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**TENDER NO: CGWP/T/031/2020-2021**

**TENDER NAME: SUPPLY AND DELIVERY OF  
FUELS, OILS, LUBRICANTS AND LIQUIFIED  
PETROLEUM GAS (COOKING GAS)**

**(FRAMEWORK CONTRACT FOR TWO YEARS)**

**NEGOTIATION NO: 852695**

**CLOSING DATE: AS INDICATED IN THE IFMIS  
PORTAL; 9<sup>TH</sup> APRIL, 2021**

**TIME: AS INDICATED IN THE IFMIS PORTAL;  
12:00 NOON**

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## **Introduction**

- 1.1 County Government of West Pokot wishes to procure services of suppliers for a framework contract on supply and delivery of fuels, oils and lubricants. Eligible bidders are invited to submit their bids.

**SECTION I                    INVITATION TO TENDER**  
**DATE 30<sup>th</sup> MARCH, 2021**

**TENDER REF NO.** CGWP/T/031/2020-2021

**TENDER NAME.** SUPPLY AND DELIVERY OF FUELS, OILS, LUBRICANTS AND LIQUIFIED PETROLEUM GAS (COOKING GAS) (FRAMEWORK CONTRACT FOR TWO YEARS)

1.1 County Government of West Pokot invites sealed bids from eligible candidates for supply and delivery of fuels, oil and lubricants. The detailed breakdown of the requirements can be obtained in the schedule of requirements/price schedule stipulated in this bid document.

1.2 Interested eligible bidders **MUST** meet all the conditions as indicated in the tender document and can view and download the documents *free of charge from the county website ([www.westpokotcounty.go.ke](http://www.westpokotcounty.go.ke)) or at National Government tenders portal <http://tenders.go.ke> or at the IFMIS tender portal: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) using the unique IFMIS negotiation number indicated above.*

1.4 Completed tender documents **MUST** be submitted through the **IFMIS SUPPLIER PORTAL: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke)** so as to be received on or before the date and time indicated in the **IFMIS PORTAL**.

Bidders **MUST** also submit a hardcopy of their bid in plain sealed envelope with the tender number clearly marked and bearing no indication of the identity of the tenderer and should be addressed to:

**COUNTY GOVERNMENT OF WEST POKOT**  
**P.O. Box 222-30600**  
**KAPENGURIA**

And placed in the tender box located at the Treasury Building, Ground Floor or sent by post to reach the above address on or before the date and time indicated in the **IFMIS PORTAL**.

**Note:** In case of discrepancy between the IFMIS bid and the submitted hardcopy, the IFMIS bid will prevail over the hard copy.

1.5 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for (120) days from the closing date of the tender.

1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at **Treasury Main Boardroom on Ground Floor.**

**HEAD, SUPPLY CHAIN MANAGEMENT SERVICE**

## SECTION II - INSTRUCTIONS TO TENDERERS

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## **SECTION II - INSTRUCTIONS TO TENDERERS 2.1**

### **Eligible Tenderers**

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2.2 Eligible Goods**

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

### **2.3 Cost of Tendering**

2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.1 No charge for tender document as it is downloaded in the website.

2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## **2.4. The Tender Document**

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

- (i) Invitation to Tender
- (ii) Instructions to tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

2.4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **2.5 Clarification of Documents**

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.6 Amendment of Documents**

2.6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.



## **2.7 Language of Tender**

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.8.1 The tender prepared by the tenderers shall comprise the following components

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 2.14

## **2.9 Tender Forms**

2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

## **2.10 Tender Prices**

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 The validity period of the tender shall be 60 days from the date of opening of the tender.

## **2.11 Tender Currencies**

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

## **2.12 Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## **2.13 Goods Eligibility and Conformity to Tender Documents**

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract



2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security**

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of 2 per cent of the tender price.



2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.22

2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and Furnishing the performance security, pursuant to paragraph 2.28

2.14.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form;  
or
- (b) in the case of a successful tenderer, if the tenderer fails:
  - (i) to sign the contract in accordance with paragraph 2.27  
or
  - (ii) to furnish performance security in accordance with paragraph 2.28

## **2.15 Validity of Tenders**

2.15.1 Tenders shall remain valid for 60 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non responsive.

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **2.16 Format and Signing of Tender**

2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **2.17 Sealing and Marking of Tenders**

2.17.1 2.17.1 The Tenderer shall seal the tender, duly marking the envelope as "**Tender No. and Tender Description**". The envelope shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **as indicated in the invitation to tender**

2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than as indicated in the invitation to tender.

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## **2.19 Modification and Withdrawal of Tenders**

2.19.1 The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.19.3 No tender may be modified after the deadline for submission of tenders.

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.20 Opening of Tenders**

2.19.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at as indicated in the invitation to tender and in the location specified in the Invitation to Tender.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.19.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

2.19.3 The Procuring entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a



clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.22 Preliminary Examination**

2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non conformity.

## **2.23 Conversion to Single Currency**

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2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on The date of tender closing provided by the Central Bank of Kenya.

## **2.24 Evaluation and Comparison of Tenders**

2.24.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **2.25 Preference**

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

## **2.26 Contacting the Procuring entity**

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

## **2.27 Award of Contract**

**(a) Post-qualification**

2.27.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**(b) Award Criteria**

2.27.4 The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

**(c) Procuring entity's Right to Vary quantities**

2.27.5 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

**(d) Procuring entity's Right to Accept or Reject Any or All Tenders**

2.27.6 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the

affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action

## **2.28 Notification of Award**

- 2.28.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties
- 2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

## **2.29 Signing of Contract**

- 2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 2.29.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

## **2.30 Performance Security**

- 2.30.1 Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for

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the annulment of the award and forfeiture of the tender security, in

which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

### **2.31 Corrupt or Fraudulent Practices**

2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations; the following terms are defined as follows;

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;

2.31.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.31.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **Appendix to Instructions to Tenderers**

### **Notes on the Appendix to the Instruction to Tenderers**

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of Section II to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.



## Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<p><i>Qualification Requirements;-</i></p> <p>(a) <i>The bidder shall furnish details of experience and past performance with respect to supply of similar goods in nature and value within the past three years; Evidence of this, e.g. testimonial letters or copies of orders from such authority, shall be presented with this bid on submission;</i></p> <p>(b) <i>Provide certificate of incorporation/ Business Registration Certificate</i></p> <p>(c) <i>Provide a valid tax compliance certificate</i></p> <p>(d) <i>Provide a CR 12 certificate for limited liability companies</i></p> <p>(e) <i>Duly filled confidential business questionnaire ( refer to pages 39-40 of this document)</i></p> <p>(f) <i>Valid Business Permit</i></p> <p>(g) <i>Duly filled and stamped form of tender</i></p> <p>(h) <i>All pages signed and stamped</i></p> <p><b><i>The above requirements are mandatory and any bidder not meeting any of the above shall be treated as non-responsive.</i></b></p>
2.1.4	<p><i>A statement declaring bidder is not ineligible for corrupt and fraudulent practices shall be drawn on bidder's letterhead, signed and stamped.</i></p>

2.24.1	<p><i>Under technical evaluation, the following shall be considered:-</i></p> <p><i>Conformity to Specification</i></p> <p><i>Capability and capacity</i></p> <p><i>List of clientele of similar assignments</i></p> <p><i>Experience with the African market</i></p> <p><i>Financial ability (derived from certified financial statements for the last two years)</i></p> <p><i>Turnover of sales per annum</i></p> <p><i>Delivery period, (the less the days the better)</i></p>
2.14.1	N/A
2.18.1	<b>Friday 9<sup>th</sup> April 2021 12:00 noon</b>
2.29.1	As prescribed

## Evaluation Criteria

Preliminary Evaluation Criteria/ Mandatory Documents

/No.	Completeness and Responsiveness Criteria	Requirement
<b>a) Statutory and General Requirements</b>		
1.	Form of Bid	1. Amount must be indicated N/A 2. Properly fill and sign 3. Tender validity period indicated
2.	Bid Security	- Provide a valid bid security as prescribed <b>Kes 100,000.00</b> as in the prescribed format in the tender document
3.	Confidential Business Questionnaire	- Properly fill and sign - Provide all required information
4.	Form of Power of Attorney	- Properly fill and sign - Provide copies of National Identification card or Passport for the attorney

5.	Valid Tax Compliance Certificate	- Copy of Valid certificate <b>Certified by Commissioner of Oaths</b>
6.	Certificate of Incorporation	- Copy of certificate <b>Certified by Commissioner of Oaths</b>
7.	Eligibility	- <b>Certified</b> copy of Form CR12 ( <b>Certified by Commissioner of Oaths</b> ) - Copies of National ID or passport for all directors
8.	Code of ethics form	- Properly fill and sign
9.	Single Business Permit	- Certified copy of current single business permit for County Government of West Pokot ( <b>Certified by Commissioner of Oaths</b> )
10	Evidence of physical registered office and business premises	- Attach either lease agreement, title deed, water bill, electricity bill or rental payment receipts
12.	Sanctity of tender document	- All pages of the bid document should be initialized and stamped
13	Price schedule	- Properly fill and sign

**At this stage, the tenderer's submission will either be responsive or non responsive. The non responsive submissions will be eliminated from the entire evaluation process and will not be considered further.**

#### **Award criteria**

i) Only bids of firms passing preliminary evaluation will be considered responsive and will be contracted under the framework agreement.

#### **Overall evaluation**

The winning bid shall be to the successful tenderer whose tender has been determined to be substantially responsive and provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

Award of contract to a bidder;-

- i. Who has submitted the tender document in line with the tender requirements
- ii. Who has been successfully evaluated in preliminary evaluation
- iii. Who has been determined to be the best priced on rates (least overall quoted rates) subject to prevailing market prices /rates.

**SECTION****III: GENERAL CONDITIONS OF  
CONTRACT**

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## **SECTION III - GENERAL CONDITIONS OF CONTRACT 3.1**

### **Definitions**

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### **3.2 Application**

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

### **3.3 Country of Origin**

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

### **3.4 Standards**

3.4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

### **3.5 Use of Contract Documents and Information**

3.5.1 The tenderer shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity

### **3.6 Patent Rights**

3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country

### **3.7 Performance Security**

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

- 3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected,

tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Packing**

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### **3.10 Delivery and Documents**

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

### **3.11 Insurance**

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### **3.12 Payment**

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract

### **3.13 Prices**



3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.13.4 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.

### **3.14. Assignment**

3.14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

### **3.15 Subcontracts**

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

### **3.16 Termination for default**

3.16.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

(a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity

(b) if the tenderer fails to perform any other obligation(s) under the Contract

- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

### **3.17 Liquidated Damages**

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

### **3.18 Resolution of Disputes**

3.18.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

### **3.19 Language and Law**

3.19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

### **3.20 Force Majeure**

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay

in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

**SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

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## SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>N/A</i>
3.12.1	<i>30 days</i>
3.18.1	<i>Arbitration laws of Kenya</i>

## **SECTION V - TECHNICAL SPECIFICATIONS 5.1**

### **General**

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.4 The tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of each product
  - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

## 5.2 PARTICULARS

**SECTION VI - SCHEDULE OF REQUIREMENTS -  
TECHNICAL SPECIFICATIONS**

<b>S/NO</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF ISSUE</b>	<b>MINIMUM ORDER QUANTITY ( QUANTITY REFERENCE )</b>
1.	Regular Petrol	Litres	1
2.	Super Petrol	Litres	1
3.	Diesel	Litres	1
4.	Kerosene	Litres	1
5.	Automatic Transmission oil	Litres	1
6.	Battery Acid	Litres	1
7.	Engine Oil 15w 40, 20 Litres	Litres	20
8.	Engine oil SAE 40	Litres	1
9.	Engine oil SAC 40 20 ltr	Litres	20
10.	Gear box oil EP90	Litres	1
11.	Gear box oil EP90 20ltrs	Litres	20
12.	Brake fluid red	Litres	1
13.	Battery Acid	Litres	1
14.	Brake fluid white	Litres	1
15.	2 T Stroke	Litres	20
16.	Distilled Water	Litres	5
17.	Engine Oil Delo 500SAESO	Litres	5
18.	Engine Oil Delo 6200SAESO	Litres	5
19.	Engine Oil Delo SAC 10 W	Litres	5
20.	Engine Oil Delo SAC 20 w 50	Litres	1
21.	Grease	Kgs	20
22.	Hydraulic Oil HD red 20Ltrs	Litres	5
23.	Engine oil SAC 140	Litres	5
24.	Engine oil SAE 50w 20ltr TW	Litres	5
25.	Engine oil 15w 40	Litres	5
26.	Engine oil 20 w 50	Litres	5
27.	Engine EP 90	Litres	1
28.	L.P. Gas 50kg	Kgs	1
29.	L.P Gas 25kg	Kgs	1
30.	L.P Gas 13 kg	Kgs	1
31.	L.P Gas 6 kg	Kg	1



The goods shall be delivered immediately after issuing the LPO

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1

<sup>1</sup> The Procuring entity must specify here the date from which the delivery schedule will start. That date should be either the date of the contract award, or the date of contract signature, or the date of opening of letter of credit, or the date of confirmation of the Letter of Credit, as appropriate. The Tender Form should include only a cross reference to this Schedule.

**SECTION VII - PRICE SCHEDULE FUEL, OILS LUBRICANTS AND LIQUIFIED PETROLEUM GAS**

<b>S/NO</b>	<b>ITEM DESCRIPTION</b>	<b>UNIT OF ISSUE</b>	<b>REFERENCE QUANTITY</b>	<b>UNIT PRICE KES.</b>
1.	Regular Petrol	Litres	1	
2.	Super Petrol	Litres	1	
3.	Diesel	Litres	1	
4.	Kerosene	Litres	1	
5.	Automatic Transmission oil	Litres	1	
6.	Battery Acid	Litres	1	
7.	Engine Oil 15w 40, 20 Litres	Litres	20	
8.	Engine oil SAE 40	Litres	1	
9.	Engine oil SAC 40 20 ltr	Litres	20	
10.	Gear box oil EP90	Litres	1	
11.	Gear box oil EP90 20ltrs	Litres	20	
12.	Brake fluid red	Litres	1	
13.	Brake fluid white	Litres	1	
14.	2 T Stroke	Litres	1	
15.	Distilled Water	Litres	20	
16.	Engine Oil Delo 500SAESO	Litres	5	
17.	Engine Oil Delo 6200SAESO	Litres	5	
18.	Engine Oil Delo SAC 10 W	Litres	5	
19.	Engine Oil Delo SAC 20 w 50	Litres	5	
20.	Grease	Kgs	1	
21.	Hydraulic Oil HD red 20Ltrs	Litres	20	
22.	Engine oil SAC 140	Litres	5	
23.	Engine oil SAE 50w 20ltr TW	Litres	5	
24.	Engine oil 15w 40	Litres	5	
25.	Engine oil 20 w 50	Litres	5	
26.	Engine EP 90	Litres	5	
27.	L.P. Gas 50kg	Kgs	1	
28.	L.P Gas 25kg	Kgs	1	
29.	L.P Gas 13 kg	Kgs	1	
30.	L.P Gas 13 kg	Kgs	1	
31.	L.P Gas 6 kg	Kgs	1	

Signature of tenderer \_\_\_\_\_ *Note:*

In case of discrepancy between unit price and total, the unit price shall prev

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## SECTION VIII - STANDARD FORMS

### Notes on the sample Forms

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

## 8.1 FORM OF TENDER

Date \_\_\_\_\_  
Tender No. \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
*[name and address of procuring entity]*

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... *[insert numbers]*.the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission ( ..... *(insert equipment description)* in conformity with the said tender documents for the sum of ..... *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract , in the form prescribed by .....*( Procuring entity)*.

4. We agree to abide by this Tender for a period of ..... *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

6. We understand that you are not bound to accept the lowest or any tender you may

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

[signature] \_\_\_\_\_

[in the capacity of] \_\_\_\_\_

Ⓢ

Ⓢ

## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c ) whichever applied to your type of business You are advised that it is a serious offence to give false information on this form

<i>Part 1 – General:</i>	
Business Name .....	
Location of business premises. ....	
Plot No .....	Street/Road .....
Postal Address .....	Tel No.....Fax..... E mail .....
Nature of Business .....	
Registration Certificate No.....	
Maximum value of business which you can handle at any one time – Kshs.....	
Name of your bankers .....	
..... Branch.....	

	Part 2 (a) – Sole Proprietor			
	Your name in full .....			Age .....
	Nationality.....	Country of origin .....		
	<input type="checkbox"/> Citizenship details			
	<input type="checkbox"/>			
	Part 2 (b) Partnership			
	Given details of partners as follows:			
	Name	Nationality	Citizenship Details	Shares
	1			
	2			
	3			
	4			
	Part 2 (c) – Registered Company			
	Private or Public.....			
	State the nominal and issued capital of company-			
	Nominal Kshs. ....			
	Issued Kshs. ....			
	Given details of all directors as follows			
	Name	Nationality	Citizenship Details	Shares
	1 .....			
	2. ....			
	3. ....			
	4. ....			
	5 .....			
	Date..... Signature of Candidate .....			

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

### 8.3 TENDER SECURITY FORM

Whereas.....[*name of the tenderer*]  
(hereinafter called “the tenderer”) has submitted its tender dated  
..... [*date of submission of tender*] for the supply, installation  
and commissioning of..... [*name and/or description  
of the equipment*] (hereinafter called “the Tender”)  
..... KNOW ALL PEOPLE by  
these presents that WE \_\_\_\_\_ of  
\_\_\_\_\_having our registered office at  
\_\_\_\_\_ (hereinafter called “the Bank”), are bound unto  
\_\_\_\_\_ [*name of Procuring entity*] (hereinafter called “the  
Procuring entity”) in the sum of \_\_\_\_\_ for which  
payment well and truly to be made to the said Procuring entity, the  
Bank binds itself, its successors, and assigns by these presents. Sealed  
with the Common Seal of  
the said Bank this \_\_\_\_\_  
day of \_\_\_\_\_ 20 \_\_\_\_\_

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[*signature of the bank*] \_\_\_\_\_  
(Amend accordingly if provided by Insurance Company)

## 8.4 CONTRACT FORM

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_  
between ..... [name of Procurement entity] of ..... [country of  
Procurement entity] (hereinafter called “the Procuring entity) of the one part and  
..... [name of tenderer] of ..... [city and country of tenderer]  
(hereinafter called “the tenderer”) of the other part;

WHEREAS the Procuring entity invited tenders for certain goods ] and has  
accepted a tender by the tenderer for the supply of those goods in the sum of  
..... [contract price in words and figures] (hereinafter called “the  
Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are  
respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as  
part of this Agreement viz:
  - (a) the Tender Form and the Price Schedule submitted by the tenderer
  - (b) the Schedule of Requirements
  - (c) the Technical Specifications
  - (d) the General Conditions of Contract
  - (e) the Special Conditions of contract; and
  - (f) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the  
tenderer as hereinafter mentioned, the tender hereby covenants with the Procuring entity to  
provide the goods and to remedy defects therein in conformity in all respects with the  
provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the  
provisions of the goods and the remedying of defects therein, the Contract Price or such  
other sum as may become payable under the provisions of the Contract at the times and in  
the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in  
accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the  
presence of \_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*





## 8.5 PERFORMANCE SECURITY FORM

To .....  
[*name of Procuring entity*]

WHEREAS ..... [*name of tenderer*]  
(hereinafter called “the tenderer”) has undertaken , in pursuance of Contract  
No. \_\_\_\_\_ [*reference number of the contract*] dated \_\_\_\_\_  
20 \_\_\_\_\_ to supply .....  
[*description of goods*] (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the  
tenderer shall furnish you with a bank guarantee by a reputable bank for the  
sum specified therein as security for compliance with the Tenderer’s  
performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to  
you, on behalf of the tenderer, up to a total of .....  
[*amount of the guarantee in words and figure*] and we undertake to pay you,  
upon your first written demand declaring the tenderer to be in default under  
the Contract and without cavil or argument, any sum or sums within the  
limits of ..... [*amount of guarantee*] as aforesaid, without  
you needing to prove or to show grounds or reasons for your demand or the  
sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

\_\_\_\_\_  
[*name of bank or financial institution*]

\_\_\_\_\_  
[*address*]

\_\_\_\_\_  
[*date*]

## 8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To .....  
[*name of Procuring entity*]

[*name of tender*] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [*amount of guarantee in figures and words*].

We, the ..... [*bank or financial institutions*], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding..... [*amount of guarantee in figures and words*]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until ..... [*date*].

Yours truly,

Signature and seal of the Guarantors

\_\_\_\_\_  
[*name of bank or financial institution*]

\_\_\_\_\_  
[*address*]

\_\_\_\_\_  
[*date*]

## 8.7 MANUFACTURER'S AUTHORIZATION FORM

To [name of the Procuring entity] .....

WHEREAS ..... [ name of the manufacturer] who are established and reputable manufacturers of ..... [name and/or description of the goods] having factories at..... [address of factory] do hereby authorize ..... [name and address of Agent] to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. .... [reference of the Tender] for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

---

[signature for and on behalf of manufacturer]

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent.

**8.8 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)* \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

## **8.9 Code of Ethics**

### **COMMITMENT TO THE CODE OF ETHICS**

#### **PART I - Title - DECLARATION FOR CODE OF ETHICS**

This code may be cited as the Code of Ethics for Suppliers in Public Procurement & Disposal

#### 1. Interpretation

In this codes, unless the context otherwise requires-

“The Act” MEANS The Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof

“Candidate” means a person who has obtained the tender documents from a public entity pursuant to an invitation notice by a procuring entity

“Code of Ethics” means a statement encompassing the set of rules based on values and the standards of conduct to which suppliers are expected to conform

“Consultant” is a person who provides services of predominantly intellectual, technical or advisory nature

“Contractor” means a person who enters into a procurement contract with a procuring entity to supply goods, works or services, and includes the main contractor

“Ethics” means values, customs, rules or principles, which govern right conduct

“Gift” has meaning assigned to it in the Leadership and Integrity Regulations, 2015

“Integrity” means the quality of being honest and having strong moral and ethical principles

“Persons” has meaning assigned to it in Article 260 of the Constitution and includes sole proprietorship

“Procuring Entity” means a public entity making a procurement to which the Public Procurement and Disposal Act, 2005 or any amendment or modification thereof applies

“Public Officer” has the meaning assigned to it in Article 260 of the Constitution

“Regulations” means regulations made under the Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof

“State Officer” has the meaning assigned to it in Article 260 of the Constitution.

“Supplier” means a candidate, bidder, and tenderer, Contractor, service provider or a consultant.

“Tenderer” means a person who submitted a tender pursuant to an invitation by a public entity

For purposes of this Code, all terms used, unless expressly defined herein, have the meaning assigned to them in the Act.

#### 2. Application of the Code

(i) This Code of Ethics is applicable to suppliers participating in public procurement or disposal of public assets.

(ii) The objective of the Code is to set minimum standards of ethical behaviour for Suppliers to ensure compliance with the Act and the Regulations and the adoption of good business practices.

#### **PART II – REQUIREMENTS/OBLIGATIONS OF THE SUPPLIERS**

#### 3. Laws and Regulations

(i) All public procurement & disposal shall be undertaken in accordance with the values and principles of the Constitution of Kenya, 2010 (Article 10)

- (ii) All Suppliers shall comply with the rule of Law.
- (iii) Suppliers shall observe other laws, regulations, rules and practices relating to taxation, labour, health and safety standards as well as environmental protection.

#### 4. Professionalism

- (i) Suppliers are required to comply with professional standards of their industry or of any professional body of which they are members. Where a supplier is a member of a professional body, the Supplier shall uphold the code of ethics of the respective profession and be of good standing.
- (ii) Suppliers shall maintain the highest standards of integrity and professionalism in their operations.
- (iii) Suppliers in public procurement shall accord mutual respect and courtesy to the public officer(s) and other suppliers without compromising their independent and distinct roles.
- (iv) Public procurement & disposal activities shall be undertaken with the objective of meeting the closest public scrutiny.

#### 5. Impartiality

A supplier shall not engage in acts aimed at encouraging patronage, tribalism, cronyism and nepotism.

#### 6. Gifts, Favors and Corrupt practices

- (i) A supplier shall not offer or give gifts of any kind to public entities and/or the employees.
- (ii) No supplier shall contact, unduly influence or exert pressure on any member of a committee or any other employee of a procuring entity to take a particular action which favours or tends to favour them.
- (iii) A supplier shall not engage in fraudulent, collusive, or corrupt practices, or inappropriate influences.
- (iv) A supplier shall not act inappropriately by attempting to interfere with the procurement process

#### 7. Conflict of Interest

- (i) A supplier shall not accept contracts which would constitute a conflict of interest with any prior or current contract. Suppliers shall disclose to all concerned parties those conflicts of interest that cannot be reasonably avoided.
- (ii) A supplier shall not enter into a contract with a procuring entity if the supplier is:
  - o An employee of the procuring entity or a member of a board or committee of the procuring entity;
  - o A State Officer, public Officer or a member of a board or committee of the Government or any department of the Government or a person appointed to any position by the President or a Cabinet Secretary;
  - o A person, including a corporation, who is related to a person described in paragraph (i) or (ii). A relative has meaning assigned to it in section 33(2) of the Public Procurement and Asset Disposal Act, 2015 or any amendment or modification thereof applies;
  - o Debarred from participating in procurement proceedings.

#### 8. Performance of Duties

##### 8.1. A supplier shall:

- (i) Duly sign this code of ethics and include it in a tender, proposal or quotation submitted.

- (ii) Obtain and submit bid documents in the manner prescribed in the tender notice and tender documents
- (iii) Supply the right quantity and quality of the contracted item and deliver at the stipulated time(s) and shall not abandon the work that they have been contracted to do.
- (iv) Perform the obligations of the contracts efficiently and effectively

8.2. Suppliers shall not participate in procurement proceedings without invitation to tender and understanding the instructions to tenderers.

8.3. While responding to tenders, quotations or request for proposals, bidders should not include unfair, discriminatory or unreasonable conditions in their bids.

8.4. Suppliers should

- (i) Ensure that their deliverables provide value for money in terms of cost, quality, quantity and timeliness of the delivered works, goods or services.
- (ii) Ensure that competent persons carry out the contractual obligations of the supplier.
- (iii) Accept full responsibility for all works, services or supplies provided

8.5. A supplier shall not

- (i) Obstruct or hinder an officer of the Authority or any other authorized person from carrying out a duty or function or exercising a power relating to procurement and disposal.
- (ii) Knowingly or in collusion with others lie to or mislead a person carrying out a duty or function or exercising a power relating to procurement and disposal.

9. Communication and Accuracy of Information

A supplier shall:

- (i) Observe strict communication limitations during the bidding process and as provided for in the Act
- (ii) Respond promptly and courteously to all proper requests for information, clarifications, complaints or enquiries from procuring entities, the Authority or any law enforcement agency.
- (iii) Ensure that all information provided to procuring entities is given in writing by Authorized Officers.
- (iv) Ensure that certified copies of all mandatory certificates are availed
- (v) Ensure that information given while participating in public procurement or disposal is true, accurate and fair, and not designed to mislead.

10. Confidentiality

Information obtained in the course of performance of a procurement contract in shall not be disclosed to unauthorized persons and shall not be used for the Supplier's advantage or material gain or for furtherance of private interest. The obligation to preserve the confidential information continues even after the business/contractual relationship with the Procuring Entity ends.

11. Duty to report impropriety/corruption

A supplier shall reject and report to the PPOA and/or the relevant agency any procurement practice which might be deemed improper.

12. PART III - OVERSIGHT BY THE PPOA

12.1. PPRA shall assist in undertaking continuous training of the suppliers to eliminate malpractices which might arise due to ignorance of the public procurement system.

12.2. PPRA will exercise oversight in the enforcement of this Code of Ethics, including taking remedial measures where the Code of Ethics is breached

12.3. PPRA shall revise the code of ethics as appropriate in consultation with the relevant stakeholders

13. PART IV - COMPLIANCE & MONITORING

13.1. A Procuring Entity may conduct due diligence, on-site evaluations and inspections of suppliers' facilities and/or project site, including those of their subcontractors and Joint Venture partners to review their compliance to this Code during execution of the Contract.

13.2. PPRA shall, on its own motion or upon receipt of a complaint, inquire into the allegation of the violation of the Code of Ethics and institute debarment proceedings in line with Regulation 90 of the Public Procurement And Disposal Regulations, 2006

13.3. PPRA shall establish a complaints management system for reporting and receipt of complaints on alleged violations of the Code of Ethics

13.4. PPRA may collaborate and partner with other agencies, organizations and professional bodies in enforcement of this Code of Ethics.

13.5. All Procuring Entities shall submit a report to PPRA, annually or upon request, of any breaches by suppliers, and any action taken against the breach, in such format as is provided by PPRA.

14. PART V - ENFORCEMENT OF THE CODE

14.1. Any person may lodge a complaint alleging a breach of this code by a supplier to the Authority or a Procuring entity.

14.2. Upon receipt of the complaint, the Authority or the Procuring entity shall register and carry out investigations into the complaint, and may take action against the supplier in accordance with the Act and any Regulations

14.3. A breach of this Code shall be subject to a debarment process as stipulated in the Act which may attract a debarment for a period not less than five years. The breach may further be subjected to a Court process that may lead to the imposition of other penalties as stipulated in the Act and other Laws.

14.4. A Procuring Entity may disqualify a supplier from further participation in a procurement or disposal proceeding or terminate a contract if it establishes a breach of this Code

14.5. A breach of this Code shall lead to termination of registration of a supplier

14.6. A supplier who violate the law or engage in unethical business dealings may be subject to disciplinary proceedings.

15. Declaration and Signature

15.1. I .....  
(Supplier) Confirm that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act 2015 and the Code of Ethics for Suppliers and my responsibilities under the Code.

15.2. I also certify that I am duly authorized to sign this Code on my own behalf and on behalf of my organization, and agree to comply with the Code of Ethics.

Name.....Sign  
.....

Position.....  
.....



Office  
address.....Telephone.....  
.....

E-  
mail.....  
.....

Name of the  
Firm.....  
.....

(Company Seal/ Rubber Stamp where applicable)

Sworn  
at.....  
.....

By the  
said.....  
.....

Deponent

This.....day  
of.....20.....

Before Me.....  
.....  
Commissioner for Oaths/Magistrate }

## FORM OF WRITTEN POWER-OF-ATTORNEY

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorised to receive on his behalf correspondence in connection with the Tender.

.....  
*(Name of Tenderer's Representative in block letters)*

.....  
*(Address of Tenderer's Representative)*

.....  
*(Signature of Tenderer's Representative)*

**8.9 FORM RB 1**

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO ..... OF..... 20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

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

**REQUEST FOR REVIEW**

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

1

2 e t c . B y t h i s m e m o r a n d u m , t h e  
A p p l i c a n t r e q u e s t s t h e B o a r d f o r a n  
o r d e r / o r d e r s t h a t : -

1

2 e

t c

SIGNED.....(Applicant)

Dated on..... day of \_\_\_\_\_ / 20.

---

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on..... day of ..... 20.....

SIGNED  
Board Secretary