderdocument.Tende

ringisopentoallqualifiedandinterestedTenderers.

3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during officehours (8.00AM-5.00PMattheaddressgivenbelow. Supply Chain Management office located at the AFC BUILDING during normal working hours or visit our website at www.baringo.go.ke

4. Tender documents may be obtained electronically from the Websitewww.baringo.go.keTenderdocumentsobtainedelectronicallywillbefreeofcharge.

5. Tenderdocumentsmaybeviewedanddownloadedforfreefromthewebsitewww.baringo.go.keTendererswhodownloadthetenderdocumentmustforwardtheirparticularsimmediatelytoBaringo County Government box 53-30400 Kabarnettofacilitateanyfurtherclarificationoraddendum.

6. TheTenderershallchronologicallyserializeallpagesofthetenderdocumentssubmitted.

7. Completedtendersmustbedeliveredto tender box situated at County Treasury AFC Building Kabarnet

8. Tenderswillbeopenedimmediatelyafterthedeadlinedateandtimespecifiedaboveoranydeadlinedateandtimespecifiedlater.Tenderswillbepubliclyopenedinthepresenceoftheenderers'designatedrepresentativeswhochoosetoattendattheaddressbelow.

9. Latetenderswillberejected.

10. Theaddressesreferredtoaboveare:

A.Addressforobtainingfurtherinformationandforpurchasingtenderdocuments

1) NameofProcuringEntity: Baringo County Government

2) PostalAddress box 53-30400 Kabarnet

B. AddressforSubmissionofTenders.

1) Director, Supply Chain Management

Baringo County Government,

P.O Box 53-30400,

Kabarnet

C. PHYSICAL ADRESS:PHYSICAL ADRESS:Supply Chain Management office located at the AFC BUILDINGKabarnet Town during normal working hours or visit our website at www.baringo.go.ke

D. .AddressforOpeningofTenders.

1) Opening of tenders shall be done on the same date of closing 21st September 2021. at AFC Building Kabarnet

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[AuthorizedOfficial(name,designation,Signatureanddate)]

Name _____

(*OfficialoftheProcuringEntityissuingtheinvitation)*

Designation

_____

Signature

_____

Date_____

PART1-TENDERINGPROCEDURES

SECTIONI:INSTRUCTIONSTOTENDERERS

A GeneralProvisions

1. ScopeofTender

1.1 TheProcuringEntityasdefinedintheTDSinvitestendersforsupplyofgoodsand,ifapplicable,anyRelatedServicesincidentalthereto,asspecifiedinSectionV,SupplyRequirements.Thename,identification,andnumberoflots(contracts)ofthisTenderDocumentarespecifiedintheTDS.

1.2 Throughoutthistenderingdocument:

a) theterm“inwriting”meanscommunicatedinwrittenform(e.g.bymail,e-mail,fax,includingifspecifiedintheTDS,distributedorreceivedthroughtheelectronic-procurementsystemusedbytheProcuringEntity)withproofofreceipt;

b) ifthecontextsorequires,“singular”means“plural”andviceversa;

c) “Day”meanscalendarday,unlessotherwisespecifiedas“BusinessDay”.ABusinessDayisanydaythatisanofficialworkingdayoftheProcuringEntity.Itexcludesofficialpublicholidays.

2. FraudandCorruption

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. EligibleTenderers

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 ATendershallnothaveaconflictofinterest.AnyTendererfoundtohaveaconflictofinterestshallbedisqualified.ATenderermaybeconsideredtohaveaconflictofinterestforthepurposeofthisTenderingprocess,iftheTenderer:

a) directlyorindirectlycontrols,iscontrolledbyorisundercommoncontrolwithanotherTenderer;or

b) receivesorhasreceivedanydirectorindirectsubsidyfromanotherTenderer;or

c) hasthesame-representativeorownershipasanotherTenderer;or

d) hasarelationshipwithanotherTenderer,directlyorthroughcommonthirdparties,thatputsitinapositiontoinfluencetheTenderofanotherTenderer,orinfluencethedecisionsoftheProcuringEntityregardingthisTenderingprocess;or

e) oranyofitsaffiliatesparticipatedasaconsultantinthepreparationofthedesignortechnicalspecificationsofthegodsthatarethesubjectoftheTender;or

f) oranyofitsaffiliateshasbeenhired(orisproposedtobehired)bytheProcuringEntityorProcuringEntityfortheContractimplementation;or

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

3.4 Atendershallnotbeinvolvedincorrupt,coercive,obstructive,collusiveorfraudulentpractice.Atendererthatisproventohavebeeninvolvedinanyofthesepracticesshallbeautomaticallydisqualified.

3.5 AfirmthatisaTenderer(eitherindividuallyorasaJVmember)shallnotsubmitmorethanoneTender,exceptforpermittedalternativeTenders.Thisincludesparticipationasasubcontractor.SuchparticipationshallresultinthedisqualificationofallTendersinwhichthefirmisinvolved.AfirmthatisnotaTendereroraJVmember,mayparticipateasasubcontractorinmorethanoneTender.Membersofajointventuremaynotalsomakeanindividualtender,beasubcontractorinaseparatetenderorbepartofanotherjointventureforthepurposesofthesameTender.

3.6 ATendermayhavethenationalityofanycountry,subjecttotherestrictionspursuanttoITT3.9.ATendershallbedeemedtohavethenationalityofacountryiftheTendererisconstituted,incorporatedorregisteredinandoperatesinconformitywiththeprovisionsofthelawsofthatcountry,asevidencedbyitsarticlesofincorporation(orequivalentdocumentsofconstitutionorassociation)anditsregistrationdocuments,asthecasemaybe.ThiscriterionalsoshallapplytothedeterminationofthenationalityofproposedsubcontractorsorsubconsultantsforanypartoftheContractincludingrelatedServices.

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

3.8 Tendersthatarestate-ownedenterprisesorinstitutionsmaybeeligibletocompeteandbeawardedaContract(s)onlyiftheyare(i)alegalpublicentityofthestateGovernmentand/orpublicadministration,(ii)financiallyautonomousandnotreceivinganysignificantsubsidiesorbudgetsupportfromanypublicentityorGovernment,and(iii)operatingundercommerciallawandvestedwithlegalrightsandliabilitiessimilartoanycommercialenterprisetoenableitcompetewithfirmsintheprivatesectoronanequalbasis.Publicemployeesandtheircloserelativesarenoteligibletoparticipateinthetender.

3.9 Tendersmaybeineligibleiftheircountriesoforigin(a)asamatteroflaworofficialregulations,Kenyaprohibitscommercialrelationswiththatcountry,or(b)byanactofcompliancewithadecisionoftheUnitedNationsSecurityCouncil takenunderChapterVIIoftheCharteroftheUnitedNations,Kenyaprohibitsanyimportofgoodsorcontractingforsupplyofgoodsorservicesfromthatcountry,oranypaymentstoanycountry,person,orentityinthatcountry.Atendershallprovidesuchdocumentaryevidenceofeligibilitysatisfactorytothe ProcuringEntity,asthe ProcuringEntityshallreasonablyrequest.

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

3.11 WherethelawrequirestendererstoberegisteredwithcertainauthoritiesinKenya,suchregistrationrequirementsshallbedefinedinthe**TDS**

3.12 TheCompetitionActofKenyarequiresthatfirmswishingtotenderasJointVentureundertakingswhichmayprevent,distortorlessencompetitioninprovisionofservicesareprohibitedunlesstheyareexemptinaccordancewiththeprovisionsofSection25oftheCompetitionAct,2010.JVswillberequiredtoseekforexemptionfromtheCompetitionAuthority.Exemptionshallnotbeaconditionfortender,butitshallbeaconditionofcontractawardandsignature.AJVtende

rershallbegivenopportunitytoseeksuchexemptionasaconditionofawardandsignatureofcontract.ApplicationforexemptionfromtheCompetitionAuthorityofKenyamaybeaccessedfromthewebsitewww.cak.go.ke.

3.13 AKenyantenderershallprovideevidenceofhavingfulfilledhis/hertaxobligationsbyproducingacurrenttaxclearancecertificateortaxexemptioncertificateissuedbytheKenyaRevenueAuthority.

4. EligibleGoodsandRelatedServices

4.1 AlltheGoodsandRelatedServicestobesuppliedundertheContractshallhavetheiroriginininanycountrythatiseligibleinaccordancewithITT3.9.

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 Aprocuringentityshallensurethattheitemslistedbelowshallbesourcedfromkenyaandthereshallbenosubstitutionsfromforeignsources.Theaffecteditemsare:

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

4.5 Anygoods,worksandproductionprocesseswithcharacteristicsthathavebeendeclaredbytherelevantnationalenvironmentalprotectionagencyorbyothercompetentauthorityasharmfultohumanbeingsandtotheenvironmentshallnotbeeligibleforprocurement.

5. SectionsofTenderingDocument

5.1 ThetenderingdocumentconsistofParts1,2,and3,whichincludeallthesectionsindicatedbelow,andshouldbereadinconjunctionwithanyAddendaissuedinaccordancewithITT8.

PART:TenderingProcedures

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

PART2:SupplyRequirements

v) SectionV-ScheduleofRequirements

PART3Contract

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. ClarificationofTenderingDocument

6.1 ATendererrequiringanyclarificationoftheTenderDocumentshallcontacttheProcuringEntityinwritingattheProcuringEntity'saddressspecifiedinthe**TDS**orraiseitsenquiriesduringthepre-

Tendermeetingifprovidedforinaccordancewith ITT6.4.TheProcuringEntitywillrespondinwritingtoanyrequestforclarification,providedthatsuchrequestisreceivednolaterthantheperiodspecifiedinthe**TDS**priortothedeadlineforsubmissionoftenders.TheProcuringEntityshallforwardcopiesofitsresponsetoalltendererswhohaveacquiredtheTenderdocumentsinaccordancewithITT5.3,includingadescriptionoftheinquirybutwithoutidentifyingitssource.IfsospecifiedintheTDS,theProcuringEntityshallalsopromptlypublishitsresponseatthewebpageidentifiedinthe**TDS.**ShouldtheclarificationresultinchangestotheessentialelementsoftheTenderDocuments,theProcuringEntityshallamendtheTenderDocumentsfollowingtheprocedureunderITT7.

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

6.3 TheTendererisrequestedtosubmitanyquestionsinwriting,toreachtheProcuringEntitynotlaterthantheperiodspecifiedinthe**TDS**beforethemeeting.

6.4 Minutesofthepre-Tendermeeting,ifapplicable,includingthetextofthequestionsaskedbyTenderersandtheresponsesgiven,together withanyresponsespreparedafterthemeeting,willbetransmittedpromptlytoallTendererswhohaveacquiredtheTenderDocumentsinaccordancewithITT6.3.Minutesshallnotidentifythesourceofthequestionsasked.

6.5 TheProcuringEntityshallalsopromptlypublishanonymized(*nonames*)Minutesofthepre-Tendermeetingatthewebpageidentified**intheTDS**.AnymodificationtotheTenderDocumentsthatmaybecomenecessaryasaresultofthepre-TendermeetingshallbemadebytheProcuringEntityexclusivelythroughtheissueofanAddendumpursuanttoITT7andnotthroughtheminutesofthepre-Tendermeeting.Nonattendanceatthepre-Tendermeetingwillnotbeacausefordisqualificationofa Tenderer.

7. AmendmentofTenderingDocument

7.1 AtanytimepriortothedeadlineforsubmissionofTenders,theProcuringEntitymayamendthetenderingdocumentbyissuingaddenda.

7.2 Anyaddendumissuedshallbepartofthetenderingdocumentandshallbecommunicatedinwritingtoallwhohaveobtainedthetenderdocumentfromthe ProcuringEntityinaccordancewithITT6.3.TheProcuringEntityshallalsopromptlypublishtheaddendumontheProcuringEntity'swebpageinaccordancewithITT7.1.

7.3 TogiveprospectiveTenderersreasonabletimeinwhichtotakeanaddendumintoaccountinpreparingtheirTenders,theProcuringEntitymay,atitsdiscretion,extendthedeadlineforthesubmissionofTenders,pursuanttoITT21.2.

C. Preparation of Tenders

8. Cost of Tendering

8.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

9. Language of Tender

9.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

10. Documents Comprising the Tender

10.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 11;

b) Price Schedules: completed in accordance with ITT 11 and ITT 13;

c) Tender Security or Tender-Securing Declaration, in accordance with ITT 18.1;

d) Alternative Tender: if permissible, in accordance with ITT 12;

e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 19.3;

f) Qualifications: documentary evidence in accordance with ITT 16.2 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;

g) Tenderer Eligibility: documentary evidence in accordance with ITT 16.1 establishing the Tenderer eligibility to tender;

h) Eligibility of Goods and Related Services: documentary evidence in accordance with ITT 15, establishing the eligibility of the Goods and Related Services to be supplied by the Tenderer;

i) Conformity: documentary evidence in accordance with ITT 15.2 that the Goods and Related Services conform to the tender document; and

j) any other document required in the TDS.

10.2 In addition to the requirements under ITT 10.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

10.3 The Tenderer shall furnish in the Form of Tender information on commissions gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Tender.

11. Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialise pages of all tender documents submitted.

12. Alternative Tenders

12.1 Unless otherwise specified **in the TDS,** alternative Tenders shall not be considered.

13. TenderPricesanddiscounts

13.1 ThepricesquotedbytheTendererintheFormofTenderandinthePrice,Schedulesshallconformtotherequirementsspecifiedbelow.

13.2 Alllots(contracts)anditemsmustbelistedandpricedseparatelyinthePriceSchedules.

13.3 ThepricetobequotedintheFormofTenderinaccordancewithITT10.1shallbethetotalpriceoftheTender,includingadiscountsoffered.

13.4 TheTendershallquoteanydiscountsandindicatethemethodologyfortheirapplicationintheformoftender.Conditionaldiscountswillberejected.

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

13.6 IfspecifiedinITT1.1,Tendersarebeinginvitedforindividuallots(contracts)orforanycombinationoflots(packages).Unlessotherwisespecified**intheTDS,**pricesquotedshallcorrespondto100%oftheitemsspecifiedforeachlotandto100%ofthequantitiesspecifiedforeachitemofalot.TendererswishingtoofferdiscountsfortheawardofmorethanoneContractshallspecifyintheirTenderthepricereductionsapplicabletoeachpackage,oralternatively,toindividualContractswithinthepackage.DiscountsshallbesubmittedinaccordancewithITT13.4providedtheTendersforalllots(contracts)areopenedatthesametime.

13.7 ThetermsEXW,CIP,CIF,DDPandothersimilartermsshallbegovernedbytherulesprescribedinthecurrenteditionofIncoterms,publishedbytheInternationalChamberofCommerce.

13.8 PricesshallbequotedasspecifiedineachPriceScheduleincludedinSectionIV,TenderingForms.Thedisaggregationofpricecomponentsisrequiredsolelyforthepurposeoffacilitatingthecomparisonof Tendersbytheprocuring Entity. Thisshallnotinanywaylimittheprocuring Entity'srighttocontractonanyofthetermsoffered.Inquotingprices,theTendershallbefreetousetransportationthroughcarriersregisteredinanyeligiblecountry.Similarly,theTendermayobtaininsuranceservicesfromanyeligiblecountryinaccordancewithITT3.6,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) anysalesandothertaxesleviedinKenyawhichwillbepayableontheGoodsiftheContractisawardedtothe Tenderer;and

iv) thepriceforinlandtransportation,insurance,andotherlocalservicesrequiredtoconveytheGoodsfromth enamedplaceofdestinationtotheirfinaldestination(ProjectSite)specified**intheTDS.**

d) forRelatedServices,otherthaninlandtransportationandotherservicesrequiredtoconveytheGoodstotheirfin aldestination,wheneversuchRelatedServicesarespecifiedintheScheduleofRequirements,thepriceofeachit emcomprisingtheRelatedServices(inclusiveofanyapplicabletaxes).

14. CurrenciesofTenderandPayment

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

14.2 TheTendershallquoteinKenyashillings.Ifallowedinthe**TDS**,theTenderermayexpresstheTenderpriceinanycur rency,provideditshallusenomorethantwoforeigncurrenciesinadditiontotheKenyaShilling.

14.3 TheratesofexchangetobeusedbytheTendershallbebasedontheexchangeratesprovidedbytheCentralBankofKe nyaonthedate30dayspriortotheactualdateoftenderopening.

15. DocumentsEstablishingtheEligibilityandConformityoftheGoodsandRelatedServices

15.1 ToestablishtheeligibilityoftheGoodsandRelatedServicesinaccordancewithITT15,Tendersshallcompletethec ountryoforigindeclarationsinthePriceScheduleForms,includedinSectionIV,TenderingForms.

15.2 ToestablishtheconformityoftheGoodsandRelatedServicestothetenderingdocument,theTendershallfurnishasp artofitsTenderthedocumentaryevidencethattheGoodsconformtothetechnicalspecificationsandstandardsspecifi edinSectionVII,ScheduleofRequirements.

15.3 Thedocumentaryevidencemaybeintheformofliterature,drawingsordata,andshallconsistofadetailedtembyitem descriptionoftheessentialtechnicalandperformancecharacteristicsoftheGoodsandRelatedServices,demonstrati ngsubstantialresponsivenessoftheGoodsandRelatedServicestothetechnicalspecification,andifapplicable,astate mentofdeviationsandexceptionstotheprovisionsoftheSectionVII,ScheduleofRequirements.

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

15.5 Standardsforworkmanship,process,material,andequipment,aswellasreferencestobrandnamesorcataloguenumb ersspecifiedbytheProcuringEntityintheScheduleofRequirements,areintendedtobedescriptiveonlyandnotrestric tive.TheTenderermayofferotherstandardsofquality,brandnames,and/orcataloguenumbers,providedthatitdemo nstrates,totheProcuringEntity'ssatisfaction,thatthesubstitutionsensuresubstantialequivalenceoraresuperiortoth osespecifiedintheSectionVII,ScheduleofRequirements.

16. DocumentsEstablishingtheEligibilityandQualificationsoftheTenderer

16.1 ToestablishTendereereligibilityinaccordancewithITT4,TendersshallcompletetheFormofTender,includedinSe ctionIV,TenderingForms.

16.2 ThedocumentaryevidenceoftheTendererqualificationstoperformtheContractifitsTenderisacceptedshallestablis htotheProcuringEntity'ssatisfaction:

a) that,ifrequired**intheTDS**,aTendererthatdoesnotmanufactureorproducetheGoodsitofferstosupplyshallsub mittheManufacturer'sAuthorizationusingtheformincludedinSectionIV,TenderingFormstodemonstrateth atithasbeendulyauthorizedbythemanufacturerorproduceroftheGoodstosupplytheseGoodsinKenya;

b) that,ifrequired**intheTDS**,incaseofaTenderernotdoingbusinesswithintheKenya,theTendererisorwillbe(ifa wardedtheContract)representedbyanAgentinthecountryequippedandabletocarryouttheSupplier'smainten ance,repairandspareparts-stockingobligationsprescribedintheConditionsofContractand/orTechnicalSpecifications;and

c) thattheTenderermeetseachofthequalificationcriterionspecifiedinSectionIII,EvaluationandQualificationC riteria.

17. PeriodofValidityofTenders

17.1 TendersshallremainvalidfortheTenderValidityperiodspecified**intheTDS**.TheTenderValidityperiodstartsfromth edatefixedfortheTendersubmissiondeadline(asprescribedbytheProcuringEntityinaccordancewithITT21.1).AT endervalidforashorterperiodshallberejectedbytheProcuringEntityasnon-responsive.

17.2 InexceptionalcircumstancesinpriortotheexpirationoftheTendervalidityperiod,theProcuringEntitymayrequestTe ndererstoextendtheperiodofvalidityoftheirTenders.Therequestandtheresponsesshallbemadeinwriting.IfaTend erSecurityisrequestedinaccordancewithITT18,itshallalsobeextendedforacorrespondingperiod.ATenderermayr efusetherequestwithoutforfeitingitsTenderSecurity.ATenderergrantingtherequestshallnotberequiredorpermitt edtomodifyitsTender,exceptasprovidedinITT17.3.

17.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:

a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified **in the TDS**;

b) in the case of **adjustable price** contracts, no adjustments shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

18. Tender Security

18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS,** in original form and, in the case of a Tender Security**,** in the amount and currency specified **in the TDS.**

18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

18.3 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

i) cash;

ii) a bank guarantee;

iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or

iv) a letter of credit; or

v) guarantee by a deposit taking micro-finance institution, Saccos society, the Youth Enterprise Development Fund or the Women Enterprise Fund.

18.4 If an unconditional guarantee is issued by an non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 17.2.

18.5 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

18.6 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

18.7 TheTenderSecurityofthesuccessfulTenderershallbereturnedaspromptlyaspossibleoncethesuccessfulTendererhassignedtheContractandfurnishedtherequiredPerformanceSecurity.

18.8 TheTenderSecuritymaybeforfeitedortheTenderSecuringDeclarationexecuted:
a) ifaTendererwithdrawsitsTenderduringtheperiodofTendervalidityspecifiedbytheTendererintheFormofTender,oranyextensiontheretoprovidedbytheTenderer;or
b) ifthesuccessfulTendererfailsto:
i) signtheContractinaccordancewithITT45;or
ii) furnishaPerformanceSecurityinaccordancewithITT46.

18.9 Wheretendersecuringdeclarationisexecuted,theProcuringEntityshallrecommendtothePPRAthatPPRAdebarstheTendererfromparticipatinginpublicprocurementasprovidedinthelaw.

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

18.11 Atenderershallnotissueatendersecuritytoguaranteeitself.

19. FormatandSigningofTender

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

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

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

19.4 IncasetheTendererisaJV,theTendershallbesignedbyanauthorizedrepresentativeoftheJVonbehalfoftheJV,andsoastobelegallybindingonallthemembersasevidencedbyapowerofattorneysignedbyeachmembers'legallyauthorizedrepresentatives.

19.5 Anyinter-lineation,erasures,oroverwritingshallbevalidonlyiftheyaresignedorinitialledbythepersonsigningtheTender.

D. SubmissionandOpeningofTenders

20 SealingandMarkingofTenders

20.1 Dependingonthesizesorquantitiesorweightofthetenderdocuments,atenderermayuseanenvelope,packageorcontainer.TheTendershalldelivertheTenderinasinglesealedenvelope,orinasinglesealedpackage,orinasinglesealedcontainerbearingthenameandReferencenumberoftheTender,addressedtotheProcuringEntityandawarningnottoopenbeforethetimeanddateforTenderopeningdate.Withinthesingleenvelope,packageorcontainer,theTendershallplacethefollowingseparate,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) bearthenameandaddressoftheProcuringEntity.
b) bearthenameandaddressoftheTenderer;and
c) bearthenameandReferencenumberoftheTender.

20.3 Whereatenderpackageorcontainercannotfitinthetenderbox,theprocuringentityshall:
a) SpecifyintheTDSwheresuchdocumentsshouldbereceived.
b) maintainarecordoftendersreceivedandissueacknowledgementreceiptnotetoeachtendererspecifyingtimeanddateofreceipt.
c) Ensurealltendersreceivedarehandedovertothetenderopeningcommitteeforopeningatthespecifiedopening placeandtime.

20.4 Ifanenvelopeorpackageorcontainerisnotsealedandmarkedasrequired,the*ProcuringEntity*willassumenoresponsibilityforthemisplacementorprematureopeningoftheTender.Tendersmisplacedoropenedprematurelywillnotbeaccepted.

21. DeadlineforSubmissionofTenders

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

21.2 TheProcuringEntitymay,atitsdiscretion,extendthedeadlineforthesubmissionofTendersbyamendingthetenderingdocumentinaccordancewithITT7,inwhichcaseallrightsandobligationsoftheProcuringEntityandTendererspreviouslysubjecttothedeadlineshallthereafterbesubjecttothedeadlineasextended.

22. LateTenders

22.1 TheProcuringEntityshallnotconsideranyTenderthatarrivesafterthedeadlineforsubmissionofTenders.AnyTenderreceivedbytheProcuringEntityafterthedeadlineforsubmissionofTendersshallbedeclaredlate,rejected,andreturnedunopenedtotheTenderer.

23. Withdrawal,Substitution,andModificationofTenders

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

23.3 TendersrequestedtobewithdrawninaccordancewithITT23.1shallbereturnedunopenedtotheTenderers.

23.4 NoTendermaybewithdrawn,substituted,ormodifiedintheintervalbetweenthedeadlineforsubmissionofTendersandtheexpirationoftheperiodofTendervalidityspecifiedbytheTendererontheFormofTenderoranyextensionthereof.

24. TenderOpening

24.1 ExceptasinthecasesspecifiedinITT23,theProcuringEntityshall,attheTenderopening,publiclyopenandreadoutallTendersreceivedbythedeadlineatthedate,timeandplacespecified**intheTDS**inthepresenceofTenderers'designatedrepresentativeswhochoosetoattend,includingtoattendanyspecificelectronictenderopeningproceduresifelectronictenderingispermittedinaccordancewithITT21.1,shallbeasspecified**intheTDS.**

24.2 First,envelopesmarked“WITHDRAWAL”shallbeopenedandreadoutandtheenvelopewiththecorrespondingTendershallnotbeopened,butreturnedtotheTenderer.Ifthewithdrawalenvelopedoesnotcontainacopyofthe“powerofattorney”confirmingthesignatureasapersondulyauthorizedtosignonbehalfoftheTenderer,thecorrespondingTenderwillbeopened.NoTenderwithdrawalshallbepermittedunlessthecorrespondingwithdrawalnoticecontainsavalidauthorizationtorequestthewithdrawalandisreadoutatTenderopening.

24.3 Next,envelopesmarked“SUBSTITUTION”shallbeopenedandreadoutandexchangedwiththecorrespondingTenderbeingsubstituted,andthesubstitutedTendershallnotbeopened,butreturnedtotheTenderer.NoTendersubstitutionshallbepermittedunlessthecorrespondingsubstitutionnoticecontainsavalidauthorizationtorequestthesubstitutionandisreadoutatTenderopening.

24.4 Next,envelopesmarked“MODIFICATION”shallbeopenedandreadoutwiththecorrespondingTender.NoTendermodificationshallbepermittedunlessthecorrespondingmodificationnoticecontainsavalidauthorizationtorequestthemodificationandisreadoutatTenderopening.

24.5 Next,allremainingenvelopesshallbeopenedoneatatime,readingout:thenameoftheTendererandwhetherthereisamodification;thetotalTenderPrices,perlot(contract)ifapplicable,includinganydiscountsandalternativeTenders;thepresenceorabsenceofaTenderSecurity,ifrequired;andanyotherdetailsastheProcuringEntitymayconsiderappropriate.

24.6 OnlyTenders,alternativeTendersanddiscountsthatareopenedandreadoutatTenderopeningshallbeconsideredfurtherforevaluation.TheFormofTenderandpagesoftheBillsofQuantitiesaretobeinitialedbythemembersofthetenderopeningcommitteeattendingtheopening.ThenumberofrepresentativesoftheProcuringEntitytosignshallbespecifiedintheTDS.

24.7 TheProcuringEntityshallneitherdiscussthemeritsofanyTendernorrejectanyTender(exceptforlateTenders,inaccordancewithITT22.1).

24.8 TheProcuringEntityshallpreparearecordoftheTenderopeningthatshallinclude,asaminimum:
a) thenameoftheTendererandwhetherthereisawithdrawal,substitution,ormodification;
b) theTenderPrice,perlot(contract)ifapplicable,includinganydiscounts;
c) anyalternativeTenders;
d) thepresenceorabsenceofaTenderSecurityorTender-SecuringDeclaration,ifonewasrequired;
e) numberofpagesofeachtenderdocumentsubmitted.

24.9 TheTenderers'representativeswhoarepresentshallberequestedtosigntherecord.TheomissionofaTendersignatureontherecordshallnotinvalidatethecontentsandeffectoftherecord.AcopyofthetenderopeningregistershallbeissuedtoaTendereruponrequest.

E. EvaluationandComparisonofTenders

25. Confidentiality

25.1 InformationrelatingtotheevaluationofTendersandrecommendationofcontractaward,shallnotbedisclosedtoTenderersoranyotherpersonsnotofficiallyconcernedwiththetenderingprocessuntiltheinformationonIntentiontoAwardtheContractistransmittedtoallTenderersinaccordancewithITT41.

25.2 AnyeffortbyaTendertoinfluencetheProcuringEntityintheevaluationorcontractawarddecisionsmayresultintherejectionofitsTender.

25.3 NotwithstandingITT25.2,fromthetimeofTenderopeningtothetimeofContractAward,ifanyTendererwishestocontacttheProcuringEntityonanymatterrelatedtotheTenderingprocess,itshoulddosoinwriting.

26. ClarificationofTenders

26.1 ToassistintheexaminationevaluationcomparisonoftheTenderers,andqualificationoftheTenderers,theProcuringEntitymay,atitsdiscretion,askanyTendererforaclarificationofitsTender.AnyclarificationsubmittedbyaTendererinrespecttoitsTenderandthatisnotinresponsetoarequestbytheProcuringEntityshallnotbeconsidered.TheProcuringEntity'srequestforclarificationandtheresponseshallbeinwriting.No

change,includinganyvoluntaryincreaseordecrease,inthepricesorsubstanceoftheTendershallbesought,offered,or permittedexcepttoconfirmthecorrectionofarithmeticerrorsdiscoveredbytheProcuringEntityintheEvaluationoft heTenders,inaccordancewithITT30.

IfaTendererdoesnotprovideclarificationsofitsTenderbythedateandtimesetintheProcuringEntity'srequestforclari fication,itsTendermayberejected.

27. Deviations,Reservations,andOmissions

27.1 DuringtheevaluationofTenders,thefollowingdefinitionsapply:

a) "Deviation"isadeparturefromherequirementsspecifiedintheTenderingdocument;

b) "Reservation"isthesettingoflimitingconditionsorwithholdingfromcompleteacceptanceoftherequirement sspecifiedinthetenderingdocument;and

c) "Omission"isthefailuretosubmitpartoralloftheinformationordocumentationrequiredinthetenderingdocu ment.

28. DeterminationofResponsiveness

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,ErrorsandOmissions

29.1 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntitymaywaiveanynon-conformitiesintheTender.

29.2 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntitymayrequestthattheTendersubmitthenecess aryinformationordocumentation,withinareasonableperiodoftime,torectifynonmaterialnon-conformitiesoromissionsintheTenderrelatedtodocumentationrequirements.Suchomissionshallnotberelatedtoan yaspectofthepriceoftheTender.FailureoftheTenderertocomplywiththerequestmayresultintherejectionofitsTend er.

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

30. ArithmeticalErrors

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.

30.2Tendererssshallbenotifiedofanyerrordetectedintheirbidduringthenotificationofaward.

31. ConversiontoSingleCurrency

31.1 Forevaluationandcomparisonpurposes,thecurrency(ies)oftheTendershallbeconvertedinasinglecurrencyasspeci fied**intheTDS.**

32. MarginofPreferenceandReservations

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) goodsmanufactured,mined,extractedorgrowninKenya.

32.3 AmarginofpreferenceshallnotbeallowedunlessitisspecifiedsointheTDS.

32.4 Contractsprocuredonbasisofinternationalcompetitivetenderingshallnotbesubjecttoreservationstospecificgroup ssasprovidedinITT32.5.

32.5 Whereitisintendedtoreserveacontracttoaspecificgroupofbusinesses(thesegroupsareSmallandMediumEnterpris es,WomenEnterprises,YouthEnterprisesandEnterprisesofpersonslivingwithdisability,asthecasemaybe),andwh oareappropriatelyregisteredassuchbytheauthoritytobespecifiedintheTDS,aprocuringentityshallensurethatthein vitationtotenderspecificallyindicatesthatonlybusinessesorfirmsbelongingtothespecifiedgroupareeligibletotend erasspecifiedintheTDS.Notendershallbereservedtomorethanonegroup.IfnotsostatedintheTenderdocuments,th einvitationtotenderwillbeopentoallinterestedtenderers.

33. EvaluationofTenders

33.1 TheProcuringEntityshallusethecriteriaandmethodologieslistedinthisITTandSectionIII,EvaluationandQualific ationcriteria.Nootherevaluationcriteriaormethodologiesshallbepermitted.Byapplyingthecriteriaandmethodolo gies,theProcuringEntityshalldeterminetheLowestEvaluatedTender.ThisistheTenderoftheTendererthatmeetsthe qualificationcriteriaandwhoseTenderhasbeendeterminedtobe:

a) substantiallyresponsivetothetenderdocuments;and

b) thelowestevaluatedprice.

33.2 Priceevaluationwillbedoneforitemsorlots(contracts),asspecified**intheTDS;**andtheTenderPriceasquotedinaccordancewithITT14.ToevaluateaTender,theProcuringEntityshallconsiderthefollowing:

a) priceadjustmentduetounconditionaldiscountsofferedinaccordancewithITT13.4;
b) convertingtheamountresultingfromapplying(a)and(b)above,ifrelevant,toasinglecurrencyinaccordancewithITT31;
c) priceadjustmentduetoquantifiablenonmaterialnon-conformitiesinaccordancewithITT29.3;and
d) anyadditionalevaluationfactorsspecified**intheTDS**andSectionIII,EvaluationandQualificationCriteria.

33.3 TheestimatedeffectofthepriceadjustmentprovisionsoftheConditionsofContract,appliedovertheperiodofexecutionoftheContract,shallnotbeconsideredinTenderevaluation.

33.4 Wherethetenderinvolvesmultiplelotsorcontracts,thetendererwillbeallowedtotenderforoneormorelots(contracts).EachlotorcontractwillbeevaluatedinaccordancewithITT33.2.Themethodologytodeterminethelowestevaluatedtendererortenderersbasedonelot(contract)orbasedonacombinationoflots(contracts),willbespecifiedinSectionIII,EvaluationandQualificationCriteria.Inthecaseofmultiplelotsorcontracts,tendererwillbewillberequiredtopreparetheEligibilityandQualificationCriteriaFormforeachLot.

33.5 TheProcuringEntity'sevaluationofaTenderwillincludeandconsider:

a) inthecaseofGoodsmanufacturedinKenya,salesandothersimilartaxes,whichwillbepayableonthegoodsifacontractisawardedtotheTenderer;
b) inthecaseofGoodsmanufacturedoutsideKenya,alreadyimportedortobeimported,customsdutiesandotherimporttaxesleviedontheimportedGood,salesandothersimilartaxes,whichwillbepayableontheGoodsifthecontractisawardedtotheTenderer;

33.6 TheProcuringEntity'sevaluationofaTendermayrequiretheconsiderationofotherfactors,inadditiontotheTenderPricequotedinaccordancewithITT14.Thesefactorsmayberelatedtothecharacteristics,performance,andtermsandconditionsofpurchaseoftheGoodsandRelatedServices.Theeffectofthefactorsselected,ifany,shallbeexpressedinmonetarytermstofacilitatecomparisonofTenders,unlessotherwisespecifiedinthe**TDS**fromamongstthosesetoutinSectionIII,EvaluationandQualificationCriteria.Theadditionalcriteriaandmethodologiestobeusedshallbeasspecifiedin ITT33.2(d).

34. ComparisonofTenders

34.1 TheProcuringEntityshallcomparetheevaluatedcostsofallsubstantiallyresponsiveTendersestablishedinaccordancewithITT33.2todeterminetheTenderthathasthelowestevaluatedcost.Thecomparisonshallbeonthebasisoftotalcost(placeoffinaldestination)pricesforallgoodsandallprices,pluscostofinlandtransportationandinsurancetoplaceofdestination,forgoodsmanufacturedwithintheKenya,togetherwithpricesforanyrequiredinstallation,training,commissioningandotherservices.

35. AbnormallyLowTenders

35.1 AnAbnormallyLowTenderisonewheretheTenderprice,incombinationwithotherconstituentelementsoftheTender,appearsunreasonablylowtotheextentthattheTenderpriceraisesmaterialconcernswiththeProcuringEntityastothecapabilityoftheTendererto performtheContractfortheofferedTenderprice.

35.2 IntheeventofidentificationofapotentiallyAbnormallyLowTenderbytheevaluationcommittee,theProcuringEntityshallseekwrittenclarificationfromtheTenderer,includingadetailedpriceanalysesofitsTenderpriceinrelationtothesubjectmatterofthecontract,scope,deliveryschedule,allocationofrisksandresponsibilitiesandanyotherrequirementsofthetenderingdocument.

35.3 Afterevaluationofthepriceanalysis,intheeventthattheProcuringEntitydeterminesthattheTendererhasfailedtodemonstrateitscapabilitytoperformthecontractfortheofferedTenderprice,theProcuringEntityshallrejectthe Tender.

36. AbnormallyHighTenders

36.4 Anabnormallyhighpriceisonewherethetenderprice,incombinationwithotherconstituentelementsofthe

Tender,appearsunreasonablytoohightotheextentthattheProcuringEntityisconcernedthatit(theProcuringEntity) maynotbegettingvalueformoneyoritmaybepayingtoohighapriceforthecontractcomparedwithmarketpricesorth atgenuinecompetitionbetweenTenderersiscompromised.

36.5 Incaseofanabnormallyhightenderprice,theProcuringEntityshallmakeasurveyofthemarketprices,checkiftheesti matedcostofthecontractiscorrectandreviewtheTenderDocumentstocheckifthespecifications,scopeofworkandc onditionsofcontractarecontributorytotheabnormallyhightenders.TheProcuringEntitymayalsoseekwrittenclari ficationfromthetendererontherreasonforthehightenderprice.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. PostQualificationoftheTenderer

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

37.2 Thedeterminationshallbebaseduponanexaminationofthedocumentaryevidenceofthequalificationssub mittedbytheTenderer,pursuanttoITT15and16.Thedeterminationshallnottakeintoconsiderationthequalifications ofotherfirmssuchastheTenderersubsidiaries,parententities,affiliates,subcontractors(otherthanspecializedsubco ntractorsifpermittedinthetenderingdocument),oranyotherfirm(s)differentfromtheTenderer.

37.3 AnaffirmativedeterminationshallbeaprerequisiteforawardoftheContracttotheTenderer.Anegativedeterminatio nshallresultindisqualificationoftheTender,inwhicheventtheProcuringEntityshallproceedtotheTendererwhooffe rsasubstantiallyresponsiveTenderwiththenextlowestevaluatedcosttomakeasimilardeterminationofthatTendere rqualificationstoperformsatisfactorily.

38. LowestEvaluatedTender

38.1 HavingcomparedtheevaluatedpricesofTenders,theProcuringEntityshalldeterminetheLowestEvaluatedTender. TheLowestEvaluatedTenderistheTenderoftheTendererthatmeetstheQualificationCriteriaandwhoseTenderhasb eendeterminedtobe:

a) MostresponsivetotheTenderdocument;and

b) thelowestevaluatedprice.

39. ProcuringEntity'sRighttoAcceptAnyTender,andtoRejectAnyorAllTenders.

39.1 TheProcuringEntityreservestherighttoacceptorrejectanyTender,andtoannultheTenderingprocessandrejectallT endersatanytimepriortonotificationAward,withouttherebyincurringanyliabilitytoTenderers.Incaseofannulmen t,allTendersshallbenotifiedwithreasonsandallTenderssubmittedandspecifically,tendersecurities,shallbeprom ptlyreturnedtotheTenderers.

F. AwardofContract

40. AwardCriteria

TheProcuringEntityshallawardtheContracttothesuccessfultendererwhosetenderhasbeendeterminedtobethe**Lo westEvaluatedTender**inaccordancewithproceduresinSection3:EvaluationandQualificationCriteria.

41. Notice of Intention to enter into a Contract

Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

a) the name and address of the Tenderer submitting the successful tender;

b) the Contract price of the successful tender;

c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;

d) the expiry date of the Standstill Period; and

e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

42. Standstill Period

42.1 The Contract shall not be awarded earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied candidate to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

42.2 Where standstill period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract to the successful Tenderer.

43. Debriefing by the Procuring Entity

43.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 41, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

43.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

44. Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

45. Signing of Contract

45.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

45.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

45.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

46. Performance Security

46.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

46.2 FailureofthesuccessfulTenderertosubmittheabove-mentionedPerformanceSecurityorsigntheContractshallconstitutesufficientgroundsfortheannulmentoftheawardandforfeitureoftheTenderSecurity.InthateventtheProcuringEntitymayawardtheContracttotheTendererofferingthenextlowestEvaluatedTender.

46.3 Performancesecurityshallnotberequiredforacontract,ifsospecifiedintheTDS.

47. PublicationofProcurementContract

Withinfourteendaysaftersigningthecontract,theProcuringEntityshallpublishandpublicizetheawardedcontractatitsnoticeboards,entitywebsite;andontheWebsiteoftheAuthorityinmannerandformatprescribedbytheAuthority. Attheminimum,thenoticeshallcontainthefollowinginformation:

a) nameandaddressoftheProcuringEntity;

b) nameandreferencenumberofthecontractbeingawarded,asummaryofitsscopeandtheselectionmethodused;

c) thenameofthesuccessfulTenderer,thefinaltotalcontractprice,thecontractduration.

d) datesofsignature,commencementandcompletionofcontract;

e) namesofallTendersthatsubmittedTenders,andtheirTenderpricesasreadoutatTenderopening;

48. ProcurementRelatedComplaint

TheproceduresformakingaProcurement-relatedComplaintareasspecifiedintheTDS.

SECTIONII–TENDERDATASHEET(TDS)

Thefollowingspecificdatashallcomplement,supplement,oramendtheprovisionsintheInstructionstoTenderers(ITT).Whenevertherеisaconflict,theprovisionshereinshallprevailoverthoseinITT.

ITT Reference	A. General
ITT 1.1	The reference number of the Invitation for Tenders is:***[insert reference number of the Request for Tenders]***_____ The Procuring Entity is: ***[insert name of the Procuring Entity]***_____ The name of the Contract is: ***[insert name of the ITT]***_____ The number and identification of lots (contracts)comprising this Invitation for Tenders is: **[*insert number and identification of lots (contracts)]***_____
ITT 1.2(a)	*[delete if not applicable]* **Electronic –Procurement System** The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process: ***[insert name of the e-system and full address or link]*** The electronic-procurement system shall be used to manage the following aspects of the Tendering process: ***[list aspects here and modify the relevant parts of the TDS accordingly e.g., issuing Tendering document, submissions of Tenders, opening of Tenders]***
ITT 2.3	The Information made available on competing firms is as follows: _____ _____
ITT 2.4	The firms that provided consulting services for the contract being tendered for are:
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: ***[insert a number]***
ITT3.7	A list of debarred firms and individuals is available on the PPRA's website: www.ppra.go.ke
ITT 3.11	Tenderers shall be required to be to be registered with ----------
	B. Contents of Tendering Document
ITT 6.1	(a) Address where to send enquiries is _____(*provide postal and email addresses)* to reach the Procuring Entity not later than_____(*specify date and time*). (b) The Procuring Entity publish its response at the website _____
ITT 6.2	A pre-tender conference will **be held/not be held** (*select one*) on _____ (*specify date and time*) at _____ (*specify city, street, building, floor and room)*
ITT 6.3	The questions to reach the Procuring Entity not later than _____ (*specify date and time*).
ITT 6.5	The Minutes of the Pre-Tender meeting shall be published on the at the website _____.
	C. Preparation of Tenders
ITT 13.5	The prices quoted by the Tenderer **[insert "shall "or "shall not"]** _____be subject to adjustment during the performance of the Contract.
ITT 13.6	Prices quoted for each lot (contract) shall correspond at least **to *[insert figure]*** percent of the items specified for each lot (contract). Prices quoted for each item of a lot shall correspond at least to ***[insert figure]***percent of the quantities specified for this item of a lot.

ITT 13.8 (a) (i) and (iii)	Place of final destination: ***[insert named place of destination]***
ITT 13.8 (a) (iii)	Final Destination (Project Site): [*insert final destination/project site, if different from named place of destination*]
ITT 13.8 (b) (i)	Named place of destination, in Kenya is _____
ITT 13.8 (b) (ii)	The price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination which is _____
13.8 (c) (iv)	The place of final destination (Project Site) is _____**.**
ITT 14.2	Foreign currency requirements **allowed/not allowed.**
ITT 15.4	Period of time the Goods are expected to be functioning (for the purpose of spare parts): ***[insert duration]***
ITT 16.2 (a)	Manufacturer's authorization is: ***[insert "required" or "not required"]***
ITT 16.2 (b)	After sales service is: ***[insert "required" or "not required"]***
ITT 17.1	The Tender validity period shall be ***[insert a number of days that is a multiple of seven counting as of the deadline for Tender submission]*** days.
ITT 17.3	(a) The Number of days beyond the expiry of the initial tender validity period will be _____days. (b) The Tender price shall be adjusted by the following percentages of the tender price: (i) By _____% of t*he local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and* *(ii) By_____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.*
ITT 18.1	***[If a Tender Security shall be required, a Tender-Securing Declaration shall not be required, and vice versa.]*** A *Tender Security* ***[insert "shall be" or "shall not be"]*** required. A Tender-Securing Declaration ***[insert "shall be" or "shall not be"]*** required. If a Tender Security shall be required, the amount and currency of the Tender Security shall be ___ ***[If a Tender Security is required, insert amount and currency of the Tender Security. Otherwise insert "Not Applicable".][In case of lots, please insert amount and currency of the Tender Security for each lot]*** *[Note: Tender Security is required for each lot as per amounts indicated against each lot].*
ITT 19.1	In addition to the original of the Tender, the number of copies is**: *[insert number of copies]***
ITT 19.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of**: *[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Tender].***
	D. Submission and Opening of Tenders
ITT 20.3	A tender package or container that cannot fit in the tender box shall be received as follows: _____ _____

ITT 21.1	For **Tender submission purposes** only, the Procuring Entity's address is: ***[This address may be the same as or different from that specified under provision ITT 7.1 for clarifications]*** Attention: *[[insert full name of person, if applicable]* Postal Address: *[insert address]* Physical Address: City, Street, Building name, Floor Number and Room number. Telephone: *[insert telephone number, including country and city codes]* Electronic mail address: *[insert email address, if applicable]* **The deadline for Tender submission is:** Date:***[insert day, month, and year, e.g. 15 June, 2008]*** Time: ***[insert time, and identify if a.m. or p.m., e.g. 10:30 a.m.]*** *[Note: The date and time should be the same as those provided in the Specific Procurement Notice - Request for Tenders, unless subsequently amended pursuant to ITT 22.2.]* tenderers **[*insert "shall" or "shall not"*]** have the option of submitting their Tenders electronically. *[Note: The following provision should be included and the required corresponding information inserted only if tenderers have the option of submitting their Tenders electronically. Otherwise omit.]* The electronic Tendering submission procedures shall be: ***[insert a description of the electronic Tendering submission procedures]***
ITT 24.1	The Tender opening shall take place at: Attention: *[[insert full name of person, if applicable]* Postal Address: *[insert address]* Physical Address: City, Street, Building name, Floor Number and Room number. Date:***[insert day, month, and year, e.g. 15 June, 2008]*** Time: ***[insert time, and identify if a.m. or p.m. e.g. 10:30 a.m.] [Date and time should be the same as those given for the deadline for submission of Tenders (ITT 22).]*** *[Note: The following provision should be included and the required corresponding information inserted only if tenderers have the option of submitting their Tenders electronically. Otherwise omit.]* The electronic Tender opening procedures shall be: ***[insert a description of the electronic Tender opening procedures.]***
ITT 24.6	The number of representatives of the Procuring Entity to sign is _____.
E. Evaluation and Comparison of Tenders	
ITT 29.3	The manner of rectify quantifiable nonmaterial nonconformities described below: _____
ITT 31.1	The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: ***[Insert name of currency]*** The source of exchange rate shall be: ***[Insert name of the source of exchange rates (e.g., the Central Bank in Kenya.]*** The date for the exchange rate shall be*:* ***[insert day, month and year, e.g. 15 June, 2008 not earlier than 30 days prior to the deadline for submission of the Tenders, nor later than the original date for the expiry of Tender validity period].***
ITT 32.3	A margin of preference and/or reservation ***[insert either "shall" or "shall not"***]apply and specify the details. If a margin of preference applies, the application methodology shall be defined in Section III – Evaluation and Qualification Criteria.

ITT 32.5	The invitation to tender is extended to the following group that qualify for Reservations _____ _____ who shall be duly registered with_____ *(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which group qualifies).*
ITT 33.2	Price evaluation will be done for _____ (*specify Items or Lots (contracts*)
ITT 33.2 (d)	Additional evaluation factors are _____
ITT 33.6	The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria: ***[refer to Section III, Evaluation and Qualification Criteria; insert complementary details if necessary]*** **(a)** Deviation in Delivery schedule: ***[insert Yes or No. If yes insert the adjustment factor in Section III, Evaluation and Qualification Criteria]*** **(b)** Deviation in payment schedule: ***[insert Yes or No. If yes insert the adjustment factor in Section III, Evaluation and Qualification Criteria]*** **(c)** the cost of major replacement component, mandatory spare parts, and service: ***[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]*** **(d)** the availability in Kenya of spare parts and after-sales services for the equipment offered in the Tender ***[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]*** **(e)** Life cycle costs: the costs during the life of the goods or equipment ***[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]*** **(f)** the performance and productivity of the equipment offered; *[Insert* ***Yes or No. If yes, insert the Methodology and criteria]*** **(g)** ***[insert any other specific criteria in Section III, Evaluation and Qualification Criteria]***
	F. Award of Contract
ITT 46.3	Performance security if so required shall be in the sum of _____
ITT 47	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to: For the attention: *[insert full name of person receiving complaints]* Title/position: *[insert title/position]* Procuring Entity: *[insert name of Procuring Entity]* Email address*: [insert email address]* In summary, a Procurement-related Complaint may challenge any of the following: **1.** the terms of the Tendering Documents; and **2.** the Procuring Entity's decision to award the contract.

SECTIONIII-EVALUATIONANDQUALIFICATIONCRITERIA

1. GeneralProvisions

1.1 WhereveraTendererisrequiredtostateamonetaryamount,TendersshouldindicatetheKenyaShillingequivalentusingtherateofexchangedeterminedasfollows:

a) Forbusinessturnoverorfinancialdatarequiredforeachyear-Exchangerateprevailingonthelastdayoftherespectivecalendaryear(inwhichtheamountsforthatyearistobeconverted)wasoriginallyestablished.

b) Valueofsinglecontract-Exchangerateprevailingonthedateofthecontractsignature.

c) Exchangeratesshallbetakenfromthepubliclyavailablesourceidentifiedin**theITT14.3.**Anyerrorindeterminingtheexchangeratesin theTendermaybecorrectedbytheProcuringEntity.

1.2 ThissectioncontainsthecriteriathattheProcuringEntityProcuringEntityshallusetoevaluatetenderandqualifytenderers.Nootherfactors,methodsorcriteriashallbeusedotherthanthosespecifiedinthistenderdocument.TheTendershallprovideallthe informationrequestedintheformsincludedinSectionIV,TenderingForms.TheProcuringEntityshoulduse theStandardTenderEvaluationReportforGoodsandWorksforevaluatingTenders.

2. EvaluationofTenders(ITT33)

2.1 SuccessfulTenderorTenders

TheProcuringEntityshallusethecriteriaandmethodologieslistedinthisSectiontoevaluateTenders.Byapplyingthesecriteriaandmethodologies,theProcuringEntityshalldeterminethesuccessfulTenderorTenderswhichhas/haveb eendeterminedto:

a) besubstantiallyresponsivetothetenderdocuments;

b) offerthelowestevaluatedcosttotheProcuringEntityforallitemsofGoodstobeprocuredbasedoneitherasingle ContractorallmultipleContractscombined,asthecasemaybe,inaccordancewiththeITT13.6invitingTenderprices anddiscounts,andprovisionsmadeoftheTenderDocumentforevaluationoftendersandawardofcontract(s);and

c) beofferedbyTendererorTenderersthatsubstantiallymeetthequalificationcriteriaapplicableforContractorc ombinedContractsforwhichtheyareselected.

2.2 EvaluationofTenders

PreliminaryexaminationforDeterminationofResponsiveness

TheProcuringEntitywillstartbyexaminingalltenderstoensuretheymeetinallrespectstheeligibilitycriteriaandothermandatoryrequirementsintheITT,andthatthetenderiscompleteinallaspectsinmeetingtherequirementsprovidedforintheprelimin aryevaluationcriteriaoutlinedbelow.TheStandardTenderEvaluationReportDocumentforGoodsandWorksforevaluatingTendersprovidesveryclearguideonhowtodealwithreviewoftheserequirements.Tenderst hatdonotpassthePreliminaryExaminationwillbeconsiderednon-responsiveandwillnotbeconsideredfurther.

EVALUATION CRITERIA

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. MUSTAttach dully filled business questionnaire
	M4.MUST attach current company CR12 certificate.
	M5.MUSTAttach dully filled Anti-corruption declaration form
	M6. Attach Valid Business permit
	M7. Dully filled form of tender

	M.8. Attach letter of authorization from authorized company(dealers) (where applicable).
	M9. Bid document **MUST** be Serialized.
	M8. 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.
	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: TUESDAY 21st SEPTEMBER 2021 AT 12.00 NOON.**

PRICEEVALUATION

ConsistentwithandinadditiontothecriterialistedinITT33.3andITT29.3;andITT34anditssubparagraphsthefollowingcriteriashallapply:

221 EvaluationofTechnicalaspectsoftheTender

TheProcuringEntityshallevaluatetheTechnicalaspectsoftheTendertodeterminecompliancewiththeProcuringEntity'srequirementsunderSectionV'ScheduleofRequirement'andwhethertheTendersaresubstantiallyresponsivetotheTechnicalSpecificationsandotherRequirements.

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 45 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 (2018, 2019 & 2020)	Audited financial report for 2018	5	
		Audited financial report for 2019	5	
		Audited financial report for 2020	5	
	Financial Capacity		15	
2.	EXPERIENCE			
	Contract implemented & completed in the past five (5) years related to Same supplies (2015 to 2020)	Information on past supply and delivery of similar nature, complexity and magnitude. Bidders MUST provide (1) Offers Letters or Contract Letters/LPOs clearly stipulating the contract value/amounts in question, Qualification Information Form (choose either of the qualification below):		
		Contracts value above KES 5M	20	
		Contracts value up to KES 3-5M	10	
		Contracts below to KES 3M	5	
	PAST & SPECIFIC EXPERIENCE		20	
3.	Dully filled and stamped Price list/specifications		20	
4.	Manufacturer's Authorization	Dully filled and stamped Manufacturer's Authorization	N/A	
	TOTAL SCORES		55	

NOTE: Only tenders that score 60% on technical evaluation will qualify to have their proposals for financials evaluated. Those scoring below 60% will be disqualified at this stage. Award will be given to the lowest evaluated responsive bidder.

TheProcuringEntityshalldeterminewhethertheTendersaresubstantiallyresponsivetotheCommercialandContractualTermsandConditions(e.g.performancesecurities,Paymentanddeliveryschedules).

222 EvaluationCriteria(OtherFactors)(ITT33.6)

TheProcuringEntity'sevaluationofaTendermaytakeintoaccount,inadditiontotheTenderPricequotedinaccordancewithITT13.8,oneormoreofthefollowingfactorsasspecifiedinITT33.2(d)andinTDSITT33.6**,**using thefollowingcriteriaandmethodologies.

a) **Deliveryschedule**.

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

b) **Deviationinpaymentschedule**.

i) tendersshallstatetheirTenderpriceforthepaymentscheduleoutlinedintheSCC.Tendersshallbe evaluatedonthebasisofthisbaseprice.tenderersare,however,permittedtostateanalternativepaymentscheduleandindicatethereductioninTenderpricetheywishtoofferforsuchalternativepaymentschedule.TheProcuringEntitymayconsiderthealternativepaymentscheduleandthereducedTenderpriceofferedbythetendererselectedonthebasisofthebasepriceforthepaymentscheduleoutlinedintheSCC.

c) **Costofmajorreplacementcomponents**,

Tenderer shall provide along with its Tender, the list of recommended spare parts for Goods offered indicatingforeachitemofsparepartherecommendedquantityandunit,andtotalCIPfinaldestination prices required during the initial period of operation specified in the TDS 15.4.The prices offered shall notexceedtheprevailingpriceschargedtootherpartiesbytheTenderer.Thecostofsuchsparepartswill not be taken into account for tender evaluation. The Procuring Entity may award the contract for spare partstotheTendererthatissuccessfulforthesupplyofGoods,byselectingatitsoption,fromtheTender's listofrecommendedspareparts,suchitemsandquantitiesagainsteachastheProcuringEntitymaydeem appropriate at the unit prices indicated by the Tenderer but not exceeding ----% (present) of the cost of Goods[normallynotmorethan10%or15%.]

d) **AvailabilityinKenya**ofsparepartsandaftersalesservicesforequipmentofferedin theTender.

AnadjustmentequaltothecosttotheProcuringEntityofestablishingtheminimumservicefacilitiesandpartsin ventoriesifquotedseparately,shallbeaddedtotheTenderprice,forevaluationpurposesonly.

e) Specificadditionalcriteria

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

22.4 MultipleContracts(ITT33.4)

MultiplecontractswillbepermittedinaccordancewithITT33.4.TenderersareevaluatedonbasisofLotsandthelowestevaluatedtendereridentifiedforeachLot.TheProcuringEntitywillselectoneOptionofthetwoOptionslistedbelowforawardofContracts.

OPTION1

i) IfatendererwinsonlyoneLot,thetendererwillbeawardedacontractforthatLot,providedthetendermeetsthe EligibilityandQualificationCriteriaforthatLot.

ii) IfatendererwinsmorethanoneLot,thetenderwillbeawardedcontractsforallwonLots,providedthetendermeetstheaggregateEligibilityandQualificationCriteriaforalltheLots.ThetendererwillbeawardedthecombinationofLotsforwhichthetendererqualifiesandtheotherswillbeconsideredforawardtosecondlowestthetenders.

OPTION2

TheProcuringEntitywillconsiderallpossiblecombinationsofwonLots[contract(s)]anddeterminethecombinationswiththelowestevaluatedprice.TenderswillthenbeawardedtotheTendererorTenderersinthecombinationsprovidedthetenderermeetstheaggregateEligibilityandQualificationCriteriaforallthewonLots.

22.5 AlternativeTenders

(ITT13.1)*AnalternativeifpermittedunderITT13.1,willbeevaluatedasf*

ollows:[insertoneofthefollowing]

"ATenderermaysubmitanalternativeTenderonlywithaTenderforthebasecase.TheProcuringEntityshallonlyconsiderthealternativeTendersofferedbytheTendererwhoseTenderforthebasecasewasdeterminedtobetheLowestEvaluatedTender."

3. MARGINOFPREFERENCE

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

3.2 Themarginofpreferencewillbeappliedinaccordancewith,andsubjectto,thefollowingprovisions:

a) Tenderersapplyingforsuchpreferenceongoodsofferedshallprovide,aspartofthedataforqualification,suchinformation,includingdetailsofthegoodsproducedinKenya,soastodeterminewhether,accordingtotheclassificationestablishedbytheProcuringEntity,aparticularcategoryofgoodsorgroupofgoodsqualifiesforamarginofpreference.

b) AfterTendershavebeenreceivedandreviewedbytheProcuringEntity,goodsofferedintheresponsiveTendersshallbeassessedtoascertaintheyaremanufactured,mined,extracted,grown,assembledorsemi-processedinKenya.Responsivetendersshallbeclassifiedintothefollowinggroups:

i) **GroupA:**TendersofferinggoodsmanufacturedinKenya,forwhich(a)labour,rawmaterials,andcomponentsfromwithinKenyaaccountformorethanforty(40)percentoftheEx-Worksprice;and (b)theproductionfacilityinwhichtheywillbemanufacturedorassembledhasbeenengagedinmanufacturingorassemblingsuchgoodsatleastsincethedateofTendersubmissiondate;

ii) **GroupB:**AllotherTendersofferingGoodsmanufacturedinKenya;

iii) **GroupC:**TendersofferingGoodsmanufacturedoutsideKenyathathavebeenalreadyimportedorthatwillbeimported.

c) TofacilitatethisclassificationbytheProcuringEntity,theTenderershallcompletewhicheverversionofthePricеScheduleforfurnishedintheTenderDocumentsisappropriate.IncorrectclassificationmayrendertheTendernon-responsiveasnoreclassificationwillbepermittedafterTenderopening.Tenderersshallprovidecorrectinformationespeciallywithrespecttoduties,taxesetc.paidonpreviouslyimportedGoodsandpercentageoflocallabour,materialsandcomponentsforGoodsmanufacturedinKenyaasanyfalseinformationwhichcannotbesupportedbydocumentationmayrendertheTendernon-responsivebesidesothersanctionsforprovidingfalsifiedinformation.

d) TheProcuringEntitywillfirstreviewtheTenderstoconfirmtheappropriatenessoftheTendergroupclassificationtowhichTenderersassignedtheirTendersinpreparingtheirTenderFormsandPriceSchedules.

e) AllevaluatedTendersineachgroupwillthenbecomparedtodeterminethelowestevaluatedTenderofeachgroup.SuchlowestevaluatedTendersshallbecomparedwitheachotherandifasaresultofthiscomparisonaTenderfromGroupAorGroupBisthelowest,itshallbeselectedfortheaward.

f) IfasaresultofthepreceedingcomparisonthelowestevaluatedTenderisaTenderfromGroupC,allTendersfromGroupCshallbefurthercomparedwiththelowestevaluatedTenderfromGroupAafteraddingtotheevaluatedpriceofgoodsofferedineachTenderfromGroupC,forthepurposeofthisfurthercomparisononly,anamountequalto15%(fifteenpercent)oftherespectiveCIPTenderpriceforgoodstobeimportedandalreadyimportedgoods.Bothpricesshallincludeunconditionaldiscountsandbecorrectedforarithmeticalerrors.IftheTenderfromGroupAisthelowest,itshallbeselectedforaward.Ifnot,thelowestevaluatedTenderfromGroupCshallbeselectedasperparagraph(e)above.”

3.3 Post-Qualification Criteria (ITT 37.1)

In case the tender was not subject to pre-qualification, the tender that has been determined to be the lowest evaluated tender shall be considered for contract award, subject to meeting each of the following conditions (post qualification Criteria applied on a GO/NOGO basis). The Procuring Entity shall carry out the post-qualification of the Tenderer in accordance with ITT 37, using only the requirements specified herein. Requirements not included in the text below shall not be used in the evaluation of the Tenderer's qualifications. The minimum qualification requirements for multiple contracts will be the sum of the minimum requirements for respective individual contracts, unless otherwise specified.

3.4 If the Tenderer is a manufacturer

a) Financial Capability

i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the supply cash flow of Kenya Shillings _____ [or equivalent].

ii) Minimum average annual supply turnover of Kenya Shillings _____ *[insert amount, specify a figure about 2.5 times the total Tender price)]* or equivalent calculated as total certified payments received for contracts of goods manufactured and supplied within the last _____ _____ *[insert number of years)*. In case of multiple contracts, limitation will be placed on the number of item(s) that will be awarded to the Tenderer.

b) Experience and Technical Capacity

The Tenderer shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s) using the form provided in Section IV. In case the Tenderer is a JV, experience and demonstrated technical capacity of only the JV shall be taken into account and not of individual members nor their individual experience/capacity will be aggregated unless all members of the JV have been manufacturing and supplying Goods offered in the Tender to the same technology, processing, design, materials, specifications, model number, etc. in all respects such that Goods manufactured have the same functional characteristics, performance parameters, outputs and other guarantees and fully interchangeable which shall be documented along with other required documents demonstrating capacity to the satisfaction of the Procuring Entity in case individual members claim experience. Otherwise, documents evidencing experience and technical capacity shall be in the name of the JV that submitted the Tender. Wherever the Words "Similar Goods" have been used it includes upgrades, latest and improved versions or models of similar specifications and technology. Refer to Form Exp-1 to provide the required information.

c) **(Optional)DocumentaryEvidenceofUsageofGoods(Whenappropriate)**
TheTendershallfurnishdocumentaryevidencesatisfactorytotheProcuringEntitytodemonstratethatsimilarGoodsasofferedintheTenderhavebeeninsuccessfuluseoroperation.
IftheTendererisaJV,theevidenceofdemonstratedusageofGoodssuppliedinthepastshallbeinthenameoftheJV.

3.5 IfTendererisaSupplier:

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

i) TheTendershalldemonstratethatithasaccessto,orhasavailable,liquidassets,unencumberedrealassets,linesofcredit,andotherfinancialmeans .

ii) Hassatisfactorilyandsubstantiallycompletedcontract(s)ofasimilarnatureeitherwithinKenya,theEastAfricanCommunityorabroad,asaprimesupplierorajointventuremember.

iii) Tenderer(Supplieror/andmanufacturer,andeachmemberofJVincasetheTendererisaJV,shalldemonstratethatNon-performanceofacontractdidnotoccurasaresultofthedefaultoftheTenderer,manufacturerorthememberofJVasthecasemaybe,inthelast 5years.ThereqTuiredinformationshallbefurnishedasperformCON-2].

3.6 PendingLitigation

Financialpositionandprospectivelong-termprofitabilityoftheSingleTenderer,andinthecasetheTendererisaJV,ofeachmemberoftheJV,shallremainsoundaccordingtocriteriaestablishedwithrespecttoFinancialCapabilityunderparagraphI(i)aboveassumingthatallpendinglitigationwillberesolvedagainsttheTenderer.Tendershallprovideinformationonpendinglitigationsasper FormCON-2.

4.6. **LitigationHistory**

Thereshallbenoconsistenthistoryofcourt/arbitralawarddecisionsagainsttheTenderer,inthelast 5 years.AllpartiestothecontractshallfurnishtheinformationontherelatedForm(CON-2)aboutanylitigationorarbitrationresultingfromcontractscompletedorongoingunderitsexecutionovertheyearsspecified.AconsistenthistoryofawardsagainsttheTendereroranymemberofaJVmayresultinrejectionofthetender.

SECTIONIV-TENDERINGFORMS

FormofTenderTendererInformationFormTendererJVMembersInformationForm

PriceSchedule:GoodsManufacturedOutsideKenya,tobeImportedPriceSchedule:GoodsManufacturedOutsideKenya,alr

eadyimportedPriceSchedule:GoodsManufacturedinKenyaPriceandCompletionSchedule –

RelatedServicesFormofTenderSecurity – DemandGuaranteeFormofTenderSecurity(TenderBond)

FormofTender-SecuringDeclarationManufacturer'sAuthorizationForm

FORMOFTENDER

INSTRUCTIONSTOTENDERERS

i) *TheTenderermustpreparethisFormofTenderonstationerywithitsletterheadclearlyshowingtheTenderer'scomplet enameandbusinessaddress.*

ii) *AllitalicizedtextistohelpTendererinpreparingthisform.*

iii) *TenderermustcompleteandsignCERTIFICATEOFINDEPENDENTTENDERDETERMINATIONandtheSELF DECLARATIONOFTHETENDERERattachedtothisFormofTender.*

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

ameandIdentification:.....*[insertidentification]***AlternativeNo.**:.....*[i*

nsertidentificationNoifthisisaTenderforanalternative]

To: Baringo county Governmentp.o Box 53-30400 kabarnet

a) **Noreservations:**WehaveexaminedandhavenoreservationstotheTenderingdocument,includingAddendaissuedi naccordancewithInstructionstotenderers(ITT7);

b) **Eligibility**:WemeettheeligibilityrequirementsandhavenoconflictofinterestinaccordancewithITT3;

c) **Tender/Proposal-SecuringDeclaration**:WehavenotbeensuspendednordeclaredineligiblebytheProcuringEntitybasedonexecutio nofaTender-SecuringDeclaration.
or
Proposal-SecuringDeclarationinKenyainaccordancewithITT3.6;

d) **Conformity:**WeoffertosupplyinconformitywiththeTenderingdocumentandinaccordancewiththeDeliverySche dulesspecifiedintheScheduleofRequirementsthefollowingGoods:[*insertabriefdescriptionoftheGoodsandRelat edServices*];

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

Option1,incaseofonelot:Totalpriceis:*[insertthetotalpriceoftheTenderinwordsandfigures,indicatingthevariousa mountsandtherespectivecurrencies];*

or

Option2,incaseofmultiplelots:(a)Totalpriceofeachlot[*insertthetotalpriceofeachlotinwordsandfigures,indicatin gthevariousamountsandtherespectivecurrencies*];and(b)Totalpriceofalllots(sumofalllots)[*insertthetotalpriceo falllotsinwordsandfigures,indicatingthevariousamountsandtherespectivecurrencies*];

f) **Discounts**:Thediscountsofferedandthemethodologyfortheirapplicationare:

i) Thediscountsofferedare:[*Specifyindetaileachdiscountoffered.*]

ii) Theexactmethodofcalculationstodeterminethenetpriceafterapplicationofdiscountsareshownbelow:[*Spec ifyindetailthemethodthatshallbeusedtoapplythediscounts*];

g) **TenderValidityPeriod**:OurTendershallbevalidfortheperiodspecifiedinTDS17.1(asamended,ifapplicable)from thedatefixedfortheTendersubmissiondeadlinespecifiedinTDS21.1(asamended,ifapplicable),anditshallremainb indinguponusandmaybeacceptedatanytimebeforetheexpirationofthatperiod;

(h)
PerformanceSecurity:IfourTenderisaccepted,wecommittoobtainaperformancesecurityinaccordance withtheTenderingdocument;

i) **OneTenderpertenderer**:WearenotsubmittinganyotherTender(s)asanindividualtenderer,andwearenotparticipatinginanyotherTender(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**:WeunderstandthatyouarenotboundtoacceptthelowestevaluatedcostTender,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.

d) DeclarationandcommitmenttotheCodeofEthicsforPersonsParticipatinginPublicProcurementandAssetDisposal.

Further,weconfirmthatwehavereadandunderstoodthefullcontentandscopeoffraudandcorruptionasinformedin **“Appendix1-FraudandCorruption**”attachedtotheFormofTender.

Nameofthetenderer:*[*insertcompletenameofthetenderer*]

NameofthepersondulyauthorizedtosigntheTenderonbehalfofthetenderer:**[*insertcompletenameofpersondulyauthorizedtosigntheTender*]

TitleofthepersonsigningtheTender:[*insertcompletetitleofthepersonsigningtheTender*]**Signatureoftheperso**

nnamedabove:[*insertsignatureofpersonwhosenameandcapacityareshownabove*]**Datesigned**[*insertdateofsig*

ning]**dayof**[*insertmonth*],[*insertyear*]

***:InthecaseoftheTendersubmittedbyaJointVenturespecifythenameoftheJointVentureastenderer.

**:PersonsigningtheTendershallhavethepowerofattorneygivenbythetenderer.Thepowerofattorneyshallbeattachedwith theTenderSchedules.

CERTIFICATEOFINDEPENDENTTENDERDETERMINATION

I,theundersigned,insubmittingtheaccompanyingLetterofTendertothe_____ _____*[NameofProcuringEntity]*for: _____*[Nameandnumberoftender]*inres ponsetotherequestfortendersmadeby:_____ _____*[NameofTenderer]*doherebymake thefollowingstatementsthatIcertifytobetrueandcompleteineveryrespect:

Icertify,onbehalfof_____*[NameofTenderer]*that:

1. IhavereadandIunderstandthecontentsofthisCertificate;

2. IunderstandthattheTenderwillbedisqualifiedifthisCertificateisfoundnottobetrueandcompleteineveryrespect;

3. IamtheauthorizedrepresentativeoftheTendererwithauthoritytosignthisCertificate,andtosubmittheTenderonbeha lfoftheTenderer;

4. ForthepurposesofthisCertificateandtheTender,Iunderstandthattheword“competitor”shallincludeanyindividualo rorganization,otherthantheTenderer,whetherornotaffiliatedwiththeTenderer,who:

   a) hasbeenrequestedtosubmitaTenderinresponsetothisrequestfortenders;

   b) couldpotentiallysubmitatenderinresponsetothisrequestfortenders,basedontheirqualifications,abilitiesore xperience;

5. TheTendererdisclosesthat[checkoneofthefollowing,asapplicable]:

   a) TheTendererhasarrivedattheTenderindependentlyfrom,andwithoutconsultation,communication,agreem entorarrangementwith,anycompetitor;

   b) theTendererhasenteredintoconsultations,communications,agreementsorarrangementswithoneormoreco mpetitorsregardingthisrequestfortenders,andtheTendererdiscloses,intheattacheddocument(s),completed etailsthereof,includingthenamesofthecompetitorsandthenatureof,andreasonsfor,suchconsultations,com munications,agreementsorarrangements;

6. Inparticular,withoutlimitingthegeneralityofparagraphs(5)(a)or(5)(b)above,therehasbeennoconsultation,comm unication,agreementorarrangementwithanycompetitorregarding:

   a) prices;

   b) methods,factorsorformulasusedtocalculateprices;

   c) theintentionordecisiontosubmit,ornottosubmit,atender;or

   d) thesubmissionofatenderwhichdoesnotmeetthespecificationsoftherequestforTenders;exceptasspecifically disclosedpursuanttoparagraph(5)(b)above;

7. Inaddition,therehasbeennoconsultation,communication,agreementorarrangementwithanycompetitorregardingt hequality,quantity,specificationsordeliveryparticularsoftheworksorservicestowhichthisrequestfortendersrelate s,exceptasspecificallyauthorizedbytheprocuringauthorityorasspecificallydisclosedpursuanttoparagraph(5)(b)a bove;

8. thetermsoftheTenderhavenotbeen,andwillnotbe,knowinglydisclosedbytheTenderer,directlyorindirectly,toanyc ompetitor,priortothedateandtimeoftheofficialtenderopening,oroftheawardingoftheContract,whichevercomesfir st,unlessotherwiserequiredbylaworasspecificallydisclosedpursuanttoparagraph(5)(b)above.

Name

_____

Title

_____

Date

[Name,titleandsignatureofauthorizedagentofTendererandDate]

SELF-DECLARATIONFORMS

FORM SD1

SELFDECLARATIONTHATTHEPERSON/TENDERERISNOTDEBARREDINTHEMATTER OFTHEPUBLICPROCUREMENT ANDASSETDISPOSAL ACT2015.

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/Directorof .....*(insert name of the Company)* who is a Bidder in respect of **Tender No.** .....for.....*(insert tender title/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 cak
3. red from participating in procurementproceedingunderPartIVoftheAct.

4. THATwhatisdeponedtohereinaboveistruetothebestofmyknowledge,informationandbelief.

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

Bidder Official Stamp

FORM SD2

SELFDECLARATIONTHATTHEPERSON/TENDERERWILLNOTENGAGEINANYCORRUPTORFRAUDULENTPRACTICE

I,.....ofP.O.Box.....beingaresidentof .....intheRepublicof.....doherebymakea statementasfollows:-

1. THATIamtheChiefExecutive/ManagingDirector/PrincipalOfficer/Directorof..... ….....……...……*(insertnameoftheCompany)*whoisaBidderinrespectof**TenderNo**.....for.....*(inserttendertitle/description)* for.....*(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/hasnotengagedinanycorrosivepracticewithotherbidderparticipatingin thesubjecttender.

5. THATwhatisdeponedtohereinaboveistruetothebestofmyknowledgeinformationandbelief.

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

Bidder'sOfficialStamp

DECLARATIONANDCOMMITMENTTOTHECODEOFETHICS

I.....(person) onbehalfof***(Nameofthe Business/Company/Firm***).....declarethatIhavereadandfullyunderstoodthecontentsofthePublicProcurement&AssetDisposalAct,2015,RegulationsandtheCodeofEthicsforpersonsparticipatinginPublicProcurementandAssetDisposalandmyresponsibilitiesundertheCode.

IdoherebycommittoabidebytheprovisionsoftheCodeofEthicsforpersonsparticipatinginPublicProcurementandAssetDisposal.

NameofAuthorizedsignatory.....

Sign…….....

Position.....

Officeaddress……Telephone…….....……

E-mail…….....……

NameoftheFirm/Company…….....……

Date…….....……

(CompanySeal/RubberStampwhereapplicable)

WitnessName…….....……

…….

Sign…….....……

Date…….....……

APPENDIX1-FRAUDANDCORRUPTION

(Appendix1shallnotbemodified)

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'spublicprocurementandassetdisposalact*(no.33of2015)*underSection66describesrulestobefollowedandactionstobetakenindealingwithCorrupt,Coercive,Obstructive,CollusiveorFraudulentpractices,andConflictsofInterestinprocurementincludingconsequencesforoffencescommitted.AfewoftheprovisionsnotedbelowhighlightKenya'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)whorefrainsfromdoinganythingprohibitedundertheatsubsection,butforthatsubsection,wouldhavebeenwithinhisorherdutiesshalldisclosetheconflictofinterestotheprocuringentity;

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;

ii) “fraudulentpractice”isanyactoromission,includingmisrepresentation,thatknowinglyorrecklesslymisleads,orattemptstomislead,apartytoobtainfinancialorotherbenefitortoavoidanobligation;

iii) “collusivepractice”isanarrangementbetweentwoormorepartiesdesignedtoachieveanimproperpurpose,includingtoinfluenceimproperlytheactionsofanotherparty;

iv) “coercivepractice”isimpairingorharming,orthreateningtoimpairorharm,directlyorindirectly,anypartyorthepropertyofthepartytoinfluenceimproperlytheactionsofaparty;

v) “obstructivepractice”is:

- deliberatelydestroying,falsifying,altering,orconcealingofevidencematerialtotheinvestigationormakingfalsestatementstoinvestigatorsinordertomateriallyimpedeinvestigationbyPublicProcurementRegulatoryAuthority(PPRA)oranyotherappropriateauthorityappointedbyGovernmentofKenyaintoallegationsofacorrupt,fraudulent,coercive,orcollusivepractice;and/orthreatening,harassing,orintimidatinganypartytopreventitfromdisclosingitsknowledgeofmattersrelevanttotheinvestigationorfrompursuingtheinvestigation;or

- actsintendedtomateriallyimpedetheexerciseofthePPRA'sortheappointedauthority'sinspectionandauditrightsprovidedforunderparagraph2.3e.below.

b) Definesmorespecifically,inaccordancewiththeaboveprocurementActprovisionssetforthforfraudulentandcollusivepracticesasfollows:

"fraudulentpractice"includesamisrepresentationoffactinordertoinfluenceaprocurementordisposalprocessortheexerciseofacontracttothedetrimentoftheprocuringentityorthetendererorthecontractor,andincludescollusivepracticesamongsttenderersprior tooraftertendersubmissiondesignedtoestablishtenderpricesatartificialnon-competitivelevelsandtodeprivetheprocuringentityofthebenefitsoffreeandopencompetition.

c) Rejectsaproposalforaward[1]ofacontractifPPRAdeterminesthatthefirmorindividualrecommendedforaward,anyofitspersonnel,oritsagents,oritssub-consultants,sub-contractors,serviceproviders,suppliersand/ortheiremployees,has,directlyorindirectly,engagedincorrupt,fraudulent,collusive,coercive,orobstructivepracticesincompetingforthecontractinquestion;

d) PursuanttotheKenya'sabovestatedActsandRegulations,maysanctionordebarorrecommendtoappropriateauthority(ies)forsanctioninganddebarmentofafirmorindividual,asapplicableundertheActsandRegulations;

e) RequiresthataclausebeincludedinTenderdocumentsandRequestforProposaldocumentsrequiring(i)Tenderers(applicants/proposers),Consultants,Contractors,andSuppliers,andtheirSub-contractors,Sub-consultants,Serviceproviders,Suppliers,Agentspersonnel,permitthePPRAoranyotherappropriateauthorityappointedbyGovernmentofKenyatoinspect[2]allaccounts,recordsandotherdocumentsrelatingtotheprocurementprocess,selectionand/orcontractexecution,andtohavethemauditedbyauditorsappointedbythePPRAoranyotherappropriateauthorityappointedbyGovernmentofKenya;and

f) PursuanttoSection62oftheaboveAct,requiresApplicants/Tendererstosubmitalongwiththeir Applications/Tenders/Proposalsa“Self-DeclarationForm”asincludedintheprocurementdocumentdeclaringthattheyandallpartiesinvolvedintheprocurementprocessandcontractexecutionhavenotengaged/willnotengageinanycorruptorfraudulentpractices.

---

[1] *Fortheavoidanceofdoubt,aparty'sineligibilitytobeawardedacontractshallinclude,withoutlimitation,(i)applyingforpre-qualification,expressinginterestinaconsultancy,andtendering,eitherdirectlyorasanominatedsub-contractor,nominatedconsultant,nominatedmanufacturerorsupplier,ornominatedserviceprovider,inrespectofsuchcontract,and(ii)enteringintoanaddendumoramendmentintroducingamaterialmodificationtoanyexistingcontract.*

[2] *Inspectionsinthiscontextusuallyareinvestigative(i.e.,forensic)innature.Theyinvolvefact-findingactivitiesundertakenbytheInvestigatingAuthorityorpersonsappointedbytheProcuringEntitytoaddressspecificmattersrelatedtoinvestigations/audits,suchasevaluatingtheveracityofanallegationofpossibleFraudandCorruption,throughtheappropriatemechanisms.Suchactivityincludesbutisnotlimitedto:accessingandexaminingafirm'sorindividual'sfinancialrecordsandinformation,andmakingcopiesthereofasrelevant;accessingandexamininganyotherdocuments,dataandinformation(whetherinhardcopyorelectronicformat)deemedrelevantfortheinvestigation/audit,andmakingcopiesthereofasrelevant;interviewingstaffandotherrelevantindividuals;performingphysicalinspectionsandsitevisits;andobtainingthirdpartyverificationofinformation.*

TENDERERINFORMATIONFORM

[ThetenderershallfillinthisForminaccordancewiththeinstructionsindicatedbelow.Noalterationstoitsformatshallbepermittedandnosubstitutionsshallbeaccepted.]

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

TenderNameandIdentification:.....[*insertidentification*

AlternativeNo.:.....*[insertidentificationNoifthisisaTenderforanalternative]*Pag

e_____of_____pages

1.Tenderer'sName*[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'syear of registration: *[insert Tenderer's year of registration]*
5.Tenderer'sAddress 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 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 ITT3.4. ☐ 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 ITT4.6 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.

TENDERER'SELIGIBILITY-CONFIDENTIALBUSINESSQUESTIONNAIREFORM

a) InstructiontoTenderer

Tenderisinstructedtocompletetheparticularsrequiredinthis Form,*oneformforeachentityifTenderisaJV.*Tendererisfurther remindedthatitisanoffencetogivefalseinformationonthisForm.

A. Tenderer'sdetails

	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		

GeneralandSpecificDetails

b) SoleProprietor,providethefollowingdetails.

Nameinfull_____Age

_____Nationality____CountryofOrigin

_____Citizenship_____

_____

c) Partnership,providethefollowingdetails.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) RegisteredCompany,providethefollowingdetails.

i) PrivateorpublicCompany_____

ii) StatethenominalandissuedcapitaloftheCompany:-

NominalKenyaShillings(Equivalent).....I

ssuedKenyaShillings(Equivalent).....

iii) GivedetailsofDirectorsasfollows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

e) DISCLOSUREOFINTEREST-InterestoftheFirmintheProcuringEntity.

i) Arethereanyperson/personsin.....(*NameofProcuringEntity)* whohasaninterestorrelationshipinthisfirm?Yes/No.....Ify

es,providedetailsasfollows.

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

ii) Conflictofinterestdisclosure

	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.		
7	Tenderer has a close business or 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 such 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

OnbehalfoftheTenderer,Icertifythattheinformationgivenaboveiscorrect.

FullName

_____

_____ _____

TitleorDesignation_____

(Signature) *(Date)*

TENDERER'SJVMEMBERS INFORMATIONFORM

[ThetendershallfillinthisForminaccordancewiththeinstructionsindicatedbelow.Thefollowingtableshallbefilledinforthetendererandforeachmemberofa JointVenture]].

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 constitutionorassociation),and/orregistration 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 ITT4.6. 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

PriceScheduleForms

*[ThetendershallfillinthesePriceScheduleFormsinaccordancewiththeinstructionsindicated.Thelistoflineitemsincolumn1ofthe**PriceSchedules**shallcoincidewiththeListofGoodsandRelatedServicesspecifiedbytheProcuringEntityintheScheduleofRequirements.]*

PriceSchedule:GoodsManufacturedOutsideKenya,tobeImported

							Date: _____ _____ Alternative No: _____ PageN° _____of _____	
1	2	3	4	5	6	7	8	9
Line Item N°	Description of Goods	Country of Origin	Delivery Date as defined by Incoterms	Quantity and physical unit	Unit price CIP *[insert place of destination]* in accordance with ITT 14.8(b)(i)	CIP Priceper line item (Col. 5x6)	Price per line item for inland transportation and other services required in Kenya to convey the Goods to their final destination specified in TDS	Total Price perLine item (Col.7+8)
[insert number of the item]	*[insertnameof good]*	*[insert countryof originof 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]*

PriceSchedule:GoodsManufacturedOutsideKenya,alreadyimported*

(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]*
										Total Tender Price	

Nameoftenderer.....*[insertcompletenameoftenderer]*Signatureoftenderer.....*[signatureofpersonsigningtheTender]*Date.....*[insertdate]**[ForpreviouslyimportedGoods,thequotedpriceshallbedistinguishablefromtheoriginalimportvalueofthese Goodsdeclaredtocustomsandshallincludeanyrebateormark-upofthelocalagentorrepresentativeandalllocalcostsexceptimportdutiesandtaxes,whichhavebeenand/orhavetobepaidbytheProcuringEntity.Forclarity,thetenderersareaskedtoquotethepriceincludingimportduties,andadditionallytoprovidetheimportdutiesandthepricenetofimportdutieswhichisthedifferenceofthosevalues.]*

PriceSchedule:GoodsManufacturedinKenya

Kenya _____ (Group A and B Tenders) Currencies in accordance with ITT15 Date: _____

ITT No: _____

Alternative No: _____

Nameoftenderer.....*[insertcompletenameoftenderer]*.....Signatureoftenderer.....*[signatureofpersonsigningtheTender]*Date: _____ *[insertdate]*

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 EXW price 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 theitem]	*[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]*
								Total Price	

PriceandCompletionSchedule-RelatedServices

Currencies in accordance with ITT15					Date: _____ ITTNo: _____ AlternativeNo: _____ PageN° _____of _____	
1	2	3	4	5	6	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		

Nameoftenderer.....*[insertcompletenameoftenderer]*Signatureoftenderer.....*[signatureofpersonsigningtheTender]*Date.....*[insertdate]*

FORMOFTENDERSECURITY-DEMANDBANKGUARANTEE

Beneficiary:_____

ITTNo:_____

Date:_____

TENDERGUARANTEENo.:_____

Guarantor:_____

1. Wehavebeeninformedthat (hereinaftercalled"theApplicant")hassubmittedorwillsubmittotheBeneficiaryitsTender(hereinaftercalled"theTender")fortheexecutionof_____underRequestforTendersNo._ (“theITT”).

2. Furthermore,weunderstandthat,accordingtotheBeneficiary'sconditions,TendersmustbesupportedbyaTenderguarantee.

3. AttherequestoftheApplicant,we,asGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysumorsumsnotexceedingintotalanamountof_____( )uponreceiptbyusoftheBeneficiary'scomplyingdemand,supportedbytheBeneficiary'sstatement,wheterinthedemanditselforaseparatesigneddocumentaccompanyingoridentifyingthedemand,statingthateithertheApplicant:
   a) haswithdrawnitsTenderduringtheperiodofTendervaliditysetforthintheApplicant'sLetterofTender(“theTenderValidityPeriod”),oranyextensiontheretoprovidedbytheApplicant;or
   b) havingbeennotifiedoftheacceptanceofitsTenderbytheBeneficiaryduringtheTenderValidityPeriodoranyextensiontheretoprovidedbytheApplicant,(i)hasfailedtoexecutethecontractagreement,or(ii)hasfailedtofurnishthePerformance.

4. ThisguaranteewillexpIre:(a)iftheApplicantisthesuccessfulTenderer,uponourreceiptofcopiesofthecontractagreementsignedbytheApplicantandthePerformanceSecurityand,or(b)iftheApplicantisnotthesuccessfulTenderer,upontheearlierof(i)ourreceiptofacopyoftheBeneficiary'snotificationtotheApplicantoftheresultsoftheTenderingprocess;or(ii)twenty-eightdaysaftertheendoftheTenderValidityPeriod.

5. Consequently,anydemandforpaymentunderthisguaranteemustbereceivedbyusattheofficeindicatedaboveonorbeforethatdate.

_____

[signature(s)]

FORMOFTENDERSECURITY(TENDERBOND)

[TheSuretyshallfillinthisTenderBondForminaccordancewiththeinstructionsindicated.]

BONDNO._____

1. BYTHISBOND.....*[nameoftenderer]*asPrincipal(hereinaftercalled“thePrincipal”),and.....*[name,legaltitle,andaddressofsurety]*,**authorizedtotransactbusinessin***[nameofcountryofProcuringEntity]*,asSurety(hereinaftercalled“theSurety”),areheldandfirmlyboundunto.....*[nameofProcuringEntity]*asObligee(hereinaftercalled“theProcuringEntity”)inthesumof.....*[amountofBond]*[1]*[amountinwords]*,forthepaymentofwhichsum,wellandtrulytobemade,we,thesaidPrincipalandSurety,bindourselves,oursuccessorsandassigns,jointlyandseverally,firmlybythesepresents.

2. WHEREASthePrincipalhassubmittedorwillsubmitawrittenTendertotheProcuringEntitydatedthe _____day_____of_____,20_____,forthesupplyof _____*[nameofContract]*(hereinaftercalledthe“Tender”).

3. NOW,THEREFORE,THECONDITIONOFTHISOBLIGATIONissuchthatifthePrincipal:

   a) haswithdrawnitsTenderduringtheperiodofTendervaliditysetforthinthePrincipal'sLetterofTender(“theTenderValidityPeriod”),oranyextensiontheretoprovidedbythePrincipal;or

   b) havingbeennotifiedoftheacceptanceofitsTenderbytheProcuringEntityduringtheTenderValidityPeriodoranyextensiontheretoprovidedbythePrincipal;(i)failedtoexecutetheContractagreement;or (ii)hasfailedtofurnishthePerformanceSecurity,inaccordancewiththeInstructionstotenderers(“ITT”)oftheProcuringEntity'sTenderingdocument.

   thentheSuretyundertakestoimmediatelypaytotheProcuringEntityuptotheaboveamountuponreceiptoftheProcuringEntity'sfirstwrittendemand,withouttheProcuringEntityhavingtosubstantiateitsdemand,providedthatinitsdemandtheProcuringEntityshallstatethatthedemandarisesfromtheoccurrenceofanyoftheaboveevents,specifyingwhichevent(s)hasoccurred.

4. TheSuretyherebyagreesthatitsobligationwillremaininfullforceandeffectuptoandincludingthedate30daysafterthedateofexpirationoftheTenderValidityPeriodsetforthinthePrincipal'sLetterofTenderoranyextensiontheretoprovidedbythePrincipal.

5. INTESTIMONYWHEREOF,thePrincipalandtheSuretyhavecausedthesepresentstobeexecutedintheirrespectivenamesthis_____dayof_____20_____.

Principal:__CorporateSeal(whereappropriate)

Surety:_____

_____

(Signature)

(Printednameandtitle)

_____

(Signature)

(Printednameandtitle)

[1]TheamountoftheBondshallbedenominatedinthecurrencyKenyashillingsortheequivalentamountinafreelyconvertiblecurrency.

FORMOFTENDER-SECURINGDECLARATION

[TheBiddershallcompletethisForminaccordancewiththeinstructionsindicated]

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

TenderNo.:.....*[insertnumberoftenderingprocess]*

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) thirtydaysaftertheexpirationofourTender.

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

Signed:……..…….....

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

Name:…….....

Dulyauthorizedtosignthebidforandonbehalfof:.....*[insertcompletenameofTenderer]*.Datedon.

.....dayof.....*[Insertdateofsigning]*.

Sealorstamp.

MANUFACTURER'SAUTHORIZATIONFORM

*[ThetenderershallrequiretheManufacturertofillinthisForminaccordancewiththeinstructionsindicated.ThisletterofauthorizationshouldbeontheletterheadoftheManufacturerandshouldbesignedbyapersonwiththeproperauthoritytosigndocumentsthatarebindingontheManufacturer.ThetenderershallincludeitinitsTender,ifsoindicatedinthe**TDS.**]*

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

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

To:.....*[insertcompletenameofProcuringEntity]*

WHEREAS

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

WeherebyextendourfullguaranteeandwarrantyinaccordancewithClause28oftheGeneralConditionsofContract,withrespecttotheGoodsofferedbytheabovefirm.

Signed:.....*[insertsignature(s)ofauthorizedrepresentative(s)oftheManufacturer]*

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

Title:.....*[inserttitle]*

Datedon_____dayof_____,_____*[insertdateofsigning]*

PART2: SUPPLYREQUIREMENTS

SectionV-ScheduleofRequirements

NotesforPreparingtheScheduleofRequirements

TheScheduleofRequirementsshallbeincludedintheTenderingdocumentbytheProcuringEntity,andshallcover,ataminimum,adescriptionofthegoodsandservicestobesuppliedandthedeliveryschedule.

TheobjectiveoftheScheduleofRequirementsistoprovidesufficientinformationtoenabletendererstopreparetheirTendersefficientlyandaccurately,inparticular,thePriceSchedule,forwhichaformisprovidedinSectionIV.Inaddition,theScheduleofRequirements,togetherwiththePriceSchedule,shouldserveasabasisintheeventofquantityvariationatthetimeofawardofcontractpursuanttoITT42.1.

Thedateorperiodfordeliveryshouldbecarefullyspecified,takingintoaccount(a)theimplicationsofdeliverytermsstipulatedintheInstructionstotendererspursuanttothe*Incoterms*rulesthat“delivery”takesplacewhengoodsaredelivered**tothefinalplaceofdelivery**,and(b)thedateprescribedhereinfromwhichtheProcuringEntity'sdeliveryobligationsstart(i.e.,noticeofaward,contractsignature,openingorconfirmationoftheletterofcredit).

1. ListofGoodsandDeliverySchedule

LineItem 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*]
1.	Fruit and tree seedlings.	ONE(I)	AS PER THE PROVIDED SPECIFICATIOS	BARINGO COUNTY GOVERNMENT (ALL DEPARTMENTS)	AS PER THE CONTRACT SIGNED AGREEMENT	AS PER CONTRACT SIGNED AGREEMENT	

2. TechnicalSpecifications

2.1 ThepurposeoftheTechnicalSpecifications(TS),istodefinethetechnicalcharacteristicsoftheGoodsandRelatedServicesrequiredbytheProcuringEntity.TheProcuringEntityshallprepareth edetailedTSconsiderthat:

i) TheTSconstitutethebenchmarksagainstwhichtheProcuringEntitywillverifythetechnicalresponsivenessofTendersandsubsequentlyevaluatetheTenders.Therefore,well-definedTSwillfacilitatepreparationofresponsiveTendersbytenderers,aswellasexamination,evaluation,andcomparisonoftheTendersbytheProcuringEntity.

ii) TheTSshallrequirethatallgoodsandmaterialstobeincorporatedinthegoodsbenew,unused,andofthemostrecentorcurrentmodels,andthattheyincorporateallrecentimprovementsindesignandmaterials,unlessprovidedforotherwiseinthecontract.

iii) TheTSshallmakeuseofbestpractices.SamplesofspecificationsfromsuccessfulsimilarprocurementsinthesamecountryorsectormayprovideasoundbasisfordraftingtheTS.

iv) ThePPRAencouragestheuseofmetricunits.

v) Standardizingtechnicalspecificationsmaybeadvantageous,dependingonthecomplexityofthegoodsandtherepetitivenessofthetypeofprocurement.TechnicalSpecificationsshouldbebroadenoughtoavoidrestrictionsonworkmanship,materials,andequipmentcommonlyusedinmanufacturingsimilarkindsofgoods.

vi) Standardsforequipment,materials,andworkmanshipspecifiedintheTenderingdocumentshallnotberestrictive.Recognizedinternationalstandardsshouldbespecifiedasmuchaspossible.Referencetobrandnames,cataloguenumbers,orotherdetailsthatlimitanymaterialsoritemstoaspecificmanufacturershouldbeavoidedasfaraspossible.Whereunavoidable,suchitemdescriptionshouldalwaysbefollowedbythewords“orsubstantially equivalent.”Whenotherparticularstandardsorcodesofpracticearereferredtointhe TS,whetherfromtheProcuringEntity'sorfromothereligiblecountries,astatementshouldfollowotherauthoritativestandardsthatensureatleastasubstantiallyequalquality,thenthestandardsmentionedintheTSwillalsobeacceptable.

vii) Referencetobrandnamesandcataloguenumbersshouldbeavoidedasfaraspossible;whereunavoidablethewords“oratleastequivalent”shallalwaysfollowsuchreferences.

viii) TechnicalSpecificationsshallbefullydescriptiveoftherequirementsinrespectof,butnotlimitedto,thefollowing:

a) StandardsofmaterialsandworkmanshiprequiredfortheproductionandmanufacturingoftheGoods.

b) Anysustainableprocurementtechnicalrequirementsshallbeclearlyspecified.

2.2 Toencouragetenderers'innovationinaddressingsustainableprocurementrequirements,aslongastheTenderevaluationcriteriaspecifythemechanismformonetaryadjustmentsforthepurposeofTendercomparisons,tenderersmaybeinvitedtoofferGoodsthatexceedsthespecifiedminimumsustainableprocurementrequirements.

i) Detailedtestsrequired(typeandnumber).

ii) Otheradditionalworkand/orRelatedServicesrequiredtoachievefulldelivery/completion.

iii) DetailedactivitiestobeperformedbytheSupplier,andparticipationoftheProcuringEntitythereon.

iv) ListofdetailedfunctionalguaranteescoveredbytheWarrantyandthespecificationoftheliquidateddamagesto beappliedintheeventthatsuchguaranteesarenotmet.

2.3 TheTSshallspecifyallessentialtechnicalandperformancecharacteristicsandrequirements,includingguaranteedor acceptablemaximumorminimumvalues,asappropriate.Whenevernecessary,theProcuringEntityshallincludeana dditionalad-hocTenderingform(tobeanAttachmenttotheLetterofTender),wherethetenderershallprovidedetailedinformation onsuchtechnicalperformancecharacteristicsinrespecttothecorrespondingacceptableorguaranteedvalues.

2.4 WhentheProcuringEntityrequeststhatthetendererprovidesinitsTenderapartorallofthe TechnicalSpecifications,technicalschedules,orothertechnicalinformation,theProcuringEntityshallspecifyindetailthenatureandextentoftherequiredinformationandthemannerinwhichithastobepresentedbythetendererinitsTender.

2.5 IfasummaryoftheTechnicalSpecifications(TS)hastobeprovided,theProcuringEntityshallinsertinformationinthetablebelow.Thetenderershallprepareasimilartabletojustifycompliancewiththerequirements.

SummaryofTechnicalSpecifications: TheGoodsandRelatedServicesshallcomplywithfollowingTechnicalSpecificationsandStandards:

ItemNo	Name of Goods or Related Service	Technical Specifications and Standards
[insert item No]	[insert name]	[insert TS and Standards]

DetailedTechnicalSpecificationsandStandards

FRUITS AND TREE SEEDLINGS.

S/N°.	DESCRIPTION	UNIT OF ISSUE	QUANTITY	NAME OF BRAND	ORIGIN	UNIT PRICE DELIVERED (KSHS)	REMARKS
1	Coffee Seedlings Ruiru II	No.	AWR				
	Coffee Seedlings Batian	No.	AWR				
2	Pasture seeds-Boma Rhodes	Kg	AWR				
3	Pasture seeds -Cenhrusciliaries	Kg	AWR				
4	Pasture seeds – Brachiaria	Kg	AWR				
5	Macadamia Seedlings	No.	AWR				
6	Cotton Seeds	Kg	AWR				
7	**Fruit Tree Seedlings** -Grafted Mangoes	No.	AWR				

S/N°.	DESCRIPTION	UNIT OF ISSUE	QUANTITY	NAME OF BRAND	ORIGIN	UNIT PRICE DELIVERED (KSHS)	REMARKS
8	Banana,	No.	AWR				
9	Pawpaw	No.	AWR				
10	Grafted Avocado (Fuerte, Hass)	No.	AWR				
11	Gravellier	No.	AWR				
12	Blue gum	No.	AWR				
13	Cypress	No.	AWR				
14	Jacaranda species	No.	AWR				
15	Neem Tree	No.	AWR				
16	Horsetail tree/Whispering pine	No.	AWR				
17	Umbrella tree	No.	AWR				
18	Nandi Flame	No.	AWR				
19	With red flowers	No.	AWR				
20	East African Green heart-sokee	No.	AWR				
21	East African cedar	No.	AWR				
22	Tamarind	No.	AWR				
23	African wild Olive (yemtit)	No.	AWR				
24	Podo	No.	AWR				
25	Bamboo	No.	AWR				
26	Koloswo	No.	AWR				
27	Ngoswe	No.	AWR				
28	Acacia tree	No.	AWR				
29	Meru Oak	No.	AWR				

S/N°.	DESCRIPTION	UNIT OF ISSUE	QUANTITY	NAME OF BRAND	ORIGIN	UNIT PRICE DELIVERED (KSHS)	REMARKS
30	Moringa Tree	No.	AWR				
31	Lomoiywet	No.	AWR				
32	Mukinduri	No.	AWR				
33	Onuet	No.	AWR				
ORNAMENTAL TREEE SPECIES (FLOWER TREES) GROWN MAINLY IN TOWNS							
34	Alcaria soft	No.	AWR				
35	Candle nut	No.	AWR				
36	Flowering palm	No.	AWR				
37	Rubber Tree	No.	AWR				
38	Syzigium (bishop wood	No.	AWR				
39	Delorixregia(with red flowers)	No.	AWR				

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTIONVI-GENERALCONDITIONSOFCONTRACT

1. Definitions

IntheConditionsofContract(“theseConditions”),whichincludeSpecialConditions,PartsAandB,andtheseGeneral Conditions,thefollowingwordsandexpressionsshallhavethemeaningsstated.Wordsindicatingpersonsorpartiesin cludecorporationsandotherlegalentities,exceptwherethecontextrequiresotherwise.

a) “Contract”meanstheContractAgreemententeredintobetweentheProcuringEntityandtheSupplier,together withtheContractDocumentsreferredtotherein,includingallattachments,appendices,andalldocumentsinco rporatedbyreferencetherein.

b) “ContractDocuments”meansthedocumentslistedintheContractAgreement,includinganyamendmentsther eto.

c) “ContractPrice”meansthepricepayabletotheSupplierasspecifiedintheContractAgreement,subjecttosucha dditionsandadjustmentstheretoordeductionstherefrom,asmaybemadepursuanttotheContract.

d) “Day”meanscalendarday.

e) “Completion”meansthefulfilmentoftheRelatedServicesbytheSupplierinaccordancewiththetermsandcon ditionssetforthintheContract.

f) “GCC”meanstheGeneralConditionsofContract.

g) “Goods”meansallofthecommodities,rawmaterial,machineryandequipment,and/orothermaterialsthattheS upplierisrequiredtosupplytotheProcuringEntityundertheContract.

h) “ProcuringEntity”meanstheProcuringEntitypurchasingtheGoodsandRelatedServices,as**specifiedintheS CC.**

i) “RelatedServices”meanstheservicesincidentaltothesupplyofthegoods,suchasinsurance,delivery,installat ion,commissioning,trainingandinitialmaintenanceandothersuchobligationsoftheSupplierundertheContra ct.

j) “SCC”meanstheSpecialConditionsofContract.

k) “Subcontractor”meansanyperson,privateorgovernmententity,oracombinationoftheabove,towhomanypar toftheGoodstobesuppliedorexecutionofanypartoftheRelatedServicesissubcontractedbytheSupplier.

l) “Supplier”meanstheperson,privateorgovernmententity,oracombinationoftheabove,whoseTendertoperfor mtheContracthasbeenacceptedbytheProcuringEntityandisnamedassuchintheContractAgreement.

m) **“BaseDate”**meansadate30daypriortothesubmissionoftenders.

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

o) **“LetterofAcceptance”**meanstheletterofformalacceptance,signedbythecontractor.ProcuringEntity,inclu dinganyannexedmemorandacomprisingagreementsbetweenandsignedbybothParties.

p) **“ProcuringEntity”**meanstheEntitynamedintheSpecialConditionsofContract.

2. Interpretation

2.1. Ifthecontextsorequiresit,singularmeanspluralandviceversa.

2.2. Incoterms

a) Unlessinconsistentwithanyprovisionoftheontract**,**themeaningofanytradetermandtherightsandobligatio nsofpartiesthereundershallbeasprescribedbyIncoterms**specifiedintheSCC**.

b) ThetermsEXWandCIPandothersimilarterms,whenused,shallbegovernedbytherulesprescribedinthecurre nteditionofIncotermsspecifiedinthe**SCC**andpublishedbytheInternationalChamberofCommerceinParis,F rance.

3. ontractDocuments

Subjecttotheorderofprecedencesetforthintheontractgreement,alldocumentsformingtheontract(andallpartst hereof)areintendedtobecorrelative,complementary,andmutuallyexplanatory.Theontractgreementshallberea dasawhole.Thedocumentsformingtheontractshallbeinterpretedinthefollowingorderofpriority:

a) theontractgreement,

b) theLetterofcceptance,

c) theGeneralonditionsofontract

d) SpecialonditionsofontractSpecialonditionsofontract

e) theFormofTender,

f) theSpecificationsandSchedulesoftheDrawings(ifany),and

g) theSchedulesofRequirements,PriceScheduleandanyotherdocumentsformingpartoftheontract.

4. FraudandCorruption

3.1 Thesuppliershallcomplywithanti-corruptionlawsandguidelinesandtheprevailingsanctions,policiesandproceduresassetforthintheLawsofKenya.

3.2 TheSuppliershalldiscloseanycommissions,gratuityorfeesthatmayhavebeenpaidoraretobepaidtoagentsoranyoth erpersonwithrespecttotheTenderingprocessorexecutionoftheontract.Theinformationdisclosedmustincludeatl eastthenameandaddressoftheagentorotherparty,theamountandcurrency,andthepurposeofthecommission,gratuit yorfee.

4.1 EntireAgreement

4.3.1TheontractconstitutestheentireagreementbetweentheProcuringEntityandtheSupplierandsupersedesallcommun ications,negotiationsandagreements(whetherwrittenororal)ofthepartieswithrespecttheretomadepriortothedateo fontract.

4.2 Amendment

Noamendmentorothervariationoftheontractshallbevalidunlessitisinwriting,isdated,expresslyreferstotheontr act,andissignedbyadulyauthorizedrepresentativeofeachpartythereto.

4.3 Non-waiver

a) SubjecttoGCCSub-Clause4.5(b)below,norelaxation,forbearance,delay,orindulgencebyeitherpartyinenforcinganyoftheterms andconditionsoftheontractorthegrantingoftimebyeitherpartytotheothershallprejudice,affect,orrestrictth erightsofthatpartyundertheontract,neithershallanywaiverbyeitherpartyofanybreachofontractoperatea swaiverofanysubsequentorcontinuingbreachofontract.

b) Anywaiverofaparty'srights,powers,orremediesundertheontractmustbeinwriting,dated,andsignedbyana uthorizedrepresentativeofthepartygrantingsuchwaiver,andmustspecifytherightandtheextenttowhichitisb eingwaived.

4.4 Severability

Ifanyprovisionorconditionoftheontractisprohibitedorrenderedinvalidorunenforceable,suchprohibition,invali dityorunenforceabilityshallnotaffectthevalidityorenforceabilityofanyotherprovisionsandconditionsoftheontr act.

5. Language

5.1 TheContractaswellasallcorrespondenceanddocumentsrelatingtotheContractexchangedbytheSupplierandtheProcuringEntity,shallbewrittenintheEnglishLanguage.SupportingdocumentsandprintedliteraturethatarepartoftheeontractmaybeinanotherlanguageprovidedtheyareaccompaniedbyanaccurateandcertifiedtranslationoftherelevantpassagesintheEnglishLanguage,inwhichcase,forpurposesofinterpretationoftheContract,theEnglishlanguageistranslationshallgovern.

5.2 TheSuppliershallbearallcostsoftranslationtothegoverninglanguageandallrisksoftheaccuracyofsuchtranslation, fordocumentsprovidedbytheSupplier.

6. JointVenture,ConsortiumorAssociation

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

7. Eligibility

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

7.2 AllGoodsandRelatedServicestobesuppliedundertheContractshallhavetheiroriginin EligibleCountries.Forthepurposeofthis Clause,originmeansthecountrywherethegoodshavebeengrown,mined,cultivated,produced,manufactured,orprocessed;orthroughmanufacture,processing,orassembly,anothercommerciallyrecognizedarticleresultsthatdifferssubstantiallyinitsbasiccharacteristicsfromitscomponents.

7.3 TheTenderer,ifaKenyanfirm,mustsubmitwithitstenderavalidtaxcompliancecertificatefromtheKenyaRevenueAuthority.

8. Notices

8.1 AnynoticegivenbyonepartytotheotherpursuanttotheContractshallbeinwritingtotheaddressspecifiedintheSCC. Theterm"inwriting"meanscommunicatedinwrittenformwithproofofreceipt.

8.2 Anoticeshallbeeffectivewhendeliveredoronthenotice'seffectivedate,whicheverislater.

9. GoverningLaw

9.1 TheContractshallbegovernedbyandinterpretedinaccordancewiththelawsofkenya.

9.2 ThroughouttheexecutionoftheContract,theSuppliershallcomplywiththeimportofgoodsandservicesprohibitions inKenya:

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

b) byanactofcompliancewithadecisionoftheUnitedNationsSecurityCounciltakenunderChapterVIIoftheCharteroftheUnitedNations,Kenyaprohibitsanyimportofgoodsfromthatcountryoranypaymentstoanycountry, person,orentity.

10. SettlementofDisputes

10.1 TheProcuringEntityandtheSuppliershallmakeeveryefforttoresolveamicablybydirectnegotiationanydisagreementordisputearisingbetweenthemunderorinconnectionwiththeContract.

10.2 If,afterthirty(30)days,thepartieshavefailedtoresolvetheirdisputeordifferencebysuchmutualconsultation,theneithertheProcuringEntityortheSuppliermaygivenoticetotheotherpartyofitsintentiontocommence

arbitration,ashereinafterprovided,astothematterindispute,andnoarbitrationinrespectofthismattermaybecommencedunlesssuchnoticeisgiven.AnydisputeordifferenceinrespectofwhichanoticeofintentiontocommencearbitrationhasbeengiveninaccordancewiththisClauseshallbefinallysettledbyarbitration.ArbitrationmaybecommencedpriortoorafterdeliveryoftheGoodsundertheContract.

10.2 Arbitrationproceedingsshallbeconductedasfollows:

10.2.1 AnyclaimordisputebetweenthePartiesarisingoutoforinconnectionwiththeContractnotsettledamicablyinaccordancewithSub-Clause10.1shallbefinallysettledbyarbitration.

10.2.2 Noarbitrationproceedingsshallbecommencedonanyclaimordisputewherenoticeofaclaimordisputehasnotbeengivenbytheapplyingpartywithinthirtydaysoftheoccurrenceordiscoveryofthematterorissuegivingrisetothedispute.

10.2.3 Notwithstandingtheissueofanoticeasstatedabove,thearbitrationofsuchaclaimordisputeshallnotcommenceunlessanattempthasinthefirstinstancebeenmadebythepartiestosettlesuchclaimordisputeamicablywithorwithouttheassistanceofthirdparties.Proofofsuchattemptshallberequired.

10.2.4 TheArbitratorshall,withoutprejudicetothegeneralityofhispowers,havepowerstodirectsuchmeasurements,computations,orvaluationsasmayinhisopinionbedesirableinordertodeterminetherightsofthepartiesandassessandawardanysumswhichoughttohavebeenthesubjectoforincludedinanyduepayments.

10.2.5 NeitherPartyshallbelimitedintheproceedingsbeforethearbitratorstotheevidence,ortothereasonsforthedisputegiveninitsnoticeofaclaimordispute.

10.2.6 Arbitrationmaybecommencedpriortoorafterdeliveryofthegoods.TheobligationsofthePartiesshallnotbealteredbyreasonofanyarbitrationbeingconductedduringtheprogressofthedeliveryofgoods.

10.2.7 Thetermsoftheremunerationofeachorallthemembersof Arbitrationshallbemutuallyagreeduponbythe Partieswhenagreeingthetermsofappointment.EachPartyshallberesponsibleforpayingone-halfofthisremuneration.

10.3 ArbitrationProceedings

10.3.1 Arbitrationproceedingswithnationalsupplierswillbeconductedinaccordancewiththe ArbitrationLawsofKenya.Incaseofanyclaimordispute,suchclaimordisputeshallbenotifiedinwritingbyeitherpartytotheotherwitharequesttosubmitittoarbitrationandtoconcurintheappointmentofan Arbitratorwithinthirtydaysofthenotice.Thedisputeshallbereferredtothearbitrationandfinaldecisionofapersonorpersonstobeagreedbetweentheparties.Failingagreementtoconcurintheappointmentofan Arbitrator,the Arbitratorshallbeappointed,ontherequestoftheapplyingparty,bytheChairmanorViceChairmanofanyofthefollowingprofessionalinstitutions;

i) KenyaNationalChamberofCommerce

ii) CharteredInstituteof Arbitrators(KenyaBranch)

iii) TheLawSocietyofKenya

10.3.2 Theinstitutionwrittentofirstbytheaggrievedpartyshalltakeprecedenceoverallotherinstitutions.

10.3.3 AlternativeArbitrationProceedings

Alternatively,thePartiesmayreferthemattertotheNairobiCentreforInternationalArbitration(NCIA)whichoffersaneutralvenuefortheconductofnationalandinternationalarbitrationwithcommitmenttoprovidinginstitutionalsupporttothearbitralprocess.

10.4 ArbitrationwithForeignSuppliers

10.4.1 Arbitrationwithforeignsuppliersshallbeconductedinaccordancewiththearbitrationrulesoftheunitednationscommissionon InternationalTradeLaw(UNCITRAL);orwithproceedingsadministeredbytheInternationalChamberofCommerce(ICC)andconductedundertheICCRulesof Arbitration;byoneormorearbitratorsappointedinaccordancewithsaidarbitrationrules.

10.4.2 Theplaceofarbitrationshallbealocationspecifiedintheb**SCC;**andthearbitrationshallbeconductedinthelanguagefo rcommunicationsdefinedinSub-Clause1.4[LawandLanguage].

10.5 AlternativeArbitrationProceedings

Alternatively,thePartiesmayreferthemattertotheNairobiCentreforInternationalArbitration(NCIA)whichoffers aneutralvenuefortheconductofnationalandinternationalarbitrationwithcommitmenttoprovidinginstitutionalsu pporttothearbitralprocess.

10.6 FailuretoComplywithArbitrator'sDecision

10.6.1 TheawardofsuchArbitratorshallbefinalandbindinguponthe parties.

10.6.1 IntheeventthataPartyfailstocomplywithafinalandbindingArbitrator'sdecision,thentheotherPartymay,withoutprejud icetoanyotherrightsitmayhave,referthemattertoacompetentcourtoflaw.

10.7 Contractoperationscontinue

Notwithstandinganyreferencetoarbitrationherein,

a) thepartiesshallcontinuetoperformtheirrespectiveobligationsundertheContractunlesstheyotherwiseagree; and

b) theProcuringEntityshallpaytheSupplieranymoniesduetheSupplier.

11. InspectionsandAuditbytheProcuringEntity

11.1 TheSuppliershallkeep,andshallcauseitsSubcontractorstokeep,accurateandsystematicaccountsandrecordsinres pectoftheGoodsinsuchformanddetailsaswillclearlyidentifyrelevanttime,changesandcosts.

11.2 Pursuanttoparagraph2.2ofInstructiontoTenderers,theSuppliershallpermitandshallcauseitssubcontractorstoper mit,theProcuringEntityand/orpersonsappointedbytheProcuringEntityorbyotherstatutorybodiesoftheGovernm enttoinspecttheSiteand/ortheaccountsandrecordsrelatingtotheprocurementprocess,selectionand/orcontractexe cution,andtohavesuchaccountsandrecordsauditedbyauditorsappointedbytheProcuringEntity.TheSupplier'sand itsSubcontractors'attentionisdrawntoSub-Clause3.1whichprovides,interalia,thatactsintendedtomateriallyimpedetheexerciseoftheProcuringEntity'sinsp ectionandauditrightsconstituteaprohibitedpracticesubjecttocontracttermination,aswellastoadeterminationofin eligibility.

12. ScopeofSupply

12.1 TheGoodsandRelatedServicestobesuppliedshallbeasspecifiedintheScheduleofRequirements.

3. DeliveryandDocuments

13.1 SubjecttoGCCSub-Clause33.1,thedeliveryoftheGoodsandcompletionoftheRelatedServicesshallbeinaccordancewiththeListofGo odsandDeliverySchedulespecifiedintheSupplyRequirements.Thedetailsofshippingandotherdocumentstobefur nishedbytheSupplierarespecifiedinthe**SCC.**

4. Supplier'sResponsibilities

14.1 TheSuppliershallsupplyalltheGoodsandRelatedServicesincludedintheScopeofSupplyinaccordancewit hGCCClause12,andtheDeliveryandCompletionSchedule,asperGCCClause13.

5. ContractPrice

15.1 PricechargedbytheSupplierfortheGoodssuppliedandtheRelatedServicesperformedundertheContractshallnot varyfromthepricesquotedbytheSupplierinitsTender,withtheexceptionofanypriceadjustmentsauthorizedinthe**S CC.**

15.2 Wherethecontractpriceisdifferentfromthecorrectedtenderprice,inordertoensurethesupplierisnotpaidlessormor erelativetothecontractprice(*whichwouldbethetenderprice*),anypartialpaymentvaluationbased

onratesinthescheduleofpricesintheTender,willbeadjustedbyaplusorminuspercentage.Thepercentagealreadyworkedoutduringtenderevaluationisworkedoutasfollows:*(correctedtenderprice–tenderprice)/tenderpriceX100*.

6. TermsofPayment

16.1 TheSuppliershallrequestforpaymentbysubmittinginvoice(s),deliverynote(s)andanyotherrelevantdocumentsasspecifiedintheSCCtotheProcuringEntity.

16.2 PaymentsshallbemadepromptlybytheProcuringEntity,butnotlaterthanthirty(30)daysaftersubmissionofaninvoicebytheSupplier,andaftertheProcuringEntityhasacceptedit.

16.3 WhereaProcuringEntityrejectsGoodsandRelatedServices,inpartorwholly,theprocuringEntityshallpromptlyinformtheSuppliertocollect,replaceorrectifyasappropriateandgivereasonsforrejection.TheSuppliershallsubmitafreshinvoice,deliverynoteandanyotherrelevantdocumentsasspecifiedintheSCC.

16.4 ThecurrenciesinwhichpaymentsshallbemadetotheSupplierunderthisContractshallbethoseinwhichtheTenderpriceisexpressed.

16.5 IntheeventthattheProcuringEntityfailstopaytheSupplieranypaymentbyitsduedateorwithintheperiodsetforthinthe**SCC,**theProcuringEntitymaypaytotheSupplierinterestontheamountofsuchdelayedpaymentattherateshowninthe**SCC,**fortheperiodofdelayuntilpaymenthasbeenmadeinfull,whetherbeforeorafterjudgmentorarbitrageaward.

TaxesandDuties

17.1TheSuppliershallbeentirelyresponsibleforalltaxes,duties,licensefees,andothersuchleviesincurredtodelivertheGoodsandRelatedServicestotheProcuringEntityatthefinaldeliverypoint.

17.3Ifanytaxexemptions,reductions,allowancesorprivilegesmaybeavailabletotheSupplierinKenya,theSuppliershallinformtheProcuringEntityandtheProcuringEntityshalluseitsbesteffortstoenabletheSuppliertobenefitfromanysuchtaxsavingstothemaximumallowableextent.

7. PerformanceSecurity

18.1 IfrequiredasspecifiedintheSCC,theSuppliershall,withintwenty-eight(28)daysofthenotificationofcontractaward,provideaperformancesecurityfortheperformanceoftheContractintheamountspecifiedinthe**SCC.**

18.2 TheproceedsofthePerformanceSecurityshallbepayabletotheProcuringEntityascompensationforanylossresultingfromtheSupplier'sfailuretocompleteitsobligationsundertheContract.

18.3 Asspecifiedin**theSCC**,thePerformanceSecurity,ifrequired,shallbedenominatedinthecurrency(ies)oftheContract,orinafreelyconvertiblecurrencyacceptabletotheProcuringEntity;andshallbeinoneoftheformatsstipulatedbytheProcuringEntityin**theSCC**,orinanotherformatacceptabletotheProcuringEntity.

18.4 ThePerformanceSecurityshallbedischargedbytheProcuringEntityandreturnedtotheSuppliernotlaterthanthirty(30)daysfollowingthedateofCompletionoftheSupplier'sperformanceobligationsundertheContract,includinganywarrantyobligations,unlessspecifiedotherwiseinthe**SCC.**

8. Copyright

19.1Thecopyrightinalldrawings,documents,andothermaterialscontainingdataandinformationfurnishedtotheProcuringEntitybytheSupplierhereinshallremainvestedintheSupplier,or,iftheyarefurnishedtotheProcuringEntitydirectlyorthroughtheSupplierbyanythirdparty,includingsuppliersofmaterials,thecopyrightinsuchmaterialsshallremainvestedinsuchthirdparty.

9. ConfidentialInformation

20.1 TheProcuringEntityandtheSuppliershallkeepconfidentialandshallnot,withoutthewrittenconsentoftheotherpartyhereto,divulgetoanythirdpartyanydocuments,data,orotherinformationfurnisheddirectlyorindirectlybytheotherpartyheretoinconnectionwiththeContract,whethersuchinformationhasbeenfurnishedpriorto,duringorfollowingcompletionorterminationoftheContract.NotwithstandingtheabOve,theSuppliermayfurnishtoitsSub-Suppliersuchdocuments,data,andotherinformationitreceivesfromtheProcuringEntitytotheextentrequiredforth

eSubSuppliertoperformitsworkundertheContract,inwhicheventtheSuppliershallobtainfromsuchSubSupplierundertakingofconfidentialitysimilartothatimposedontheSupplierunderGCCClause20.

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 TheaboveprovisionsofGCCClause20shallnotinanywaymodifyanyundertakingofconfidentialitygivenbyeitherofthepartiesheretopriortothedateoftheContractinrespectoftheSupplyoranypartthereof.

20.5 TheprovisionsofGCCClause20shallsurvivecompletionortermination,forwhateverreason,oftheContract.

10. Subcontracting

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

21.2 SubcontractsshallcomplywiththeprovisionsofGCCClauses3and7.

11. SpecificationsandStandards

22.1 TechnicalSpecificationsandDrawings

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

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

c) WhereverreferencesaremadeintheContracttocodesandstandardsinaccordancewithwhichitshallbeexecuted,theeditionortherevisedversionofsuchcodesandstandardsshallbethosespecifiedintheScheduleofRequirements.DuringContractexecution,anychangesinanysuchcodesandstandardsshallbeappliedonlyafterapprovalbytheProcuringEntityandshallbetreatedinaccordancewithGCCClause33.

12. PackingandDocuments

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

23.2 Thepacking,marking,anddocumentationwithinandoutsidethepackagesshallcomplystrictlywithsuchspecialrequirementsasshallbeexpresslyprovidedforintheContract,includingadditionalrequirements,ifany,specified**inthe SCC**,andinanyotherinstructionsorderedbytheProcuringEntity.

13. Insurance

24.1UnlessotherwisespecifiedintheSCC,theGoodssuppliedundertheContractshallbefullyinsured—inafreelyconvertiblecurrencyfromaneligiblecountry—againstlossordamageincidentaltomanufactureoracquisition,transportation,storage,anddelivery,inaccordancewiththeapplicableIncotermsorinthemannerspecifiedintheSCC.

14. TransportationandIncidentalServices

25.1 UnlessotherwisespecifiedintheSCC,responsibilityforarrangingtransportationoftheGoodsshallbeinaccordance withthespecifiedIncoterms.

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 PricechargedbytheSupplierforincidentalservices,ifnotincludedintheContractPricefortheGoods,shallbeagreed uponinadvancebythepartiesandshallnotexceedtheprevailingrateschargedtootherpartiesbytheSupplierforsimilarservices

15. InspectionsandTests

26.1 TheSuppliershallatitsownexpenseandatnocosttotheProcuringEntitycarryoutallsuchtestsand/orinspectionsoftheGoodsandRelatedServicesasarespecifiedintheSCC.

26.2 TheinspectionsandtestsmaybeconductedonthepremisesoftheSupplieroritsSubcontractor,atpointofdelivery,and/orattheGoods'finaldestination,orinanotherplaceinKenyaasspecifiedintheSCC.SubjecttoGCCSub-Clause26.3,ifconductedonthepremisesoftheSupplieroritsSubcontractor,allreasonablefacilitiesandassistance,includingaccesstodrawingsandproductiondata,shallbefurnishedtotheinspectorsatnochargetotheProcuringEntity.

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

26.4 WhenevertheSupplierisreadytocarryoutanysuchtestandinspection,itshallgiveareasonableadvancenotice,includingtheplaceandtime,totheProcuringEntity.TheSuppliershallobtainfromanyrelevantthirdpartyormanufacturer anynecessarypermissionorconsenttoenabletheProcuringEntityoritsdesignatedrepresentativetoattendthetestand/orinspection.

26.5 TheProcuringEntitymayrequiretheSuppliertocarryoutanytestand/orinspectionnotrequiredbytheContractbutdeemednecessarytoverifythatthecharacteristicsandperformanceoftheGoodscomplywiththetechnicalspecificationscodesandstandardsundertheContract,providedthattheSupplier'sreasonablecostsandexpensesincurredintheca rryingoutofsuchtestand/orinspectionshallbeaddedtotheContractPrice.Further,ifsuchtestand/orinspectionimpedestheprogressofmanufacturingand/ortheSupplier'sperformanceofitsotherobligationsundertheContract,dueallowancewillbemadeinrespectoftheDeliveryDatesandCompletionDatesandtheotherobligationssoaffected.

26.6 TheSuppliershallprovidetheProcuringEntitywithareportoftheresultsofanysuchtestand/orinspection.

26.7 TheProcuringEntitymayrejectanyGoodsoranypartthereofthatfailtopassanytestand/orinspectionordonotconformtothespecifications.TheSuppliershalleitherrectifyorreplacesuchrejectedGoodsorpartsthereoformakealterationsnecessarytomeetthespecificationsatnocosttotheProcuringEntity,andshallrepeatthetestand/orinspection,atnocosttotheProcuringEntity,upongivinganoticepursuanttoGCCSub-Clause26.4.

26.8 TheSupplieragreesthatneithertheexecutionofatestand/orinspectionoftheGoodsoranypartthereof,northeattendancebytheProcuringEntityoritsrepresentative,northeissueofanyreportpursuanttoGCCSub-Clause26.6,shallreleasetheSupplierfromanywarrantiesorotherobligationsundertheContract.

16. LiquidatedDamages

27.1ExceptasprovidedunderGCCClause32,iftheSupplierfailstodeliveranyoralloftheGoodsbytheDate(s)ofdeliveryorperformtheRelatedServiceswithintheperiodspecifiedintheContract,theProcuringEntitymaywithoutprejudicetoallitsotherremediesundertheContract,deductfromtheContractPrice,asliquidateddamages,asumequivalenttothepercentagespecifiedinthe**SCC**ofthedeliveredpriceofthedelayedGoodsorunperformedServicesforeachweekorpartthereofofdelayuntilactualdeliveryorperformance,uptoamaximumdeductionofthepercentagespecifiedinthose **SCC.**Oncethemaximumisreached,theProcuringEntitymayterminatetheContractpursuanttoGCCClause35.

28. Warranty

28.1 TheSupplierwarrantsthatalltheGoodsarenew,unused,andofthemostrecentorcurrentmodels,andthattheyincorporateallrecentimprovementsindesignandmaterials,unlessprovidedotherwiseintheContract.

28.2 SubjecttoGCCSub-Clause22.1(b),theSupplierfurtherwarrantsthattheGoodsshallbefreefromdefectsarisingfromanyactoromissionoftheSupplierorarisingfromdesign,materials,andworkmanship,undernormaluseintheconditionsprevailinginthecountryoffinaldestination.

28.3 Unlessotherwisespecifiedinthe**SCC,**thewarrantyshallremainvalidfortwelve(12)monthsaftertheGoods,oranyportionthereofasthecasemaybe,havebeendeliveredtoandacceptedatthefinaldestinationindicatedinthe**SCC,**orforeighteen(18)monthsafterthedateofshipmentfromtheportorplaceofloadinginthecountryoforigin,whicheverperiodconcludesearlier.

28.4 TheProcuringEntityshallgivenoticetotheSupplierstatingthenatureofanysuchdefectstogetherwithallavailableevidencethereof,promptlyfollowingthediscoverythereof.TheProcuringEntityshallaffordallreasonableopportunityfortheSuppliertoinspectsuchdefects.

28.5 Uponreceiptofsuchnotice,theSuppliershall,withintheperiodspecifiedinthe**SCC,**expeditiouslyrepairorreplaceth edefectiveGoodsorpartsthereof,atnocosttotheProcuringEntity.

28.6 Ifhavingbeennotified,theSupplierfailstoremedythedefectwithintheperiodspecifiedinthe**SCC,**theProcuringEntitymayproceedtotakewithinareasonableperiodsuchremedialactionasmaybenecessary,attheSupplier'sriskandexpenseandwithoutprejudicetoanyotherrightswhichtheProcuringEntitymayhaveagainsttheSupplierundertheContract.

29. PatentIndemnity

29.1 TheSuppliershall,subjecttotheProcuringEntity'scompliancewithGCCSub-Clause29.2,indemnifyandholdharmlesstheProcuringEntityanditsemployeesandofficersfromandagainstanyandallsuits,actionsoradministrativeproceedings,claims,demands,losses,damages,costs,andexpensesofanynature,includingattorney'sfeesandexpenses,whichtheProcuringEntitymaysufferasaresultofanyinfringementorallegedinfringementofanypatent,utilitymodel,registereddesign,trademark,copyright,orotherintellectualpropertyrightregisteredorotherwiseexistingatthedateoftheContractbyreasonof:

a) theinstallationoftheGoodsbytheSupplierortheuseoftheGoodsinthecountrywheretheSiteislocated;and
b) thesaleinanycountryoftheproductsproducedbytheGoods.

SuchindemnityshallnotcoveranyuseoftheGoodsoranypartthereofotherthanforthepurposeindicatedbyortobereasonablyinferredfromtheContract,neitheranyinfringementresultingfromtheuseoftheGoodsoranypartthereof,oranyproductsproducedtherebyinassociationorcombinationwithanyotherequipment,plant,ormaterialsnotsuppliedbytheSupplier,pursuanttotheContract.

29.2 IfanyproceedingsarebroughtoranyclaimismadeagainsttheProcuringEntityarisingoutofthemattersreferredtoinGCCSub-Clause29.1,theProcuringEntityshallpromptlygivetheSupplieranoticethereof,andtheSuppliermayatitsownexpenseandintheProcuringEntity'snameconductsuchproceedingsorclaimandanynegotiationsforthesettlementofanysuchproceedingsorclaim.

29.3 IftheSupplierfailstonotifytheProcuringEntitywithintwenty-eight(28)daysafterreceiptofsuchnoticethatitintendstoconductanysuchproceedingsorclaim,thentheProcuringEntityshallbefreetoconductthesameonitsownbehalf.

29.4 TheProcuringEntityshall,attheSupplier'srequest,affordallavailableassistancetotheSupplierinconductingsuchproceedingsorclaim,andshallbereimbursedbytheSupplierforallreasonableexpensesincurredinsodoing.

29.5 TheProcuringEntityshallindemnifyandholdharmlesstheSupplieranditsemployees,officers,andSubcontractorsfromandagainstanyandallsuits,actionsoradministrativeproceedings,claims,demands,losses,damages,costs,andexpensesofanynature,includingattorney'sfeesandexpenses,whichtheSuppliermaysufferasaresultofanyinfringementorallegedinfringementofanypatent,utilitymodel,registereddesign,trademark,copyright,orotherintellectualpropertyrightregisteredorotherwiseexistingatthedateoftheContractarisingoutoforinconnectionwithanydesign,data,drawing,specification,orotherdocumentsormaterialsprovidedordesignedbyoronbehalfoftheProcuringEntity.

30. LimitationofLiability

30.1 Exceptincasesofcriminalnegligenceorwillfulmisconduct,

a) theSuppliershallnotbeliabletotheProcuringEntity,whetherincontract,tort,orotherwise,foranyindirectorconsequentiallossordamage,lossofuse,lossofproduction,orlossofprofitsorinterestcosts,providedthatthisexclusionshallnotapplytoanyobligationoftheSuppliertopayliquidateddamagestotheProcuringEntity,and

b) theaggregateliabilityoftheSuppliertotheProcuringEntity,whetherundertheContract,intortorotherwise,shallnotexceedthetotalContractPrice,providedthatthislimitationshallnotapplytothecostofrepairingorreplacingdefectiveequipment,ortoanyobligationofthesuppliertoindemnifytheProcuringEntitywithrespecttopatentinfringement.

31. ChangeinLawsandRegulations

31.1 UnlessotherwisespecifiedintheContract,ifafterthedateof30dayspriortodateofTendersubmission,anylaw,regulation,ordinance,orderorbylawhavingtheforceoflawisenacted,promulgated,abrogated,orchangedinKenya(whichshallbedeemedtoincludeanychangeininterpretationorapplicationbythecompetentauthorities)thatsubsequentlyaffectstheDeliveryDateand/ortheContractPrice,thensuchDeliveryDateand/orContractPriceshallbecorrespondinglyincreasedordecreased,totheextentthattheSupplierhastherebybeenaffectedintheperformanceofanyofitsobligationsundertheContract.Notwithstandingtheforegoing,suchadditionalorreducedcostshallnotbeseparatelypaidorcreditedifthesamehasalreadybeenaccountedforinthepriceadjustmentprovisionswhereapplicable,inaccordancewithGCCClause15.

32. ForceMajeure

32.1 TheSuppliershallnotbeliableforforfeitureofitsPerformanceSecurity,liquidateddamages,orterminationfordefaultifandtotheextentthatitsdelayinperformanceorotherfailuretoperformitsobligationsundertheContractistheresultofaneventofForceMajeure.

32.2 ForpurposesofthisClause,“ForceMajeure”meansaneventorsituationbeyondthecontroloftheSupplierthatisnotfo reseeable,isunavoidable,anditsoriginisnotduetonegligenceorlackofcareonthepartoftheSupplier.Sucheventsma yinclude,butnotbelimitedto,actsoftheProcuringEntityinitssovereigncapacity,warsorrevolutions,fires,floods,ep idemics,quarantinerestrictions,andfreightembargoes.

32.3 IfaForceMajeuresituationarises,theSuppliershallpromptlynotifytheProcuringEntityinwritingofsuchconditiona ndthecausethereof.UnlessotherwisedirectedbytheProcuringEntityinwriting,theSuppliershallcontinuetoperfor mitsobligationsundertheContractasfarasisreasonablypractical,andshallseekallreasonablealternativemeansforp erformancenotpreventedbytheForceMajeureevent.

33. ChangeOrdersandContractAmendments

33.1 TheProcuringEntitymayatanytimeordertheSupplierthroughnoticeinaccordanceGCCClause8,tomakechanges withinthegeneralscopeoftheContractinanyoneormoreofthefollowing:

a) drawings,designs,orspecifications,whereGoodstobefurnishedundertheContractaretobespecificallymanuf acturedfortheProcuringEntity;

b) themethodofshipmentorpacking;

c) theplaceofdelivery;and

d) theRelatedServicestobeprovidedbytheSupplier.

33.2 Ifanysuchchangecausesanincreaseordecreaseinthecostof,orthetimerequiredfor,theSupplier'sperformanceofan yprovisionsundertheContract,anequitableadjustmentshallbemadeintheContractPriceorintheDelivery/Complet ionSchedule,orboth,andtheContractshallaccordinglybeamended.AnyclaimsbytheSupplierforadjustmentunder thisClausemustbeassertedwithintwenty-eight(28)daysfromthedateoftheSupplier'sreceiptoftheProcuringEntity'schangeorder.

33.3 PricestobechargedbytheSupplierforanyRelatedServicesthatmightbeneededbutwhichwerenotincludedintheCo ntractshallbeagreeduponinadvancebythepartiesandshallnotexceedtheprevailingrateschargedtootherpartiesbyt heSupplierforsimilarservices.

33.4 **ValueEngineering:**TheSuppliermayprepare,atitsowncost,avalueengineeringproposalatanytimeduringtheperf ormanceofthecontract.Thevalueengineeringproposalshall,ataminimum,includethefollowing;

a) theproposedchange(s),andadescriptionofthedifferencetotheexistingcontractrequirements;

b) afullcost/benefitanalysisoftheproposedchange(s)includingadescriptionandestimateofcosts(includinglife cyclecosts)theProcuringEntitymayincurinimplementingthevalueengineeringproposal;and

c) adescriptionofanyeffect(s)ofthechangeonperformance/functionality.

33.5 TheProcuringEntitymayacceptthevalueengineeringproposaliftheproposaldemonstratesbenefitsthat:

a) acceleratesthedeliveryperiod;or

b) reducestheContractPriceorthelifecyclecoststotheProcuringEntity;or

c) improvesthequality,efficiencyorsustainabilityoftheGoods;or

d) yieldsanyotherbenefitstotheProcuringEntity,withoutcompromisingthenecessaryfunctionsoftheFacilities.

33.6 IfthevalueengineeringproposalisapprovedbytheProcuringEntityandresultsin:

a) areductionoftheContractPrice;theamounttobepaidtotheSuppliershallbethepercentagespecified**intheSCC** ofthereductionintheContractPrice;or

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

33.7 Subjecttotheabove,novariationinormodificationofthetermsoftheContractshallbemadeexceptbywrittenamend mentsignedbytheparties.

34. ExtensionsofTime

34.1 IfatanytimeduringperformanceoftheContract,theSupplieroritssubcontractorsshouldencounterconditionsimpedingtimelydeliveryoftheGoodsorcompletionofRelatedServicespursuanttoGCCClause13,theSuppliershallpromptlynotifytheProcuringEntityinwritingofthedelay,itslikelyduration,anditscause.Assoonaspracticableafterreceiptoftheprocuring Supplier'snotice,theProcuringEntityshallevaluatethesituationandmayatitsdiscretionextendtheSupplier'stimeforperformance,inwhichcasetheextensionshallberatifiedbythepartiesbyamendmentoftheContract.

34.2 ExceptincaseofForceMajeure,asprovidedunderGCCClause32,adelaybytheSupplierintheperformanceofitsDeliveryandCompletionobligationsshallrendertheSupplierliabletotheimpositionofliquidateddamagespursuanttoGCCClause26,unlessanextensionoftimeisagreedupon,pursuanttoGCCSub-Clause34.1.

7. Termination

35.1 TerminationforDefault

a) TheProcuringEntity,withoutprejudicetoanyotherremedyforbreachofContract,bywrittennoticeofdefaultsenttotheSupplier,mayterminatetheContractinwholeorinpart:
   i) iftheSupplierfailstodeliveranyorallotheGoodswithintheperiodspecifiedintheContract,orwithinany extensionthereofgrantedbytheProcuringEntitypursuanttoGCCClause34;
   ii) iftheSupplierfailstoperformanyotherobligationundertheContract;or
   iii) iftheSupplier,inthejudgmentoftheProcuringEntityhasengagedinFraudandCorruption,asdefinedinparagraph2.2aoftheAppendixtotheGCC,incompetingfororinexecutingtheContract.

b) IntheeventtheProcuringEntityterminatestheContractinwholeorinpart,pursuanttoGCCClause35.1(a),theProcuringEntitymayprocure,uponsuchtermsandinsuchmannerasitdeemsappropriate,GoodsorRelatedServicessimilartothoseundeliveredornotperformed,andtheSuppliershallbeliabletotheProcuringEntityforanyadditionalcostsforsuchsimilarGoodsorRelatedServices.However,theSuppliershallcontinueperformanceoftheContracttotheextentnotterminated.

35.2 TerminationforInsolvency.

TheProcuringEntitymayatanytimeterminatetheContractbygivingnoticetotheSupplieriftheSupplierbecomesbankruptorotherwiseinsolvent.Insuchevent,terminationwillbewithoutcompensationtotheSupplier,providedthatsuchterminationwillnotprejudiceoraffectanyrightofactionorremedythathasaccruedorwillaccruethereaftertotheProcuringEntity

35.2 TerminationforConvenience.

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

b) TheGoodsthatarecompleteandreadyforshipmentwithintwenty-eight(28)daysaftertheSupplier'sreceiptofnoticeofterminationshallbeacceptedbytheProcuringEntityatthe Contracttermsandprices.FortheremainingGoods,theProcuringEntitymayelect:
   i) tohaveanyportioncompletedanddeliveredattheContracttermsandprices;and/or
   ii) tocanceltheremainderandpaytotheSupplieranagreedamountforpartiallycompletedGoodsandRelatedServicesandformaterialsandpartspreviouslyprocuredbytheSupplier.

8. Assignment

36.1 NeitherthetheProcuringEntitynortheSuppliershallassign,inwholeorinpart,theirobligationsunderthisContract,exceptwithpriorwrittenconsentoftheotherparty.

9. ExportRestriction

37.1 NotwithstandinganyobligationundertheContracttocompleteallexportformalities,anyexportrestrictionsattributabletotheProcuringEntity,toKenya,ortotheuseoftheproducts/goods,systemsorservicestobesupplied,whicharisefromtraderegulationsfromacountrysupplyingthoseproducts/goods,systemsorservices,andwhichsubstantiallyimpedetheSupplierfrommeetingitsobligationsundertheContract,shallreleasetheSupplierfromtheobligationtoprovidedeliveriesorservices,alwaysprovided,however,thattheSuppliercandemonstratetothesatisfactionoftheProcuringEntitythatithascompletedallformalitiesinatimelymanner,includingapplyingforpermits,authorizationsandlicensesnecessaryfortheexportoftheproducts/goods,systemsorservicesundertheTermsoftheContract.TerminationoftheContractonthisbasisshallbefortheProcuringEntity'sconveniencepursuanttoSub-Clause35.3.

SECTIONVII-SPECIALCONDITIONSOFCONTRACT

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

[TheProcuringEntityshallselectinserttheappropriatewordingusingthesamplesbeloworotheracceptablewording,andeletethetextinitalics].

GCC1.1(j)	The Procuring Entity is: *[Insert complete legal name of the Procuring Entity]*
GCC 28.3	The Final Destination(s) is/are: *[Insert name(s) and detailed informationon the location(s) of the site(s)]*
GCC 4.2 (a)	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 there under shall not be as prescribed by Incoterms, they shall be as prescribed by: *[exceptional; refer to other internationally accepted trade terms]*
GCC4.2(b)	The version edition of Incoterms shall be *INCOTERMS 2015*
GCC8.1	For **notices**, the Procuring Entity's address shall be: Attention: *[insert full name of person, if applicable]* Postal address (full postal address) Physical Address (fullLocation *insertcity,streetname,Buildingnamed floor number, room number)* Telephone: *[include telephone number, including country and city codes]* Electronic mail address*: [insert e-mail address, if applicable]*
GCC10.4.2	The place of arbitration shall be --(specify City and Country).
GCC13.1	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 details etc.].* 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.
GCC15.1	The prices charged for the Goods supplied and therelatedServicesperformed*[insert "shall" or "shall not," as appropriate]* be adjustable. If prices are adjustable, the following method shall be used to calculate the price adjustment *[see attachment to these SCC for a sample Price Adjustment Formula]*

GCC16.1	***Sampleprovision*** GCC16.1-ThemethodandconditionsofpaymenttobemadetotheSupplierunderthisContractshallbeasfollows: **A.PaymentforGoodssuppliedfromabroad:** Paymentofforeigncurrencyportionshallbemadein*[insertcurrencyoftheContractPrice}* inthefollowingmanner: (i)**AdvancePayment:**Ten(10)percentoftheContractPriceshallbepaidwithinthirty (30)daysofsigningoftheContract,anduponsubmissionofclaimandabankguaranteeforequivalentamountvaliduntiltheGoodsaredeliveredand,intheform,providedintheTenderingdocumentoranotherformacceptabletotheProcuringEntity. (ii) **OnShipment:**Eighty(80)percentoftheContractPriceoftheGoodsshippedshallbepaidthroughirrevocableconfirmedletterofcreditopenedinfavouroftheSupplierinabankinitscountry,uponsubmissionofdocumentsspecifiedinGCCClause12. (iii) **OnAcceptance:**Ten(10)percentoftheContractPriceofGoodsreceivedshallbepaidwithinthirty(30)daysofreceiptoftheGoodsuponsubmissionofclaimsupportedbytheacceptancecertificateissuedbytheProcuringEntity. B. **PaymentoflocalcurrencyportionofaforeignSuppliershallbemadein**Kenyashillingswithinthirty(30)daysofpresentationofclaimsupportedbyacertificatefromtheProcuringEntitydeclaringthattheGoodshavebeendeliveredandthatallothercontractedServiceshavebeenperformed. **C. PaymentforGoodsandServicessuppliedfromwithinKenya:** PaymentforGoodsandServicessuppliedfromwithinKenyashallbemadein *[currency]*,asfollows: (i)**AdvancePayment:**Ten(10)percentoftheContractPriceshallbepaidwithinthirty (30)daysofsigningoftheContractagainstaninvoiceandabankguaranteefortheequivalentamountandintheformprovidedintheTenderingdocumentoranotherformacceptabletotheProcuringEntity. (ii) **OnDelivery:**Eighty(80)percentoftheContractPriceshallbepaidonreceiptoftheGoodsandupon submissionofthedocumentsspecifiedinGCCClause13.Thebankguaranteeshallthenbereleased. (iii) **OnAcceptance:**Theremainingten(10)percentoftheContractPriceshallbepaidtotheSupplierwithinthirty(30)daysafterthedateoftheacceptancecertificatefortherespectivedeliveryissuedbytheProcuringEntity.
GCC16.5	Thepayment-delayperiodafterwhichtheProcuringEntityshallpayinteresttothesuppliershallbe*[insertnumber]*days. Theinterestratethatshallbeappliedis*[insertnumber}*%
GCC18.1	APerformanceSecurity*[insert"shall"or"shallnot"berequired}* *[IfaPerformanceSecurityisrequired,insert"theamountofthePerformanceSecurityshallbe:[insertamount]* *[TheamountofthePerformanceSecurityisusuallyexpressedasapercentageoftheContractPrice.Thepercentagevariesaccordingtotheprocuring Entity'sperceivedriskandimpactofnon-performancebytheSupplier.A10%percentageisusedundernormalcircumstances]*
GCC18.3	Ifrequired,thePerformanceSecurityshallbeintheformof:*[insert"aDemandGuarantee"or"aPerformanceBond"}* Ifrequired,thePerformancesecurityshallbedenominatedin*[insert"afreelyconvertiblecurrencyacceptabletotheProcuringEntity"or"thecurrenciesofpaymentoftheContract,inaccordancewiththeirportionsoftheContractPrice"}*

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]*
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)]*
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: *[insert name(s) of location(s)]*
GCC 27.1	The liquidated damage shall be: *[insert number]* % per week
GCC 27.1	The maximum amount of liquidated damages shall be: *[insert number]* %
GCC 28.3	The period of validity of the Warranty shall be: *[insert number]* days For purposes of the Warranty, the place(s) of final destination(s) shall be: *[insert name(s) of location(s)]* ***Sample provision*** GCC 28.3- In partial modification of the provisions, the warranty period shallbe__ hours ofoperationor____ months from date of acceptance of the Goodsor( )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(). *[The rate should be higher than the adjustment rate used in the Tender evaluation under TDS 34.6(!)]*

GCC28.5, GCC28.6	Theperiodforrepairorreplacementshallbe:*[insertnumber(s)J*days.
GCC33.4	IfthevalueengineeringproposalisapprovedbytheProcuringEntitytheamounttobepaidtotheSupp liershallbe_% (insertappropriatepercentage. Thepercentageisnormallyupto50%)ofthereductionintheContractPrice.

SECTIONVIII-CONTRACTFORMS

ThisSectioncontainsformswhich,oncecompleted,willformpartoftheContract.TheformsforPerformanceSecurityandAdvancePaymentSecurity,whenrequired,shallonlybecompletedbythesuccessfultendereraftercontractaward.

FORMNo1: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:insertthedatethatthisNotificationistransmittedtoTenderers.TheNotificationmustbesenttoallTendererssimultaneously.Thismeansonthesamedateandasclosetothesametimeaspossible.]

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

   ThisNotificationissentby_____(*Nameanddesignation*)_____

3. NotificationofIntentiontoAward

   I) Employer:_____*[insertthenameoftheEmployer]*

   ii) Project:_____*[insertnameofproject]*

   iii) Contracttitle:_____*[insertthenameofthecontract]*

   iv) Country:_____*[insertcountrywhereITTisissued]*

   v) ITTNo:_____*[insertITTreferencenumberfromProcurementPlan]*

   ThisNotificationofIntentiontoAward(Notification)notifiesyouofourdecisiontoawardtheabovecontract.ThetransmissionofthisNotificationbeginstheStandstillPeriod.DuringtheStandstillPeriod,youmay:

4. Requestadebriefinginrelationtotheevaluationofyourtender

   SubmitaProcurement-relatedComplaintinrelationtothedecisiontoawardthecontract.

   a) Thesuccessfultenderer

      i) NameofsuccessfulTender_____

      ii) AddressofthesuccessfulTender_____

      iii) ContractpriceofthesuccessfulTenderKenyaShillings_____(inwords _____)

   b) OtherTenderers

   NamesofallTendersthatsubmittedaTender.IftheTender'spricewasevaluatedincludetheevaluatedpriceaswellastheTenderpriceasreadout.ForTendersnotevaluated,giveonemainreasontheTenderwasunsuccessful.

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

(Notea)StateNEifnotevaluated

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:_____[*inserttitle/position*]

ii) Agency:_____[*insertnameofEmployer*]

iii) Emailaddress:_____[*insertemailaddress*]

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

e) Thedebriefingmaybeinwriting,byphone,videoconferencecallorinperson.Weshallpromptlyadviseyouinwritinghowthedebriefingwilltakeplaceandconfirmthedateandtime.

f) Ifthedeadlinetorequestadebriefinghasexpired,youmaystillrequestadebriefing.Inthiscase,wewillprovidethedebriefingassoonaspracticable,andnormallynolaterthanfifteen(15)Daysfromthedateofpublicationofthe ContractAwardNotice.

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) AtthispointintheprocurementprocessyoumaysubmitaProcurement-relatedComplaintchallengingthedecisiontoawardthecontract.Youdonotneedtohaverequested,orreceived,adebriefingbeforemakingthiscomplaint.YourcomplaintmustbesubmittedwithintheStandstillPeriodandreceivedbyusbeforetheStandstillPeriodends.

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

Youshouldreadthesedocumentsbeforepreparingandsubmittingyourcomplaint.

e) Therearefouressentialrequirements:

i) Youmustbean'interestedparty'.Inthiscase,thatmeansaTendererwhosubmittedaTenderinthistenderingprocess,andistherecipientofaNotificationofIntentiontoAward.

ii) Thecomplaintcanonlychallengethedecisiontoawardthecontract.

iii) Youmustsubmitthecomplaintwithintheperiodstatedabove.

iv) Youmustinclude,inyourcomplaint,alloftheinformationrequiredtosupportyourcomplaint.

7. <u>StandstillPeriod</u>

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

ii) TheStandstillPeriodlaststen(14)DaysafterthedateoftransmissionofthisNotificationofIntentiontoAward.

iii) TheStandstillPeriodmaybeextendedasstatedinparagraphSection5(d)above.

IfyouhaveanyquestionsregardingthisNotificationpleasedonothesitatetocontactus.

OnbehalfoftheEmployer:

Signature:

_____**N**

ame:_____

_____**T**

itle/position:_____

_____**T**

elephone:_____

_____**E**

mail:_____

FORMNO2:NOTIFICATION OF AWARD-LETTEROFACCEPTANCE

[letterheadpaperoftheEmployer]

_____*[date]*

To_____*[nameandaddressoftheContractor]*

Thisistonotifyyouthatyour Tenderdated_____*[date]*forexecutionofthe _____*[nameoftheContractandidentificationnumber,asgiveninthe ContractData]*fortheAcceptedContractAmount _____*[amountinnumbersandwords][nameofcurrency]*,ascorrectedandmodifiedinaccordancewiththeInstructionstoTenderers,isherebyacceptedby_____ _____*(nameofEmployer).*

YouarerequestedtofurnishthePerformanceSecuritywithin30daysinaccordancewiththeConditionsofContract,using,for thatpurpose,oneofthePerformanceSecurityFormsincludedinSectionVIII,ContractForms,oftheTenderDocument.

AuthorizedSignature:

_____

NameandTitleofSignatory:

_____

NameofEmployer:

_____

Attachment:*ContractAgreement:*_____

NOTIFICATIONOFAWARD-LETTEROFACCEPTANCE

[useletterheadpaperoftheProcuringEntity]

_____*[date]*

To:_____*[nameandaddressoftheSupplier]*

Subject:_____***NotificationofAwardContractNo.***.....

Thisistonotifyyouthatyour Tenderdated_____***[insertdate]***forexecutionofthe _____***[insertnameofthecontractandidentificationnumber,asgivenintheSCC]***fortheAccepted ContractAmountof _____***[insertamountinnumbersandwordsandnameofcurrency]***,ascorrectedandmodifiedinacc ordancewiththeInstructionstotenderersisherebyacceptedbyourAgency.

YouarerequestedtofurnishthePerformanceSecuritywithin30daysinaccordancewiththeConditionsofContract,usingfort hatpurposetheofthePerformanceSecurityFormincludedinSectionX,ContractForms,oftheTenderingdocument.

AuthorizedSignature:

_____

NameandTitleofSignatory:

_____

NameofAgency:_____

Attachment:ContractAgreement

FORMNO3-CONTRACTAGREEMENT

[Thesuccessfultenderershallfillinthisforminaccordancewiththeinstructionsindicated]

THISAGREEMENTmadethe_____*[insert:**number**]*dayof_____ _____*[insert:**month**],[insert:**year**]*.BETWEEN(1)_____ _____*[insertcompletenameofProcuringEntity*andhavingitsprincipalplaceofbusinessat*[insert:addres sofProcuringEntity]*(hereinaftercalled"ProcuringEntity"),oftheonepart;and(2) _____*[insertnameofSupplier**]**,*acorporationincorporatedunderthelawsof*[insert:countryofSupplier**]***an dhavingitsprincipalplaceofbusinessat _____*[insert:addressofSupplier]*(hereinaftercalled"theSupplier"),oftheotherpart.

3. WHEREAStheProcuringEntityinvitedTendersforcertainGoodsandancillaryservices,viz., _____ *[insertbriefdescriptionofGoodsandServices]*andhasacceptedaTenderbytheSupplierforthesupplyofthoseGoodsan dServices,theProcuringEntityandtheSupplieragreeasfollows:

   i) InthisAgreementwordsandexpressionsshallhavethesamemeaningsasare respectivelyassignedtothemintheContractdocumentsreferredto.

   ii) Thefollowingdocumentsshallbedeemedtoformandbereadandconstruedaspartofthis Agreement.ThisAgre ementshallprevailoverallothercontractdocuments.

      a) theLetterofAcceptance

      b) theLetterofTender

      c) theAddendaNos._____(ifany)

      d) SpecialConditionsofContract

      e) GeneralConditionsofContract

      f) theSpecification(includingScheduleofRequirementsandTechnicalSpecifications)

      g) thecompletedSchedules(includingPriceSchedules)

      h) anyotherdocumentlistedinGCCasformingpartoftheContract

   iii) InconsiderationofthepaymentstobemadebytheProcuringEntitytotheSupplierasspecifiedinthisAgreement, theSupplierherebycovenantswiththeProcuringEntitytoprovidetheGoodsandServicesandtoremedydefects thereininconformityinallrespectswiththeprovisionsoftheContract.

4. TheProcuringEntityherebycovenantstopaytheSupplierinconsiderationoftheprovisionoftheGoodsandServicesa ndtheremedyingofdefectstherein,theContractPriceorsuchothersumasmaybecomepayableundertheprovisionsoft heContractatthetimesandinthemannerprescribedbytheContract.

5. INWITNESSwhereofthepartiesheretohavecausedthisAgreementtobeexecutedinaccordancewiththelawsofKen yaontheday,monthandyearindicatedabove.

<u>ForandonbehalfoftheProcuringEntity</u>

Signed:_____*[insertsignature]*

inthecapacityof

_____*[inserttitleorotherappropriatedesignation]*I

nthepresenceof_____

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

<u>donbehalfoftheSupplier</u>

Signed:

_____*[insertsignatureofauthorizedrepresentative(s)oftheSupplier]*in

thecapacityof_____

_____*[inserttitleorotherappropriatedesignation]*inthepresenceof

_____*[insertidentificationofofficialwitness]*

FORMNO.4-PERFORMANCESECURITY[Option1-UnconditionalDemandBankGuarantee]

[Guarantorletterhead]

Beneficiary:_____
_____*[insertnameandAddressof*Employer*]***Dat**
e:_____*[Insertdateofissue]*
Guarantor:_____*[**Insertnameandaddressofplaceofissue,unlessindicatedintheletterhead]*

1. Wehavebeeninformedthat _____(hereinafter called"theContractor")hasenteredintoContractNo._____dated _____with*(nameofEmployer)*_____ _____(theEmployerastheBeneficiary),fortheexecutionof _____(hereinaftercalled"theContract").

2. Furthermore,weunderstandthat,accordingtotheconditionsoftheContract,aperformanceguaranteeisrequired.

3. AttherequestoftheContractor,weasGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysumorsumsnotexceedingintotalanamountof _____(*inwords*),[1]suchsumbeingpayablein thetypesandproportionsofcurrenciesinwhichtheContractPriceispayable,uponreceiptbyusoftheBeneficiary'scomplyingdemandsupportedbytheBeneficiary'sstatement,whetherinthedemanditselforinasepara tesigneddocumentaccompanyingoridentifyingthedemand,statingthattheApplicantisinbreachofitsobligation(s)undertheContract,withouttheBeneficiaryneedingtoproveortoshowgroundsforyourdemandorthesumspecifiedtherein.

4. Thisguaranteeshallexpire,nolaterthanthe….Dayof……,2...…[2],andanydemandforpaymentunderitmustbereceivedbyusattheofficeindicatedaboveonorbeforethatdate.

5. TheGuarantoragreestoaone-timeextensionofthisguaranteeforaperiodnottoexceed*[sixmonths][oneyear]*,inresponsetotheBeneficiary'swrittenrequestforsuchextension,suchrequesttobepresentedtotheGuarantorbeforetheexpiryofthegu arantee.”

_____

[NameofAuthorizedOfficial,signature(s)andseals/stamps]

FORMNo.5-PERFORMANCESECURITY[Option2–PerformanceBond]

Beneficiary:_____

_____*[insertnameandAddressof*Employer*]***Date:**

_____*[Insertdateofissue]*

PERFORMANCEBONDNo.:_____

Guarantor:_____*[Insertnameandaddressofplaceofissue,unlessindicatedintheletterhead]*

1. BythisBond_____asPrincipal(hereinaftercalled“theContractor”)and_____ _____ _____]asSurety(hereinaftercalled“theSurety”),areheldandfirmlyboundunto _____]asObligee(hereinaftercalled“theEmployer”)intheamountof _____forthepaymentofwhichsumwellandtrulytobemadeinthetypesandproportionsofcurrenciesinwhichtheeContractPriceispayable,theContractorandtheSuretybindthemselves,theirheirs,executors,administrators,successorsandassigns,jointlyandseverally,firmlybythesepresents.

2. WHEREAStheContractorhasenteredintoawrittenAgreementwiththeEmployerdatedthe _____dayof,20_____,for _____inaccordancewiththedocuments,plans,specifications,andamendmentsthereto,whichtotheextentthereinprovidedfor,arebyreferencemadeparthereofandarehereinafterreferredtoastheContract.

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

   1) completetheContractinaccordancewithitstermsandconditions;or

   2) obtainatenderortendersfromqualifiedtenderersforsubmissiontotheEmployerforcompletingtheContractinaccordancewithitstermsandconditions,andupondeterminationbytheEmployerandtheSuretyofthelowestresponsiveTenderers,arrangeforaContractbetweensuchTenderer,andEmployerandmakeavailableasworkprogresses(eventhoughthereshouldbeadefaultorasuccessionofdefaultsundertheContractorContractsofcompletionarrangedunderthisparagraph)sufficientfundstopaythecostofcompletionlesstheBalanceoftheContractPrice;butnotexceeding,includingothercostsanddamagesforwhichtheSuretymaybeliablehereunder,theamountsetforthinthefirstparagraphhereof.Theterm“BalanceoftheContractPrice,”asusedinthisparagraph,shallmeanthetotalamountpayablebyEmployertoContractorundertheContract,lesstheamountproperlypaidbyEmployertoContractor;or

   3) paytheEmployertheamountrequiredbyEmployertocompletetheContractinaccordancewithitstermsandconditionsuptoatotalnotexceedingtheamountofthisBond.

4. TheSuretyshallnotbeliableforagreatersumthanthespecifiedpenaltyofthisBond.

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

6. Intestimonywhereof,theContractorhashereuntosethishandandaffixedhisseal,andtheSuretyhascausedthesepresentstobesealedwithhiscorporatesealdulyattestedbythesignatureofhislegalrepresentative,thisday_____of_____20 _____.

SIGNEDON_____onbehalfofBy

_____inthecapacityofI

nthepresenceof

SIGNEDON_____onbehalfof

By

_____inthecapacityofI

nthepresenceof

FORMNO.6-ADVANCEPAYMENTSECURITY[DemandBankGuarantee]

[Guarantorletterhead]

Beneficiary:_____

_____*[InsertnameandAddressof*Employer*]***Date:**

_____*[Insertdateofissue]*

ADVANCEPAYMENTGUARANTEENo.:

_____*[Insertguaranteereferencenumber]***Guarantor:**

_____***[****Insertnameandaddressofplaceofissue,unlessindicatedintheletterhead]*

1. Wehavebeeninformedthat_____(hereinaftercalled“theContractor”)hasenteredintoContractNo. _____*dated*_____withtheBeneficiary,fortheexecutionof _____(hereinaftercalled"theContract").

2. Furthermore,weunderstandthat,accordingtotheconditionsoftheContract,anadvancepaymentinthesum _____(*inwords*)istobemadeagainstanadvancepaymentguarantee.

3. AttherequestoftheContractor,weasGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysumorsums notexceedingintotalanamountof_____(*inwords* _____)[1]uponreceiptbyusoftheBeneficiary'scomplyingdemandsupportedbytheBeneficiary'sstatement,whetherinthedemanditselforinaseparatesigneddocumentaccompanyingoridentifyingthedemand,statingeitherthattheApplicant:

   a) hasusedtheadvancepaymentforpurposesotherthanthecostsofmobilizationinrespectofthegoods;or

   b) hasfailedtorepaytheadvancepaymentinaccordancewiththeContractconditions,specifyingtheamountwhichtheApplicanthasfailedtorepay.

4. AdemandunderthisguaranteemaybepresentedasfromthepresentationtotheGuarantorofacertificatefromtheBeneficiary'sbankstatingthattheadvancepaymentreferredtoabovehasbeencreditedtotheContractoronitsaccountnumber_____at_____

5. ThemaximumamountofthisguaranteeshallbeprogressivelyreducedbytheamountoftheadvancepaymentrepaidbytheContractorasspecifiedincopiesofinterimstatementsorpaymentcertificateswhichshallbepresentedtous.Thisguaranteeshallexpire,atthelatest,uponourreceiptofacopyoftheinterimpaymentcertificateindicatingthatninety(90)percentoftheAcceptedContractAmount,lessprovisionalsums,hasbeen certifiedforpayment,oronthe_____dayof_____,2____,[2]whicheverisearlier. Consequently,anydemandforpaymentunderthisguaranteemustbereceivedbyusatthisofficeonorbeforethatdate.

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

[NameofAuthorizedOfficial,signature(s)andseals/stamps]