# COUNTY GOVERNMENT OF MERU (CGM)

## DEPARTMENT OF FINANCE, ECONOMIC PLANNING & INFORMATION COMMUNICATION TECHNOLOGY (ICT):

## OPEN TENDER

## FRAMEWORK AGREEMENT FOR

## HIRE OF HOTEL AND CONFERENCE FACILITIES

## TENDER NO: CGM/ONT/FWA/021/2022-2023

(March, 2023)

EXECUTING AGENCY/CLIENT:
CHIEF OFFICER FINANCE, ECONOMIC PLANNING & ICT
COUNTY GOVERNMENT OF MERU
P. O. BOX 120
MERU

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## INVITATION TO TENDER

The County Government of Meru (CGM), (hereafter called "The Client") now invites sealed bids from eligible service providers for the aforementioned, for a period of THREE (3) Years to be renewed at the sole discretion of CGM upon satisfactory performance of the service provider and availability of budget. This tender will be awarded on basis of Framework Agreement and suppliers will be given orders on call-offs.

Interested candidates may obtain further information from and inspect the tender document from CGM website: www.meru.go.ke; or Government Portal: https://tenders.go.ke. Funds for this project will be obtained from the Exchequer.

1.1. Interested service providers shall download the tender document from the website freely, and MUST forward their particulars immediately for recording and further clarification and addenda to procurement.finance@meru.go.ke ;

1.2. Bids must be delivered & deposited in the tender box located at the reception of the County Government of Meru headquarter and addressed to: THE COUNTY SECRETARY, COUNTY GOVERNMENT OF MERU, P.O. BOX 120-60200 MERU on or before 23rd March, 2023 at 10.00 A.M.

1.3. Prices quoted should be inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of 126 days from the closing date of thetender;

1.4. Tenderers shall furnish, as part of their application a tender security as indicated in the instructions to tender. Tenders will be awarded on basis of Framework Agreement.

1.5. Late Bids will be rejected. Bids will be publicly opened immediately after closure in the presence of the Bidders' designated representatives and anyone who chooses to attend.

CHIEF OFFICER,
DEPARTMENT OF FINANCE, ECONOMIC PLANNING & ICT,
COUNTY GOVERNMENT OF MERU,
P. O. BOX 120-MERU.

# PART 1 - TENDERING PROCEDURES

## SECTION I -INSTRUCTIONS TO TENDERERS

### A. General

### 1. Scope of Tender

1.1 This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of this tender are specified inthe **TDS.**

### 2. Throughout this tendering document:

2.1 The terms:

a) The term "in writing" means communicated in written form (e.g., by mail, e-mail, fax, including if specified **in the TDS**, distributed or received through the electronic-procurement system usedby the Procuring Entity) with proof of receipt;

b) if the contexts or esquires, "singular" means "plural" and vice versa; and

c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity'sofficial public holidays.

2.2 The successful Tenderer will be expected to complete the performance of the Services by the IntendedCompletion Date provided **in the TDS**.

### 3. Fraud and Corruption

3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regardingcollusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall bedisqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to theForm of Tender.

3.3 **Unfair Competitive Advantage** - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shallindicate in the **TDS** and make available to all the firms together with this tender document all Information that would in that respect gives such firm any unfair competitive advantage over competing firms.

3.4 Unfair Competitive Advantage-Fairness and transparency in the tender process require that the Firmsor their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those thatprovided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

## 4. Eligible Tenderers

**4.1** A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or anycombination of such entities in the form of a Joint Venture (JV) under an existing agreement or with the intentto enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shallbe jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalfof any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be asub contract or in a separate tender or be part of another joint venture for the purposes of the same Tender. Themaximum number of JV members shall be specified in the **TDS.**

4.2 Public Officers, of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brotheror Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.

4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or

b Receives or has received any direct or indirect subsidy from another Tenderer; or

c has the same legal representative as another Tenderer; or

d has a relationship with another Tenderer, directly or through common third parties, that puts it in a positionto influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or

e oranyofitsaffiliatesparticipatedasaconsultantinthepreparationoftheProcuringEntity'sRequirements (including Activities Schedules, Performance Specifications and Drawings) for the Non-Consulting Services that are the subject of the Tender; or

f or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or ProcuringEntity for the Contract implementation; or

g would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2. 1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is undercommon control with that firm; or

h has a close business or family relationship with a professional staff of the Procuring Entity or of the projectimplementing agency, who:

i. are directly or in directly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or

ii. Would be involved in the implementation or supervision of such contract unless the conflicts teemingfrom such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.

4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender,except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer ora JV member may participate as a sub-contractor in more than one Tender.

4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4 .9.

4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya shall be ineligible to be pre-qualified for, initially selected for, tender for, propose for, or be awarded a contract during such period of

sanctioning. The list of debarred firms and individuals is available at the PPRA Website www.ppra.go.ke

4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awardeda Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate underCommercial law; and (iii) are not under supervision of the Procuring Entity.

Tenders, in accordance with ITT25.1).

4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council take under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person or entityin that country.

4.9 A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated orregistered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

*4.10* Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in *"SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9".*

4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer isnot registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered inKenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shallnot sub contract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which mayprevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke

4.13 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligationsby producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

## 5 Qualification of the Tenderer

5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

## B. Contents of Tendering Document

## 6 Sections of Tendering Document

6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and shouldbe read in conjunction with any Addenda issued in accordance with ITT 10.

Tenders, in accordance with ITT25.1).

**PART 1: Tendering Procedures**

i) Section I - Instructions to Tenderers (ITT)
ii) Section II - Tender Data Sheet (TDS)
iii) Section III - Evaluation and Qualification Criteria
iv) Section IV - Tendering Forms

**PART 2: Procuring Entity's Requirements**

v) Section V-Procuring Entity's Requirements

**PART 3: Contract**

vi) Section VI - General Conditions of Contract (GCC)
vii) Section VII - Special Conditions of Contract (SCC)
viii) Section VIII - Contract Forms

6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Tenderers, as the case may be, issued by theProcuring Entity is not part of this tendering document.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completenessof the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

**1. Site Visit**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect theSite of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering in to a contract for the Services. The costs of visiting the Site shall beat theTenderer's own expense.

**8 Pre-Tender Meeting**

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. TheTenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works.The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raisedat that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pre tender visit of the site of the service, if applicable,including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT6.3. Minutes shall not identify the source of the questions asked.

8.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meetingand the pre-arranged pretender visit of the site of the service at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shallbe made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

**9 Clarification of Tender Documents**

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in

Tenders, in accordance with ITT25.1).

writing atthe Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting and the pre- arranged pretender visit of the site of the Service if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is receivedno later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS,** the Procuring Entity shall also promptly publish its response at the webpage identified in the **TDS.** Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

## 10 Amendment of Tender Documents

10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all whohave obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordancewith ITT 24.2 below.

# C. Preparation of Tenders

## 11 Cost of Tendering

11.1 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 theTendering process.

## 12 Language of Tender

12.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer andthe Procuring Entity shall be written in the 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.

## 13 Documents Comprising the Tender

13.1 The Tender shall comprise the following:

a **Form of Tender** prepared in accordance with ITT 14;

b **Schedules:** priced Activity Schedule completed in accordance with ITT 14 and

ITT 16;c **Tender Security or Tender-Securing Declaration** in accordance with

ITT 21.1;

d **Alternative Tender**: if permissible in accordance with ITT 15;

e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, inaccordance with ITT 22.3;

f **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer'squalifications to perform the Contract if its Tender is accepted;

g **Tenderer's Eligibility**: documentary evidence in accordance with ITT 19 establishing the Tenderer'seligibility to Tender;

h **Conformity**: documentary evidence in accordance with ITT 18, that the Services conform

Tenders, in accordance with ITT25.1).
to thetendering document; and

i Any other document required in the **TDS.**

The Tenderer shall chronologically serialize pages of all tender documents submitted.

13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form 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.

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

## 14 Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 22.3. All blank spaces shall be filled in with the information requested.

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

## 15 Alternative Tenders

15.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by the Procuring Entity.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in theTDS** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified **in the TDS**, Tenderers a reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified **in the TDS**, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

## 16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and inthe Activity Schedule (s) shall conform to the requirements specified below.

16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).

16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, sub mitted by the Tenderer.

16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 16.1.

16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

Tenders, in accordance with ITT25.1).

16.7 If provided for **in the TDS**, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditionsof Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

## 17 Currencies of Tender and Payment

17.1 The currency of the Tender and the currency of payments shall be Kenya Shillings.

## 18 Documents Establishing Conformity of Services

18.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.

18.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the ProcuringEntity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified inthe Section VII, Procuring Entity's Requirements.

18.3 Tender to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers. qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement processor contract management.

18.4 The purpose of the information described in ITT 18.3 above, overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership andcontrol.

18.4 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entitymay request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT18.3. The obligations to require this information shall continue for theduration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

18.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurateas at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as atthe date of submission to the Procuring Entity.

18.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

18.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the

Tenders, in accordance with ITT25.1).
procurement or contract management process, then:

i) If the procurement process is still on going, the tenderer will be disqualified from the procurement process,

ii) if the contract has been awarded to that tenderer, the contract award will be set aside, pending theoutcome of (iii),

iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether thetenderer or any other persons have committed any criminal offence.

18.9 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date,or attempts to obstruct the verification process, then the consequences ITT 18.9 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine err or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## 19 Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 To establish Tenderer's their eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender,included in Section IV, Tendering Forms.

19.2 The documentary evidence of the Tenderer's qualification stopper form the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

19.3 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed methodology, work plan and schedule.

19.4 In the event that pre-qualification of Tenderers has been undertaken, only Tenders from prequalified Tendererssshall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders thatthe originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.

19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

## 20 Period of Validity of Tenders

20.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period startsfrom the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 24.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be madein writing. If a Tender Security is requested in accordance with ITT20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

## 21 Tender Security

21.1 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**.

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

21.3 If a Tender Security is specified pursuant to ITT 21.1, from a reputable source, and an eligible country and shallbe in any of the following forms at the Tenderer's option:

i) cash;

Tenders, in accordance with ITT25.1).

ii) a bank guarantee;

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

iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsiveTender Security shall be rejected by the Procuring Entity as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's 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-responsiveor a bidder declines to extend tender validity period.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

a. If a Tenderer withdraw sits Tender during the period of Tender validity specified by the Tenderer in theForm of Tender, or any extension there to provide by the Tenderer; or

b. if the successful Tenderer fails to:

c. sign the Contract in accordance with ITT 46; or

d. Furnish a performance security in accordance with ITT 47.

21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRAdebars the Tenderer from participating in public procurement as provided in the law.

21.9 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 13.2.

21.10 A tenderer shall not issue a tender security to guarantee itself.

## 22 Format and Signing of Tender

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, boundwith the volume containing the Form of Tender, and clearly marked "Original. "In addition, the Tenderer shallsubmit copies of the Tender, in the number specified **in the TDS**, and clearly marked as "Copies. "In the eventof discrepancy between them, the original shall prevail.

22.2 Tenderers shall mark as "CONFIDENTIAL "information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a writtenconfirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by eachperson signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

Tenders, in accordance with ITT25.1).

## D. Submission and Opening of Tenders

### 23 Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope,or in a single sealed package, or in a single sealed container bearing the name and Reference numberof the Tender, addressed to the Procuring Entity and a warning not to open before the time and datefor Tender opening date. Within the single envelope, package or container, the Tenderer shall placethe following separate, sealed envelopes:

a. in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, asdescribed in ITT13; and

b. in an envelope or package or container marked "COPIES", all required copies of the Tender; and

c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:

   i. in an envelope or package or container marked "ORIGINAL–ALTERNATIVE TENDER", thealternative Tender; and

   ii. in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all requiredcopies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) Bear the name and address of the Procuring Entity.

b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assumeno responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

### 24 Deadline for Submission of Tenders

24.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **inthe TDS**. When so specified **in the TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission

procedures specified **in the TDS**.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending thetendering document in accordance with ITT9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

### 25 Late Tenders

25.1 The Procuring Entity shall not consider any Tender that arrives after the dead line for submission of Tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned un opened to the Tenderer.

### 26 Withdrawal, Substitution and Modification of Tenders

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) Prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in

Tenders, in accordance with ITT25.1).
accordancewith ITT 23.

26.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified 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 Form of Tender orany extension thereof.

## 27 Tender Opening

**27.1** Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS**in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1shall be as specified **in the TDS.**

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalfof the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless thecorresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

27.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a validauthorization to request the substitution and is read out at Tender opening.

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whetherthere is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representativesof the Procuring Entity attending Tender opening in the manner specified **in the TDS**.

27.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late

27.8 The Procuring Entity shall prepare are cord of the Tender opening that shall include, as a minimum:

a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;

b) The Tender Price, per lot (contract) if applicable, including any discounts; and

c) any alternative Tenders;

d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

e) Number of pages of each tender document submitted

27.9 The Tenderers' representatives who a rep resent shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tenderopening register shall be distributed to Tenderer upon request.

## E. Evaluation and Comparison of Tenders

## 28 Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosedto Tenderers or any other persons not officially concerned with the Tendering process until

Tenders, in accordance with ITT25.1).
information on theIntention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.

28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

## 29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any tenderer for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and theresponse shall be in writing. No change, including any voluntary increase or decrease, in the prices or substanceof the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT32.

29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## 30 Deviations, Reservations, and Omissions

30.1 During the evaluation of Tenders, the following definitions apply:

a) "Deviation" is a departure from the requirements specified in the tendering document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of therequirements specified in the tendering document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in thetendering document.

## 31 Determination of Responsiveness

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tenderitself, as defined in ITT 12.

31.2 A substantially responsive Tender is one that meets the requirements of the tendering document withoutmaterial deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

a) If accepted, would:

i. affect in any substantial way the scope, quality, or performance of the Non-Consulting Services

specified in the Contract; or

ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rightsor the Tenderer's obligations under the Contract; or

b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantiallyresponsive Tenders.

31.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 18and ITT 19, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.

31.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by theProcuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31.5 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

31.6 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure ofthe Tenderer to comply with the request may result in the rejection of its Tender.

31.7 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparisonpurposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS**.

## 32 Arithmetical Errors

32.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not bethe subject of correction, adjustment or amendment in any way by any person or entity.

32.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead todisqualification of the tender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive .and

c) If there is a discrepancy between words and figures, the amount in words shall prevail

32.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.

## 33 Conversion to Single Currency

33.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted into a single currency **as specified in the TDS**.

## 34 Margin of Preference and Reservations

**34.1** Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS.**

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specificallyindicates that only businesses/firms belonging to the specified group are eligible to

specified in the Contract; or

tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all tenderers.

## 35 Evaluation of Tenders

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation andQualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteriaand methodologies, the Procuring Entity shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

a) Substantially responsive to the tendering document; and

b) The lowest evaluated cost.

The evaluation and award of contracts will be based on each Service Number

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost byadjusting the Tender price as follows:

a) Price adjustment due to discounts offered in accordance with ITT 16.4;

b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency inaccordance withITT33; and

d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and QualificationCriteria.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the periodof execution of the Contract, shall not be considered in Tender evaluation.

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

## 36 Comparison of Tenders

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established inaccordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

## 37 Abnormally Low Tenders and Abnormally

### HighTenders Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender,appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### Abnormally High Tenders

37.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if he specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.

37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

## 38 Unbalanced and/or Front-Loaded Tenders

38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

a) Accept the Tender; or

b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 10% of the Contract Price; or

c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or

d) Reject the Tender.

## 39 Qualification of the Tenderer

39.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

## 40 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders

40.1 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 there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

## F. Award of Contract

### 43 Award Criteria

43.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to

be the Lowest Evaluated Tender.

## 42 Notice of Intention to enter in to a Contract

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issuea Notification of Intention to Enter into a Contract/Notification of a ward to all tenderers which shall contain, ata 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 wasunsuccessful, unless the price information in(c) above already reveals the reason;

d) the expiry date of the Stand still Period; and

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

## 43 Stand still Period

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

43.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter in to a Contract with the successful Tenderer.

## 44 Debriefing by the Procuring Entity

44.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues orconcerns regarding their tender. The Procuring Entity shall provide the debriefing with in five days of receipt of the request.

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

## 45 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1,upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmitthe 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.

## 46 Signing of Contract

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the partiesmeeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Framework Agreement.

46.2 Within fourteen (14) days of receipt of the Framework Agreement, the successful Tenderer shall sign, date, andreturn it to the Procuring Entity.

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

## 47 Performance Security

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successfulTenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptableto the Procuring Entity. 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 Tendererto 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.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In thatevent the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

## 48 Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain thefollowing information:

a) Name and address of the Procuring Entity;

b) Name and reference number of the contract being awarded, a summary of its scope and the selectionmethod used;

c) The name of the successful Tenderer, the final total contract price, the contract duration.

d) Dates of signature, commencement and completion of contract;

e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

## 49 Adjudicator

49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Tenderer disagrees with thisTender, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has notagreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authoritydesignated in the Special Conditions of Contract at the request of either party.

## 50 Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.

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

## SECTION II - TENDER DATA SHEET (TDS)

The following specific data for the Non-Consulting Services to be procured shall complement, supplement, or amendthe provisions in the Instructions to Tenderers (ITT).Whenever there is a conflict, the provisions here in shall prevailover those in ITT.

*[Where a new-procurement system is used, modify the relevant parts of the TDS accordingly to reflect thee-procurement process].*

*[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for therelevant ITT].*

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | **A. General** |
| ITT 1.1 | The reference number of the Request for Tenders (ITT) is : *as per the Invitation Letter*<br>The Procuring Entity is: *as per the Invitation Letter*<br>The name of the ITT is: *as per the Invitation Letter*<br>The number and identification of lots (contracts) comprising this ITT is: **Not Applicable** |
| ITT 2.1(a) | **Electronic –Procurement System (*Not Applicable*)**<br>The Procuring Entity shall use the following electronic-procurement system to manage thisTendering process:<br>[*insert name of the e-system and url address or link*]<br>The electronic-procurement system shall be used to manage the following aspects of theTendering process:<br>*[list the aspects here and modify the relevant parts of the TDS accordingly e.g., issuingtendering document, submissions of Tenders, opening of Tenders]* |
| ITT 2.2 | The Intended Completion Date is *(as per the call-off service orders issued as and whenrequired)* |
| ITT 3.3 | Information that any unfair competitive advantage over competing firms is as follow: *That any firm or their affiliates or JV or employees involved in any way during consulting services related to this project is highly likely to have competitive advantage owing to prior information about the project and should therefore desist from participating in this tender. Ifsuch undue influence is detected, will automatically lead to disqualification on grounds of non-responsiveness* |
| ITT 3.4 | The firms that provided consulting services (*Not Applicable)* |
| ITT 4.1 | Maximum number of members in the Joint Venture (JV) shall be: ***[insert a number]*** *5* |
| | **B. Contents of Tendering Document** |
| ITT 8.1 | *(a)* A pre-tender conference will <u>be held/will not be held</u> on (*Not Applicable)* _____(*date and time*), at_____*(specify city,street, building, floor and room number)*<br>**(b)** A pre-arranged pretender visit of the site of the works visit will <u>be held/will not be held</u><br>on (*Not Applicable)* (*date and time*), at_____*(specify exact location).* |
| ITT 8.2 | The questions in writing, to reach the Procuring Entity (*Not Applicable)* |

| | |
|---|---|
| ITT 8.4 | Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the<br>works shall be published on the website (*Not Applicable)* |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | |
| ITT 9.1 | *i)* The Tenderer will submit any request for clarifications in writing at the Address *as per theInvitation Letter*, to reach the Procuring Entity not later than (*not later than not later than3 days before submission by close of normal business hours)*<br><br>*ii)* The Procuring Entity shall publish its response at the website *as per the Invitation Letter*<br><br>The Procuring Entity shall also promptly publish response at the website |
| | **C. Preparation of Tenders** |
| ITT 13.1 (i) | The Tenderer shall submit the following additional documents in its Tender: ***[list anyadditional document not already listed in ITT 13.1 that must be submitted with the Tender]***<br><br>Other documents required are (*refer to this ITT and Evaluation & Qualification CriteriaOnly)* |
| ITT 15.1 | Alternative Tenders ***[ "shall not be"]*** considered.<br><br>***[If alternatives shall be considered, the methodology shall be defined in Section III,Evaluation and Qualification Criteria. See Section III for further details]*** |
| ITT 15.2 | Alternative times for completion ***"shall not be"]*** permitted. If permitted, the range ofacceptable completion time is:_____.<br><br>If alternative times for completion are permitted, the evaluation method will be as specifiedin Section III, Evaluation and Qualification Criteria. |
| ITT 15.3 | Alternative technical solutions shall be permitted for the following parts of the Services:(*Not Applicable*)<br><br>***[If alternative technical solutions are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.]*** |
| ITT 16.7 | The prices quoted by the Tenderer_____***[ "shall not"]*** be subject to adjustmentduring the performance of the Contract. |
| ITT 20.1 | The Tender validity period shall be *126 days.* |
| ITT 21.1 | ***[If a Tender Security shall be required, a Tender-Securing Declaration shall not be required, and vice versa.]***<br><br>A Tender Security ***[ "shall not be"]*** required.<br><br>A Tender-Securing Declaration **[** ***"shall not be"]*** required.<br><br>If a Tender Security shall be required, the amount and currency of the Tender Security shall be *(Not Applicable)*<br><br>[***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]***<br><br>***Note: Tender Security is required for each lot as per amounts indicated against each lot. Tenderers have the option of submitting one Tender Security for all lots (for the combinedtotal amount of all lots) for which Tenders have been submitted, however if the amount ofTender Security is less than the total required amount, the Procuring Entity will determinefor which lot or lots the Tender Security amount shall be applied.]*** |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| ITT 21.3 (a) | The Contract price shall be adjusted by *(Not Applicable unless in conformity with the Act after One Year)* |
| ITT 22.1 | In addition to the original of the Tender, the number of copies is: **One** |
| ITT 22.3 | The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: All details as provided in the Form of Tender |
| | **D. Submission and Opening of Tenders** |
| ITT 24.1 | For **Tender submission purposes** only, the Procuring Entity's address is: ***(As per invitationto tender)*** |
| ITT 24.1 | **The deadline for Tender submission is: (As per invitation to tender)**<br>***[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 23.2]***<br>Tenderers_____[***"shall not"***] have the option of submitting their Tenders electronically.<br>[***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.]***<br>The electronic Tender submission procedures shall be*: (Not Applicable)* |
| ITT 27.1 | The Tender opening shall take place at the time and the address for Opening of Tendersprovided below:<br>*(1)* Name of Procuring Entity: *As per Invitation Letter Section*<br>(2) Physical address for the location (City, Street, Building, Floor Number and Room).<br>*As per Invitation Letter Section*<br>*(3)* State date and time of tender opening. *As per Invitation Letter Section* |
| ITT 27.1 | ***[The following provision should be included and the required corresponding informationinserted only if Tenderers have the option of submitting their Tenders electronically.***<br>***Otherwise omit.]***<br>The electronic Tender opening procedures shall be: ( Nota Applicable) |
| ITT 27.6 | The Form of Tender and priced Activity Schedule shall be initialed by representatives of theProcuring Entity conducting Tender opening. ***The cover page should also be initialed and number of pages recorded.***<br>***Any modification to the unit or total price shall be initialed by the Representative of the Procuring Entity. The PE shall use the standard opening register updated by the Authority*** |
| | **E. Evaluation and Comparison of Tenders** |
| ITT 31.7 | comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified as follows: The adjustment shall be based on the *(NOT APPLICABLE)* ***(insert "average" or "highest")*** price of the item or component as quoted inother substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate. |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| ITT 33.1 | The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: Kenya Shillings<br><br>The source of exchange rate shall be: **The Central bank of Kenya** (mean rate)<br><br>The date for the exchange rate shall be*:* **the deadline date for Submission of the Tenders.**<br><br>*For comparison of Tenders, the Tender Price, corrected pursuant to ITT 31, shall first be broken down into the respective amounts payable in various currencies by using the selling exchange rates specified by the Tenderer in accordance with ITT 15.1.*<br><br>*In the second step, the Procuring Entity will convert the amounts in various currencies in which the Tender Price is payable (excluding Provisional Sums but including Daywork wherepriced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and, on the date, stipulated above.* |
| ITT 34.1 | Margin of preference allowed or not allowed *(Not Allowed)* |
| ITT 34.2 | The invitation to tender is extended to the following group that qualify for Reservations<br>*(Not Applicable)*<br><br>*(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprisesand Enterprises of persons living with disability, as the case may be; describe precisely*<br>*which groups qualify).* |
| ITT 35.2 (d) | Additional evaluation factors shall be *(as specified in this ITT or Evaluation &Qualification criteria)* |
| ITT 35.4 | Tenderers shall be allowed/not allowed (*select one)* to quote separate prices for different<br>lots (contracts) and the methodology to determine the lowest tenderer is specified in SectionIII, Evaluation and Qualification Criteria. (*Not Lotted*) |
| | **F. Award of Contract** |
| ITT 49.1 | The Adjudicator proposed by the Procuring Entity is (*As per Special Conditions of Contract*)The hourly fee for this proposed Adjudicator shall be__. The biographical dataof the proposed Adjudicator is as follows:_____. |

| | |
|---|---|
| ITT 50.1 | The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.<br><br>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 iseither by hand delivery or email to:<br><br>For the attention: *[insert full name of person receiving complaints]*<br><br>Title/position: *[insert title/position]*<br><br>Procuring Entity: *[insert name of Procuring Entity]*<br><br>Email address*: [insert email address]*<br><br>In summary, a Procurement-related Complaint may challenge any of the following:<br><br>(i) the terms of the Tender Documents; and<br>(ii) the Procuring Entity's decision to award the contract. |

## SECTION III – EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provision

1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shillingequivalent using the rate of exchange determined as follows:

a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originallyestablished.

b) Value of single contract-Exchange rate prevailing on the date of the contract signature.

c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error indetermining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No otherfactors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

### 1.3 Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arriveat the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria,(ii)has been determined to be substantially responsive to the Tender Documents, and(iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

### 2 Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteriaand other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

*[The Procuring Entity will provide the preliminary evaluation criteria. To facilitate this, a template may be attached or clearly described information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]*

### 3 Tender Evaluation (ITT 35)

**Price evaluation**: in addition to the criteria listed in ITT 35.2 (a)–(d) the following criteria shall apply:

i) **Alternative Completion Times, i**f permitted under ITT 15.2, will be evaluated as follows: ……

ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 15.3, will beevaluated as follows:……

iii) **Other Criteria; i**f permitted under ITT 35.2 (e): ……

### 4 Multiple Contracts

Tenderers have the option to Tender for any one or more Service Lines/Lots. Tenders will be evaluated lot- wise, taking into account discounts offered, if any. The contract(s) will be awarded to the Tenderer or Tenderers offering the lowest evaluated cost to the Procuring Entity for each Service Line or Service Lot, subject to the selected Tenderer(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

### 5 Alternative Tenders (ITT 15.1)

*An alternative if permitted under ITT 13.1, will be evaluated as follows:*
The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Procuring Entity's requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

## 6 MARGIN OF PREFERENCE

**Apply Margin of Preference,** if so allowed to all evaluated and accepted tender as follows.

6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of foreign tenderers, where the percentage of shareholding of Kenyan citizens is lessthan fifty-one percent (51%).

6.2 Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractor's qualifies for amargin of preference.

6.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessedto ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into thefollowing groups:

i) Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold sharesof over fifty one percent (51%).

ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold sharesof less than fifty one percent (51%).

6.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender,and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to theevaluated price offered in each ender from Group B. All tenders shall then be compared using new prices withadded prices to Group Band the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the firstevaluation price shall be selected.

## 7 Post qualification and Contract ward (ITT 39), more specifically,

a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluatedtenderer, subject to confirmation of pre-qualification data, if so required.

b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

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 construction cash flow of Kenya Shillings_____.

ii) Minimum average annual construction turnover of Kenya Shillings_____*[insert amount]*, equivalent calculated as total
certified payments received for contracts in progress and/or completed within the last_____*[insert of year]* years.

iii) At least_____(*insert number)* of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings
_____equivalent.

iv) Contractor's Representative and Key Personnel, which are specified as

_____
_____

v) Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically
listed as *[specify requirements for each lot as applicable]*
_____

_____

vi) Other conditions depending on their seriousness.

a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non- performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last__(*five years*). The required information shall be furnished in the appropriate form.

b) **Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last
_____(*five years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the year's specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## (A) PRELIMINARY EVALUATION CRITERIA

| S/NO | REQUIREMENTS |
|---|---|
| 1) | The tender has been duly signed by the person lawfully authorized to do so through the power of attorney; |
| 2) | The tender is valid for the period required; |
| 3) | Duly filled, signed and stamped standard forms including:<br>• confidential business questionnaire<br>• self-declaration forms<br>• certificate of independent tender determination<br>• declaration and commitment to the code of ethics<br>• schedule of prices form<br>• tenderer information form<br>• qualification information |
| 4) | Compliance with all general responsiveness requirements of this tender |

## (B) MANDATORY EVALUATION CRITERIA

| S/No. | Condition |
|---|---|
| 1) | Certificate of incorporation |
| 2) | Valid Tax Compliance Certificate - acknowledgements receipt will NOT be considered |
| 3) | Valid Business Permit |
| 4) | Valid CR 12 and copies of IDs of Directors for limited company/ copies of IDs of Directors sole proprietorships and partnerships. |
| 5) | Chronologically serialized tender document |
| 6) | Valid Tourism license under Tourism Levy Board |
| 7) | Valid Public Health certificate( Chef, storekeeper and Waiters/Waitress |
| 8) | Copies of Meal(menu) and Accommodation Tariffs |
| 9) | Valid Safety Inspection certificate |

## (C) TECHNICAL EVALUATION

| No. | Evaluation criteria | Evaluation attribute | Weighing Score | Maximum score |
|---|---|---|---|---|
| 1. | Experience of the firm | Number of similar businesses done for the last 5 years (LPO or contracts or Completion certificates) | 5 companies and above =20 Marks<br>Others prorated at:<br>No. of businesses x 20mks/10 businesses | 20 Marks |

| No. | Evaluation criteria | Evaluation attribute | Weighing Score | Maximum score |
|---|---|---|---|---|
| | | Magnitude of businesses done in the last 5 years (LPO or contracts or Completioncertificates) | 5,000,000 and above =20 marks Others prorated at Value of businesses x 20 marks /5,000,000 | 20mrks |
| | | Experience working with Public/Government entity (LPOor contracts or Completion certificates) | 3 Public entities Others prorated at: No. of org x 10 Marks/3 years | 10 marks |
| 2. | Manager of the organization | Manager with Diploma / degree in Hotel Management or Business Management/Administration or equivalent certification (attach copies of certificates and CV) | 10 marks | 10 marks |
| 3. | Experience of the Manager in Hotel Management | Attach Recommendation letters and CV with contact persons | 10 yrs and above Others prorated at No of yrs x 20marks/10years | 20 |
| 4 | key Technical personnel( attach copies of certificates/CV) | Chef of the organization with at least Diploma in food management or its relevant (attach copies of certificate and CV. | 10 | 10 |
| | | Accountant of the organization with at least Diploma in commerce accounting option or its relevant (attach copies of certificate and CV. | 5 | 5 |
| 5 | Financial capacity (Audited Accounts) for most recent Years | Quick ratio = $\frac{\text{Current assets - stock}}{\text{Current liability}}$ | 2.1 ratio Others prorated at $\frac{\text{The ratio x 5}}{2}$ | 5 |

| No. | Evaluation criteria | Evaluation attribute | Weighing Score | Maximum score |
|---|---|---|---|---|
| (PASS MARK TO PROCEED TO FINANCIAL EVALUATION IS 70%): TOTAL | | | | 100% |

(D) **FINANCIAL** EVALUATION

The CGM will sign framework agreements only with service providers with reasonable market rates on a needs basis.

The Market rates will be identified after Due Diligence on service quality and capacity needsas well as a negotiated price, so as to ensure value for money through call-offs orders or mini competition pursuant to section 114 (3) on a rotation basis depending on availability of space.

## SECTION IV - TENDERING FORMS

### i) FORM OF TENDER

*INSTRUCTIONS TO TENDERERS*

i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing theTenderer's complete name and business address.*

ii) *All italicized text is to help Tenderer in preparing this form.*

iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDERDETERMINATIONand the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*

iv) *TheFormofTendershallincludethefollowingFormsdulycompletedandsignedbytheTenderer.*

a) *Tenderer's Eligibility-Confidential Business Questionnaire*

b) *Certificate of Independent Tender Determination*

c) *Self-Declaration of the Tenderer*

**Date of this Tender submission:**_____[*insert date (as day, month and year) of Tendersubmission*]

**ITT No.:**_____[*insert number of ITT process*]

**Alternative No.:**_____[*insert identification No if this is a Tender f or an*

*alternative*] To:_____**[*insert complete name of Procuring Entity*]**

a) **No reservations:** We have examined and have no reservations to the tendering document, includingAddenda issued in accordance with ITT9;

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT4;

c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenyain accordance with ITT21;

d) **Conformity:** We offer to provide the Non-Consulting Services inconformity with the tenderingdocument of the following:[*insert a brief description of the Non-Consulting Services*];

e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item(f) below is:

Option 2, in case of multiple lots:(a)Total price of each lot[*insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies*]; and (b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies*];

*In case of multiple Service Lines or Service Packages (a) Total price of each Service Line or Package [insertthe total price of each in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all Service Lines and Packages [insert the total price in words and figures, indicating the various amounts and the respective currencies];*

f) **Discounts:** The discounts offered and the methodology for their application are:

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

ii) The exact method of calculations to determine the net price after application of discounts isshown below: [*Specify in detail the method that shall be used to apply the discounts*];

g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended ifapplicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1(as amended if applicable),and it shall remain binding upon us and may be accepted at any time before the expirationof that period;

h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;

i) **One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) a s a Joint Venture member or as a subcontractor, and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT14;

j) **Suspension and Debarment**: We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;

k) **State-owned enterprise or institution**: [*select the appropriate option and delete the other*] [*We are nota state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITT 4.6*];

*l)* **Commissions, gratuities and fees**: We have paid, or will pay the following commissions, gratuities, orfees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, r gratuity].*

| Name of Recipient | Address | Reason | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

*(If none has been paid or is to be paid, indicate "none.")*

*a)* *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisionsrelating to Standstill Period as described in this tendering document and the Procurement Regulations.

m) **Binding Contract**: We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender,the Best Evaluated Tender or any other Tender that you may receive; and

o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting forus or on our behalf engages in any type of Fraud and Corruption.

p) **Collusive practices**: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate ofIndependent tender Determination" attached below.

q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from_____(*specify website*) duringthe procurement process and the execution of any resulting contract.

r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

i) Tenderer's Eligibility; Confidential Business Questionnaire–to establish we are not in any conflictto interest.

ii) Certificate of Independent Tender Determination–to declare that we completed the tender withoutcolluding with other tenderers.

iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in anyform of fraud and corruption.

iv) Declaration and commitment to the Code of Ethics for Persons Participating in PublicProcurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption asinformed in **"Appendix 1- Fraud and Corruption"** attached to the Form of Tender.

**Name of the Tenderer .....** *[*insert complete name of person signing the Tender*]

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

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

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

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

## ii) TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is aJV.* Tenderer is further reminded that it is an offence to give false information on this Form.

a) Tenderer's details

| | ITEM | DESCRIPTION |
|---|---|---|
| 1 | Name of the Procuring Entity | |
| 2 | Reference Number of the Tender | |
| 3 | Date and Time of Tender Opening | |
| 4 | Name of the Tenderer | |
| 5 | Full Address and Contact Details ofthe Tenderer. | 1. Country<br>2. City<br>3. Location<br>4. Building<br>5. Floor<br>6. Postal Address<br>7. Name and email of contact person. |
| 6 | Current Trade License Registration Number and Expiring date | |
| 7 | Name, country and full address (*postal and physical addresses, email, and telephone number*) of Registering Body/Agency | |
| 8 | Description of Nature of Business | |
| 9 | Maximum value of business which theTenderer handles. | |
| 10 | State if Tenders Company is listed instock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of state which stock exchange | |

### General and Specific Details

b) **Sole Proprietor,** provide the following details.

Name in full_____Age_____

Nationality_____Country of Origin_____

Citizenship _____

c) **Partnership,** provide the following details.

| | Names of Partners | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |

| | | | | |
|---|---|---|---|---|
| 3 | | | | |

d) **Registered Company,** provide the following details.

i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent) .....

Issued Kenya Shillings (Equivalent) .....

iii) Give details of Directors as follows.

| | Names of Director | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

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

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

If yes, provide details as follows.

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

ii) **Conflict of interest disclosure**

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| 1 | Tenderer is directly or indirectly controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tender has a relationship with another tenderer, directly orthrough 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 specificationsof the works that are the subject of the tender. | | |
| 6 | Tenderer would be providing goods, works, non-consultingservices or consulting services during implementation of the contract specified in this Tender Document. | | |

| | | | |
|---|---|---|---|
| 7 | Tenderer has a close business or family relationship with aprofessional 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 | | |

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| | involved in the implementation or supervision of the Contract. | | |
| 9 | Has the conflict stemming from such relationship stated initem 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract? | | |

f) **Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate asat the date of submission.

Full Name_____

Title or Designation_____

_____ _____

*(Signature)* *(Date)*

## iii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the_____ _____ *[Name of Procuring Entity]* for:_____ _____*[Name and number of tender]* in response to the request for tenders made by:_____*[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

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

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete inevery respect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit theTender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include anyindividual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
   a) Has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications,abilities or experience;

5. The Tenderer discloses that [check one of the following, a s applicable]:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication,agreement or arrangement with, any competitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attacheddocument(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs(5)(a) or (5)(b) above, there has been noconsultation, communication, agreement or arrangement with any competitor regarding:
   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except asspecifically disclosed pursuant to paragraph (5) (b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of theContract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name_____

Title_____

Date

_____

*[Name, title and signature of authorized agent of Tenderer and Date]*

## iv) SELF-DECLARATION FORMS

### FORM SD1

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

I, ……, of Post Office Box …… being a resident of…… …….. in the Republic of …… do hereby make a statement asfollows:-

1. THAT I am the Company Secretary/ Chief Executive/ Managing Director /Principal Officer/Director of …….. ……..…….. *(insert name of the Company)* who is a Bidder in respect of **TenderNo.** …….. for..... *(insert tender title/description)* for ……*(insert name of the Procuring entity)* and duly authorized and competent to make thisstatement.

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

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

| …… | …… | …… |
|---|---|---|
| (Title) | (Signature) | (Date) |

Bidder Official Stamp

## FORM SD2

## SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPTOR FRAUDULENT PRACTICE

I, ……of P. O. Box……being a resident of …… …… in the Republic of…… do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of …… …… *(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 servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board,Management, Staff and/or employees and/or agents of…… *(insert name of the Procuring entity)* which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to anymember of the Board, Management, Staff and/or employees and/or agents of…….. *(name of the procuring entity)*

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other biddersparticipating in the subject tender

5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

…… ……

……(Title)

(Signature) (Date)

Bidder's Official Stamp

## v) DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I,..... (person) on behalf of *(Name of the Business/ Company/Firm*) ..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations andthe Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities underthe Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurementand Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

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

E-mail.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness

Name.....

.....

Sign.....

Date.....

## APPENDIX1-FRAUDANDCORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act *(no. 33 of 2015)* and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

### 2. Requirements

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engagedin procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1above.

2.2 Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted be low highlight Kenya's policy of no tolerance for such practices and behavior:

1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusiveor fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commitsan offence;

3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) if a contract has already been entered into with the person, the contract shall be voidable;

4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedythe procuring entity may have;

**3.** An employee or agent of the procuring entity or a member of the Board or committee of the procuring entitywho has a conflict of interest with respect to a procurement: -

a) Shall not take part in the procurement proceedings;

b) shall not, after a procurement contract has been entered into, take part in any decision relating to theprocurement or contract; and

c) Shall not be a subcontractor for the tender to whom was awarded contract, or a member of the group oftenders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

**4.** An employee, agent or member described in subsection (1) who refrains from doing anything prohibited underthat subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

4.1 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the a warding officer. etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anythingof value to influence improperly the actions of another party;

ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improperpurpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly,any party or the property of the party to influence improperly the actions of a party;

v) "obstructive practice" is:

a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive,or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

b) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.

c) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and todeprive he procuring entity of the benefits of free and open competition.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Act sand Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permitthe PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2]allaccounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

---

[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification,expressing interest in*
*A consultancy, and rendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

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

## vi) TENDERER INFORMATION FORM

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its formatshall be permitted and no substitutions shall be accepted.]*

Date.....*[insert date (as day, month and year) of Tender submission*]

ITT No..... *[insert number of Tendering process]*

Alternative No ..... *[insert identification No if this is a Tender for an alternative]*

*1.* Tenderer's Name.....*[insert Tenderer's legal name]*

*2.* In case of JV, legal name of each member .....*[insert legal name of each member in JV]*

*3.* Tenderer's actual or intended country of registration .....*[insert actual or intended country of registration]*

*4.* Tenderer's year of registration .....*[insert Tenderer's year of registration]*

*5.* Tenderer's Address in country of registration ..... *[insert Tenderer's legal address in country of registration]*

6. Tenderer's Authorized Representative Information

Name..... *[insert Authorized Representative's name]*

Address .....*[insert Authorized Representative's Address]*

Telephone..... *[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]*

☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents ofregistration of the legal entity named above, in accordance with ITT 4.4.

☐ In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1.

In case of state-owned enterprise or institution, in accordance with ITT4.6

documentsestablishing:

i) Legal and financial autonomy

ii) Operation under commercial law

iii) Establishing that the Tenderer is not under the supervision of the agency of the Procuring Entity

☐ A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by theKenya Revenue Authority in accordance with ITT 4.14.

8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## vii) OTHER FORMS

### TENDERER'S JV MEMBERS INFORMATION FORM

*[The Tenderers hall fill in this Form in accordance with the instructions indicated below. The following table shallbe filled in for the Tenderer and for each member of a Joint Venture]].*

Date.....*[insert date (as day, month and year) of Tender submission*]

ITT No..... *[insert number of Tendering process]*

Alternative No .....*[insert identification No if this is a Tender for an alternative]*

| |
|---|
| 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<br>Name: *[insert name of JV's Member authorized representative]*<br>Address: *[insert address of JV's Member authorized representative]*<br>Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Member authorized representative]*<br>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]*<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4.<br>☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6. |
| 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

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

**Beneficiary:**_____
**Request for Tenders No:**
_____
**Date:**_____
**TENDER GUARANTEE No.:**_____
**Guarantor:** _____

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

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

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

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

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Framework Agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is notthe successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.

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

_____
*[signature(s)]*

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

## FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

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

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

   Sealed with the Common Seal of the said Guarantor this_____day of_____20___.

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

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

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

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

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

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

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

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

## TENDER-SECURING DECLARATION FORM

[The Bidder shall complete this Form in accordance with the instructions indicated] Date ..... *[insert date(as day, month and year) of Tender Submission]*

Tender No ..... *[insert number of tendering process]*

To..... *[insert complete name of Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I / we will automatically be suspended from being eligible for tendering in any contract withthe Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are inbreach of our obligation (s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or(ii) fail or refuse to furnish he Performance Security, in accordance with the instructionsto tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s),upon the earlier of:
   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
   b) thirty days after the expiration of our Tender.

4. I / We understand that if I am / we are / in a Joint Venture, the Tender Securing Declaration must be in the nameof the Joint Venture that submits the bid , and the Joint Venture has not been legally constituted at the time ofbidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:……..…….....

Capacity / title (director or partner or sole proprietor, etc.)
…….....

Name: …….....

Duly authorized to sign the bid for and on behalf of..... *[insert complete name of Tenderer]*

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

Seal or stamp

## viii) QUALIFICATION FORMS FOREIGN TENDERERS 40% RULE

Pursuant to ITT 4.10, a foreign tenderer must complete this form to demonstrate that the tender fulfils thiscondition.

| Item | Description of Work Item | Describe location ofSource | COST in K. shillings | Comments, if any |
|---|---|---|---|---|
| A | Local Labor | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| B | Sub contracts from Local sources | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| C | Local materials | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| D | Use of Local Plant and Equipment | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| E | Add any other items | | | |
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| | TOTAL COST LOCAL CONTENT | | | |
| | PERCENTAGE OF CONTRACT PRICE | | | |

## FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shallbe prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

| Item of equipment | | |
|---|---|---|
| Equipment informatio n | Name of manufacturer | Model and power rating |
| | Capacity | Year of manufacture |
| Current status | Current location | |
| | Details of current commitments | |
| Source | Indicate source of the equipment<br>☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured | |

Omit the following information for equipment owned by the Tenderer.

| Owner | Name of owner | |
|---|---|---|
| | Address of owner | |
| | Telephone | Contact name and title |
| | Fax | Telex |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |

## FORM PER - 1

### Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below foreach candidate.

### Contractor' Representative and Key Personnel

| | | |
|---|---|---|
| 1. | **Title of position:** Contractor's Representative | |
| | **Name of candidate:** | |
| | **Duration of appointment :** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment:for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Ganttchart*] |
| 2. | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment :** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment:for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Ganttchart*] |
| 3. | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment :** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment:for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Ganttchart*] |
| 4. | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment :** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment:for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Ganttchart*] |
| 5. | **Title of position:** *[insert title]* | |
| | **Name of candidate** | |
| | **Duration of appointment :** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment:for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |

| | | |
|---|---|---|
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Ganttchart*] |

## FORM PER-2:

**Resume and Declaration - Contractor's Representative and Key Personnel.**

| Name of Tenderer |
|---|
| |

| Position [*#1*]: [*title of position from Form PER-1*] | | |
|---|---|---|
| Personnel information | Name: | Date of birth: |
| | Address: | E-mail: |
| | | |
| | Professional qualifications: | |
| | Academic qualifications: | |
| | Language proficiency: *[language and levels of speaking, reading and writing skills]* | |
| Details | | |
| | Address of Procuring Entity: | |
| | Telephone: | Contact (manager / personnel officer): |
| | Fax: | |
| | Job title: | Years with present Procuring Entity: |

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experiencerelevant to the project.

| **Project** | **Role** | **Duration of involvement** | **Relevant experience** |
|---|---|---|---|
| *[main project details]* | *[role and responsibilities on theproject]* | *[time in role]* | *[describe the experience relevant to thisposition]* |
| | | | |
| | | | |
| | | | |

## DECLARATION

I, the undersigned.....*[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for thisposition as provided in the Tender:-

| Commitment | Details |
|---|---|
| Commitment to duration of contract: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |
| Time commitment: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |

I understand that any misrepresentation or omission in this Form may:

a) be taken into consideration during Tender evaluation;

b) result in my disqualification from participating in the Tender;

c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel:_____[*insert name*]

Signature:_____

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature:_____

Date: (day month year): _____

## ix) TENDERERS QUALIFICATION WITHOUT PRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

### FORM ELI 1.1

**Tenderer Information Form**

Date:_____

ITT No. and title:_____

| |
|---|
| Tenderer's name |
| In case of Joint Venture (JV), name of each member: |
| Tenderer's actual or intended country of registration:<br>*[indicate country of Constitution]* |
| Tenderer's actual or intended year of incorporation: |
| Tenderer's legal address [in country of registration]: |
| Tenderer's authorized representative information<br>Name:_____<br>Address:_____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4<br>☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 4.1<br>☐ In case of state-owned enterprise or institution, in accordance with ITT 4.6, documents establishing:<br>• Legal and financial autonomy<br>• Operation under commercial law<br>• Establishing that the Tenderer is not under the supervision of the Procuring Entity<br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## FORM ELI -1.2

Tenderer's JV Information Form
(to be completed for each member of Tenderer's JV)

Date:_____

ITT No. and title:_____

| |
|---|
| Tenderer's JV name: |
| JV member's name: |
| JV member's country of registration: |
| JV member's year of constitution: |
| JV member's legal address in country of constitution: |
| JV member's authorized representative<br>information Name:_____<br>Address:_____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4.<br>☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.<br><br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## FORM CON –2

### Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:_____

| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | |
|---|---|---|---|
| ☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.<br><br>☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/number, and any other identification]*<br>Name of Procuring Entity: *[insert full name]*<br>Address of Procuring Entity: *[insert street/city/country]*<br>Reason(s) for nonperformance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | |
| ☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.<br>☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below. | | | |

| Year of dispute | Amount in dispute (currency) | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|---|---|---|---|
| | | Contract Identification: _____<br>Name of Procuring Entity: _____<br>Address of Procuring Entity: _____<br>Matter in dispute: _____<br>Party who initiated the dispute: _____<br>Status of dispute: _____ | |

| | | | |
|---|---|---|---|
| | | Contract Identification:<br>Name of Procuring Entity:<br>Address of Procuring Entity:Matter in dispute:<br>Party who initiated the dispute:Status of dispute: | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | |

| Year of dispute | Amount in dispute (currency) | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|---|---|---|---|
| ☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.<br>☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below. | | | |
| **Year of award** | **Outcome as percentage ofNet Worth** | **Contract Identification** | **Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)** |
| *[insert year]* | *[insert percentage ]* | Contract Identification: [indicate complete contract name, number, andany other identification]<br>Name of Procuring Entity: *[insertfull name]*<br>Address of Procuring Entity: *[insertstreet/city/country]*<br>Matter in dispute: *[indicate mainissues in dispute]*<br>Party who initiated the dispute: *[indicate "Procuring Entity" or"Contractor"]*<br>Reason(s) for Litigation and awarddecision *[indicate main reason(s)]* | *[insert amount]* |

## FORM FIN–3.1:

## FINANCIAL SITUATION AND PERFORMANCE

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:

_____

**Financial Data**

| **Type of Financial informationin_____ (currency)** | **Historic information for previous_____*years*, (amount in currency, currency, exchange rate*, USD equivalent)** | | | | |
|---|---|---|---|---|---|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) | | | | | |
| Total Liabilities (TL) | | | | | |
| Total Equity/Net Worth (NW) | | | | | |
| Current Assets (CA) | | | | | |
| Current Liabilities (CL) | | | | | |
| Working Capital (WC) | | | | | |
| Information from Income Statement | | | | | |
| Total Revenue (TR) | | | | | |
| Profits Before Taxes (PBT) | | | | | |
| Cash Flow Information | | | | | |
| Cash Flow from OperatingActivities | | | | | |

*Refer to ITT 15 for the exchange rate

## Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contractcommitments.

| No. | Source of finance | Amount (Kenya Shilling equivalent) |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | | |

## Financial documents

The Tenderer and its parties shall provide copies of financial statements for_____years pursuant Section III,Evaluation and Qualifications Criteria, Sub-factor3.1.The financial statements shall:

a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such asparent company or group member).

b) Be independently audited or certified in accordance with local legislation.

c) Be complete, including all notes to the financial statements.

d) Correspond to accounting periods already completed and audited.

Attached are copies of financial statements[1]for the_____years required above ; and complying withthe requirements

[2] *If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.*

## FORM FIN–3.2:

### Average Annual Construction Turnover

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:_____

| | Annual turnover data (construction only) | | |
|---|---|---|---|
| Year | Amount Currency | Exchange rate | Kenya Shilling equivalent |
| *[indicate year]* | *[insert amount and indicate currency]* | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Average Annual Constructio n Turnover * | | | |

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

## FORM FIN–3.3:

### Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subjectcontractor contracts as specified in Section III, Evaluation and Qualification Criteria.

| Financial Resources | | |
|---|---|---|
| No. | Source of financing | Amount (Kenya Shilling equivalent) |
| 1 | | |
| 2 | | |
| 3 | | |
| | | |

## FORMFIN–3.4:

### Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

| No. | Name of Contract | Procuring Entity's Contact Address, Tel, | Value of OutstandingWork [Current Kenya Shilling /month Equivalent] | Estimated Completio nDate | Average Monthly InvoicingOver Last Six Months [Kenya Shilling /month)] |
|---|---|---|---|---|---|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| | | | | | |

## FORM EXP-4.1

**General Construction Experience**

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:_____

_____Page_____of

_____pages

| Starting Year | Ending Year | Contract Identification | Role of Tenderer |
|---|---|---|---|
| | | Contract name: _____<br>Brief Description of the Works performed by theTenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by theTenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |

## FORM EXP -4.2(a)

**Specific Construction and Contract Management Experience**

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:_____

| **Similar Contract No.** | **Information** | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contractor ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| Total Contract Amount | | | **Kenya Shilling** | |
| If member in a JV or sub-contractor, specify participation in total Contractamount | | | | |
| Procuring Entity's Name: | | | | |
| Address:<br>Telephone/fax<br>numberE-mail: | | | | |
| Description of the similarity in accordance with Sub-Factor 4.2(a) of<br>Section III: | | | | |
| 1. Amount | | | | |
| 2. Physical size of required worksitems | | | | |
| 3. Complexity | | | | |
| 4. Methods/Technology | | | | |
| 5. Construction rate for keyactivities | | | | |
| 6. Other Characteristics | | | | |

## FORMEXP-4.2(b)

### Construction Experience in Key Activities

Tenderer's Name:_____

Date:_____

Tenderer's JV Member Name:_____

Sub-contractor's Name[3] (as perITT35):_____

ITT No. and title:_____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One:_____

| | Information | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contract or ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| Total Contract Amount | | | **Kenya Shilling** | |
| Quantity (Volume, number or rate of production, as applicable) performed underthe contract per year or part of the year | Total quantity in the contract (i) | Percentage participation (ii) | | Actual Quantity Performed (i) x (ii) |
| Year 1 | | | | |
| Year 2 | | | | |
| Year 3 | | | | |
| Year 4 | | | | |
| Procuring Entity's Name: | | | | |
| Address: Telephone/fax numberE-mail: | | | | |

[3] *If applicable*

| | Information |
|---|---|
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: | |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |

2 Activity No.

Two3.

……

## x) SCHEDULE FORMS

*[The Tenderer shall fill in these Forms in accordance with the instructions indicated. The list of line items in column1 of the **Activity Schedules** shall coincide with the List of Non-Consulting Services specified in the Procuring Entity'sRequirements.]*

### xi) WORK SCHEDULES AND SPECIFICATIONS

A) The Specifications and Priced Activity Schedules

## SCHEDULE OF PRICES

| S/NO | Description | Unit | Minimum Estimated Qty(Floor) | Maximum Estimated Qty(Ceiling) | Rate (ksh) VAT inclusive (on floor) | Total Rate (ksh) VAT inclusive (on floor) |
|---|---|---|---|---|---|---|
| 1 | Full board plus conference | PAX | 1,000 | 15,000 | | |
| 2 | Half board plus conference | PAX | 1,000 | 15,000 | | |
| 3 | Bed and breakfast plus conference | PAX | 1,000 | 15,000 | | |
| 4 | Half day conference | PAX | 1,000 | 15,000 | | |
| 5 | Full day conference | PAX | 1,000 | 15,000 | | |
| 6 | Conference only | PAX | 1,000 | 15,000 | | |
| 7 | All inclusive package | PAX | 1,000 | 15,000 | | |

Authorized by: Name of Tenderer.....

Designation .....

Signature:.....

Date.....

## B) Method Statement

[Procuring Entity shall provide main features of the expected method of carrying out the contract, includingindicating the material, personnel and equipment in puts].

## C) Work Plan

[Procuring Entity shall provide main features of the work plan that the Tenderer should provide in the tender forcarrying out the contract, from beginning to the end].

## D) Other Time Schedule

*(to be used by Tenderer when alternative Time for Completion is invited in ITT14.2)*

## xii) CONTRACT FORMS

***NOTIFICATION OF INTENTION TO AWARD***

[*This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.*] [*Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form*] For theattention of Tenderer's Authorized Representative

Name..... *[insert Authorized Representative's name]*

Address ..... *[insert Authorized Representative's Address]*

Telephone numbers..... *[insert Authorized Representative's telephone/fax numbers]*

Email Address..... *[insert Authorized Representative's email address]*

***[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent toall Tenderers simultaneously. This means on the same date and as close to the same time as possible.]***

**DATE OF TRANSMISSION:**..... This Notification is sent by: [*email/fax*] on [*date*] (local time)

**Procuring Entity**..... *[insert the name of the Procuring Entity]*

**Contract title** ..... *[insert the name of the contract]*

**ITT No**..... *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. Thetransmission of this Notification begins the Standstill Period. During the Standstill Period you may:

a) Request a debriefing in relation to the evaluation of your Tender, and/or

b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

**I). The successful Tenderer**

| No. | Description and No.of Service Line or Package | [*insert name of successful Tenderer*] | [*insert Address of successful Tenderer*] | Tender price | Evaluated Tender price (if applicable) |
|---|---|---|---|---|---|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |

*ii).* Other Tenderers *[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender'sprice was evaluated include the evaluated price as well as the Tender price as read out.]*

| No. | Description and No.of Service Line or Package | [*insert name ofTenderer*] | [*insert Address ofTenderer*] | Tender price | Evaluated Tender price |
|---|---|---|---|---|---|
| 1 | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 2 | | | | | |
| 3 | | | | | |

### *iii).* How to request a debriefing

**DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (local time).**

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3)Business Days of receipt of this Notification of Intentionto Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request fordebriefing as follows:

**Attention** ..... [*insert full name of person, if applicable*]

**Title/position**.....[*insert title/position*]

**Agency**.....[*insert name of Procuring Entity*]

**Email address**..... [*insert email address*]

If your request for a debriefing is received within the3Business Days deadline, we will provide the debriefing withinfive (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you inwriting how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide thedebriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publicationof the Contract Award Notice.

### iv. How to make a complaint

**Period: Procurement-related Complaint challenging the decision to award shall be submitted by [*insert date andtime*].**

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

**Attention** .....[*insert full name of person, if applicable*]

**Title/position**..... [*insert title/position*]

**Agency**.....[*insert name of Procuring Entity*]

**Email address**.....[*insert email address*]

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decisionto award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Stand still Period and received by us before the Stand still Period ends.In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tenderingprocess, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required to support the complaint.
5. The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be refundable (information available from the Public Procurement Authority at info@ppra.go.ke or complaints@ppra.go.ke

v). Standstill Period

**DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).**
The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention toAward.

The Standstill Period may be extended as stated in Section 4 above.
If you have any questions regarding this Notification please do not hesitate to contactus.

On behalf of the Procuring Entity:

**Signature:**_____

**Name:**_____

**Title/position:**_____

**Telephone:**_____

**Email:** _____

## 2. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……OF……20……..

BETWEEN

……..……APPLICANT

AND

……RESPONDENT (Procuring Entity)

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

REQUEST FOR REVIEW

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

namely:1.

2.

By this memorandum, the Applicant requests the Board for an

order/orders that:1.

2.

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

---

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

SIGNED

Board Secretary

## 3. LETTER OF AWARD

*[Form head paper of the Procuring Entity]*

*.....[date]*

To..... *[name and address of the Service Provider]*

This is to notify you that your Tender dated*[date]*forexecutionofthe*[nameoftheContractandidentificationnumber, as given in the Special Conditions of Contract] "for the Contract Amounts [amount in numbers and words] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers, are hereby accepted by ..... (name of Procuring Entity)." for each Service Line or Package listed on the Table below.*

| No. | Description and Number of Service Line orPackage | [*insert accepted Tender Price*] | [*insert completion period*] |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |

"You are requested to arrange to sign the Framework Agreement within 28 days in accordance with the Conditions of Contract. On being instructed to commence the contract on any of the packages you have won, by a call-off notification,you will be requested to furnish for the particular Service Line or Package a Performance Security within 28 days in accordance with the Conditions of Contract, and for that purpose, using one of the Performance Security Forms includedin Section VIII, Contract Forms, of the Tender Document".

Please return the attached Contract dully signed

AuthorizedSignature:.....

.....

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract

## 4. FORM OF CONTRACT

*[Form head paper of the*

*ProcuringEntity]* LUMP SUM

REMUNERATION

This CONTRACT(herein after called the "Contract") is made the *[day]* day of the month of*[month]*,*[year]*, between,on the one hand,*[name of Procuring Entity]*(herein after called the "Procuring Entity") and, on the other hand, *[nameof Service Provider]*(hereinafter called the" Service Provider").

[***Note:*** *In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows:*"…(herein after called the"Procuring Entity") and, on the other hand, a joint venture consisting of the following entities, each of which will bejointly and severally liable to the Procuring Entity for all the Service Provider's obligations under this Contract, namely, *[name of Service Provider]*and*[name of Service Provider]*(herein after called the "Service Provider").]

WHEREAS

a) The Procuring Entity has requested the Service Provider to provide certain Services as defined in theGeneral Conditions of Contract attached to this Contract (herein after called the "Services");

b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of ;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, andthe priority of the documents shall be as follows:
   a) The Form of Acceptance;
   b) The Service Provider's Tender
   c) The Special Conditions of Contract;
   d) The General Conditions of Contract;
   e) The Specifications;
   f) The Priced Activity Schedule; and
   g) The following Appendices: [***Note:*** *If any of these Appendices are not used, the words "Not Used" shouldbe inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of thatAppendix.*]

   Appendix A: Description of the ServicesAppendix B: Schedule of Payments Appendix C: Subcontractors Appendix D: Breakdown of Contract Price
   Appendix E: Services and Facilities Provided by the Procuring Entity

2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in theContract, in particular:
   a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
   b) The Procuring Entity shall make payments to the Service Provider in accordance with the provisions ofthe Contract.

   INWITNESSWHERE OF, the Parties here to have caused this Contract to be signed in their respective namesas of the day and year first above written.

For and on behalf of_____*[name of Procuring Entity]*

_____*[Authorized Representative]*
For and on behalf of *[name of Service Provider]*

_____*[Authorized Representative]*

[***Note*** *:If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner*:]

For and on behalf of each of the Members of the Service Provider

*.....[name of member]*

*.....[Authorized Representative]*

*..... [name of member]*

*.....[Authorized Representative]*

## 4. FORM OF TENDER SECURITY (Bank Guarantee) *[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.] [Guarantor Form head or SWIFT identifier code]*

**Beneficiary** ..... *[Procuring Entity to insert its name and address]*
**ITT No** ..... *[Procuring Entity to insert reference number for the Request for Tenders]*
**Alternative No** ..... *[Insert identification No if this is a Tender for an alternative]* **Date** ..... *[Insert date of issue]*

**TENDER GUARANTEE No**..... *[Insert guarantee reference number]*

**Guarantor** ..... *[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that____*[insert name of the Tenderer, which in the case of a joint venture shall be thename of the joint venture (whether legally constituted or prospective) or the names of all members there of]*(hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of__under Request for Tenders No.___("The ITT").

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

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

(a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Form of Tender("the Tender Validity Period"), or any extension there to provide by the Applicant; or

(b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to sign the Framework Agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's tendering document.

This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Framework AgreementsignedbytheApplicantandtheperformancesecurityissuedtothe Beneficiary in relation to such Framework Agreement; or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the

end of the Tender Validity Period.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC PublicationNo. 758.

_____
*[Signature(s)]*

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

## 5. FORM OF TENDER SECURITY (TENDER BOND) *[The Surety shall fillin*

*this Tender Bond Form in accordance with the instructions indicated.]* BOND NO.

_____

BY THIS BOND *[name of Tenderer]* as Principal (herein after called "the Principal"), and *[name, legal title, and address of surety]*,**authorized to transact business in Kenya** ,as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[name of Procuring Entity]* as Obligee (hereinafter called "the Procuring Entity") in the sum of *[amount of Bond][amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHERE AS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the_____ day of_____, 20_____, for the supply of *[name of Contract]*(herein after called the "Tender").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

c) haswithdrawnitsTenderduringtheperiodofTendervaliditysetforthinthePrincipal'sFormofTender("theTenderValidityPeriod"),oranyextensiontheretoprovidedbythePrincipal;or

d) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension there to provide by the Principal; (i) failed to execute the Framework Agreement; or (ii) hasfailed to furnish the Performance Security, in accordance with the Instructions to Tenderers ("ITT") of the Procuring Entity's tendering document.

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extensionthereto provided by the Principal.

IN TESTIMONY WHERE OF, the Principal and the Surety have caused these presents to be executed in theirrespective names this_____day of_____20_____.

Principal:_____
Corporate Seal (where appropriate)

Surety:_____

_____
*(Signature)*

_____
*(Signature)*

*(Printed name and title)*

*(Printed name and title)*

## 6 FORM OF TENDER-SECURING DECLARATION

*[The Tenderer shall fill in this Form in accordance with the instructions indicated.]*

Date..... *[date (as day, month and year)]*

ITT No..... *[number of Tendering process]*

Alternative No ..... *[insert identification No if this is a Tender for an alternative]*

To..... *[complete name of Procuring Entity]* We, the undersigned, declare

that: We understand that, according to your conditions, Tenders must be supported by a

Tender-SecuringDeclaration.
We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in anycontract with the Procuring Entity for the period of time of *[number of months or years]*starting on *[date]*,if we are in breach four obligation(s) under the Tender conditions, because we:

a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
b) having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail to sign the Framework Agreement; or (ii) fail or refuse to furnish the Performance Security,if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after theexpiration of our Tender.

Name of the Tenderer*****_____

Name of the person duly authorized to sign the Tender on behalf of the Tenderer******_____

Title of the person signing the Tender_____

Signature of the person named above_____

Date signed_____day of_____,_____

*****: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

**: Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

*[**Note:** In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the JointVenture that submits the Tender.*

# PART II – PROCURING ENTITY'S REQUIREMENTS

## SECTION V - ACTIVITY SCHEDULE

### Objectives

N/A

### Day work Schedule

N/A

### Provisional Sums

N/A

## PERFORMANCE SPECIFICATIONS AND DRAWINGS

The following are the requisite services expected by CGM:-

| S/NO | Description | Unit |
|---|---|---|
| 1 | Full board plus conference | PEOPLE/ PAX |
| 2 | Half board plus conference | PEOPLE/ PAX |
| 3 | Bed and breakfast plus conference | PEOPLE/ PAX |
| 4 | Half day conference | PEOPLE/ PAX |
| 5 | Full day conference | PEOPLE/ PAX |
| 6 | Conference only | PEOPLE/ PAX |
| 7 | All inclusive package | PEOPLE/ PAX |

# PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS

# SECTION VI - GENERAL CONDITIONS OF CONTRACT

## A. General

### Provisions

### Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the followingmeanings:

a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolvedisputes in the first instance, as provided for in Sub-Clause8.2 hereunder.

b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the ServiceProvider forming part of his Tender;

c) "Completion Date" means the date of completion of the Services by the Service Provider as certified bythe Procuring Entity

d) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract(GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;

e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause6;

f) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider'semployees and equipment, in addition to payments for associated materials and administration.

g) "Procuring Entity" means the Procuring Entity or party who employs the Service Provider

h) "Foreign Currency" means any currency other than the currency of Kenya;

i) "GCC" means these General Conditions of Contract;

j) "Government "means the Government of Kenya;

k) "Local Currency "means Kenya shilling;

l) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified inthe SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;

m) "Party" means the Procuring Entity or the Service Provider, as the case maybe, and "Parties" means bothof them;

n) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees andassigned to the performance of the Services or any part there of;

o) "Service Provider" is a person or corporate body whose Tender to provide the Services has been acceptedby the Procuring Entity;

p) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Providerto the Procuring Entity

q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;

r) "Specifications" means the specifications of the service included in the Tendering Document submittedby the Service Provider to the Procuring Entity

s) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as describedin Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.

t) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses3.5and4;

u) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible foroversight of public procurement.

v) "Project Manager" shall the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointedfrom time to time by the Procuring Entity and notified to the Contractor.

w) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating itsdissatisfaction and intention to commence arbitration.

### 1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

### 1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling languagefor all matters relating to the meaning or interpretation of this Contract.

### 1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to havebeen made when delivered in person to an authorized representative of the Party to whom the communicationis addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified inthe SCC.**

### 1.5 Location

The Services shall be performed at such locations as a respecified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, asthe Procuring Entity may approve.

### 1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specifiedin the SCC.**

### 1.7 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its sub contract or sand sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitutea prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

### 1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been includedin the Contract Price.

## 2 Commencement, Completion, Modification, and Termination of Contract

### 2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as maybe **stated in the SCC.**

### 2.2 Commencement of Services

#### 2.2.1 Program

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approvala Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

### 2.2.2 Satarting Date

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomeseffective, or at such other date as may be **specified in the SCC.**

### 2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by theIntended Completion Date, as is **specified in the SCC.** If the Service Provider does not complete the activitiesby the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause3.8.Inthiscase,the Completion Date will be the date of completion of all activities.

### 2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of theServices or of the Contract Price, may only be made by written agreement between the Parties.

### 2.4.1 Value Engineering

The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a) The proposed change(s), and a description of the difference to the existing contract requirements;

b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the Procuring Entity may incur in implementing the value engineering proposal; and

c) A description of any effect(s)of the change on performance/functionality.

aThe Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

a) accelerates the delivery period; or

b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or

c) improves the quality, efficiency, safety or sustainability of the services; or

d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of theFacilities.

If the value engineering proposal is approved by the Procuring Entity and results in:

a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentagespecified in the **SCC** of the reduction in the Contract Price; or

b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in (a) to(d)above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

### 2.5 Force Majeure

### 2.5.1 Definition

For the purposes of this Contract,"ForceMajeure"meansaneventwhichisbeyondthereasonablecontrolofa Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as tobe considered impossible under the circumstances.

### 2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided thatthe Party affected by such an event (a) has taken all reasonable precautions, due

care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and(b) has informed the other Party as soon as possible about the occurrence of such an event.

### 2.5.3 Extension of Time

Any period with in which a Party shall, pursuant to this Contract, complete any action or task, shall be extendedfor a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### 2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the ServiceProvider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## 2.6 Termination

### 2.6.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty(30) days' written notice of terminationto the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through
(d) of this Sub-Clause 2.6.1:

a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract,within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;

b) if the Service Provider become insolvent or bankrupt;

c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract

### 2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and
(b) of this Sub-Clause 2.6.2:

a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice fromthe Service Provider that such payment is overdue; or

b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### 2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make thefollowing payments to the Service Provider:

a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;

b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost ofthe return travel of the Personnel.

# 3 Obligations of the Service Provider

## 3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, andemploy appropriate advanced technology and safe methods. The Service Provider shall always act, in respect

of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall atall times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractorsor third parties.

### 3.2 Conflict of Interests

#### 3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remunerationinconnectionwiththisContractortheServices,andtheServiceProvidershallnotacceptfortheir own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Providershall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

#### 3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Providerand its affiliates, as well as any Subcontractor and any of its affiliates, shall bed is qualified from providing goods, works, or Services(other than the Services and any continuation thereof) for any project resulting fromor closely related to the Services.

#### 3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly,in any of the following activities:

a) During the term of this Contract, any business or professional activities in Kenya which would conflictwith the activities assigned to them under this Contract;

b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire publicemployees' inactive duty or on any type of leave, to perform any activity under this Contract;

c) After the termination of this Contract, such other activities as may be **specified in the SCC.**

### 3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential informationrelating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without theprior written consent of the Procuring Entity.

**3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Sub contractors', as the case may be)own cost but on terms and conditions approved bythe Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC;** and
(b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurancehas been taken out and maintained and that the current premiums have been paid.

### 3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of thefollowing actions:

a) Entering into a subcontract for the performance of any part of the Services,

b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel andSubcontractors"),

c) changing the Program of activities; and

d) Any other action that may be **specified in the SCC.**

### 3.6 Reporting Obligations

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

### 3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, andthe Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC.**

### 3.8 Liquidated Damages

#### 3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidateddamages shall not exceed the amount **defined in the SCC.** The Procuring Entity may deduct liquidated damagesfrom payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

#### 3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of paymentto the date of repayment, at the rates specified in Sub-Clause 6.5.

#### 3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculatedas a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause7.2 and **specifiedin the SCC.**

### 3.9 Performance Security

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by abank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the CompletionDate of the Contract in the case of a Performance Bond.

### 3.10 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or executionof the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### 3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC**.

## 4 Service Provider's Personnel

### 4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix Care hereby approved by the Procuring Entity.

### 4.2 Removal and/or Replacement of Personnel

a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace anyof the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or betterqualifications.

b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have beencharged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with theperformance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications andexperience acceptable to the Procuring Entity.

c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## 5 Obligations of the Procuring Entity

### 5.1 Assistance and Exemptions

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Providersuch assistance and exemptions as **specified in the SCC.**

### 5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased ordecreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.

### 5.3 Services and Facilities

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

## 6 Payments to the Service Provider

### 6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub- Clauses2.4and6.3.

### 6.2 Contract Price

a) The price payable is **set forth in the SCC.**

b) Price may be payable in foreign currency, if so allowed in this document.

### 6.3 PaymentforAdditionalServices,andPerformanceIncentiveCompensation

**6.3.1** For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**6.3.2** **If the SCC so specify,** the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

**6.3.3** Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price–tender price)/tender price X100.*

## 6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC. Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC.** Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

## 6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider foreach day of delay at the rate stated in **the SCC**.

## 6.6 Price Adjustment

**6.6.1** Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment fact or to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c Lmc / Loc + C_c Imc / Ioc$$

Where:

$P_c$ is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

$A_c$, $B_c$ and $C_c$ are coefficients specified in the **SCC**, representing: $A_c$ the non-adjustable portion; $B_c$ the adjustable portion relative to labor costs and $C_c$ the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

Lmc is the index prevailing at the first day of the month of the corresponding invoiced ate and Loc is the index prevailing 28 days before Tender opening for labor; both in the specific currency "c".

Imc is the index prevailing at the first day of the month of the corresponding invoice date and Ioc is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Zo/Zn will be applied to the respective component factor of pn for the formula of the relevant currency. Zo is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Zn is the corresponding number of such currency units on the date of the current index.

**6.6.2** If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

## 6.7 Day works

**6.7.1** If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for

additional services to bepaid in that way.

**6.7.2** All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause1.6 within two days of the Services being performed.

**6.7.3** The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated inSub-Clause6.7.2

## *7* Quality Control

### 7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in theSCC.** The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entityconsiders may have a Defect. Defect Liability Period is as **defined in the SCC**.

**Correction of Defects, and Lack of Performance Penalty**

a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.

b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within thelength of time specified by the Procuring Entity's notice.

c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice,the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay thisamount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

## *8* Settlement of Disputes

### 8.1 Contractor's Claims

**8.1.1** If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor becameaware, or should have become aware, of the event or circumstance.

**8.1.2** If the Contractor fails to give notice of a claim within such period of 28days, the Time for Completion shall notbe extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clauses hall apply.

**8.1.3** The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all s relevant to such event or circumstance.

**8.1.4** The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either onthe Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keepingand /or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

**8.1.5** Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstancegiving rise to the claim, or within such other period as may be proposed by the Contractor and approved by theProject Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time

and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

8.1.5.1 This fully detailed claim shall be considered as interim;

a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and

b) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the eventor circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

**8.1.6** Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Managershall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

**8.1.7** Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause3.5[Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

**8.1.8** Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied aresufficient to substantiate the whole of the claim, the Contractor shall only been titled to payment for such partof the claim as he has be enable to substantiate.

**8.1.9** If the Project Manager does not respond within the time framed fined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordancewithSub-Clause8.2 [Matters that may be referred to arbitration].

**8.1.10** The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contract or fails to comply with this or another Sub-Clause in relation to any claim, any extensionof time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub- Clause.

## 8.2 Matters that may be referred to arbitration

**8.2.1** Notwithstanding anything stated herein the following matters may be referred to arbitration before the practicalcompletion of the Services or abandonment of the Services or termination of the Contract by either party:

a) The appointment of a replacement Project Manager upon the said person ceasing to act.

b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions

c) Whetherornotacertificatehasbeenimproperlywithheldorisnotinaccordance with these Conditions.

e) Any dispute arising in respect of war risks or war damage.

f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

## 8.3 Amicable Settlement

**8.3.1** Where a Notice of Dis satisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration afterthe fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

## 8.4 Arbitration

**8.4.1** Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicablyin accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

**8.4.2** The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives ofthe Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

**8.4.3** Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

**8.4.4** Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, andthe Project Manager shall not be altered by reason of any arbitration being conducted during the progress of theservices.

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

## 8.5 Arbitration with proceedings

**8.5.1** In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

a) Law Society of Kenya or

b) Chartered Institute of Arbitrators (Kenya Branch)

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

**8.5.3** The arbitration maybe on the construction of this Contractor on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to been titled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

**8.5.4** Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

**8.5.5** Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

**8.5.6** The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in anycertificate.

**8.5.7** The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

**8.5.8** The award of such Arbitrator shall be final and binding upon the parties.

## 8.6 Failure to Comply with Arbitrator's Decision

**8.6.1** In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may,without prejudice to any other rights it may have, refer the matter to a competent court of law.

## 9.1 The Adjudicator

9.1.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30days, the Adjudicator shall be designated by the AppointingAuthority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

**9.2** The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC,** together with reimbursableexpenses of the type's **specified in the SCC**, and the cost shall be divided equally between the Procuring Entityand the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision ofthe Adjudicator to an Arbitrator within28 days of the Adjudicator's written decision. If neither party refers thedispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

## B. SPECIAL CONDITIONS OF CONTRACT

### SECTION VII - SPECIAL CONDITIONS OF CONTRACT

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| **1.1(a)** | The Adjudicator is _____ |
| **1.1(v)** | Project Manager is _____ |
| **1.1(d)** | The contract name is_____. |
| **1.1(g)** | The Procuring Entity is _____ |
| **1.1(l)** | The Member in Charge is _____ |
| **1.1(o)** | The Service Provider is _____ |
| **1.4** | The addresses are:<br>Procuring Entity:<br>Attention: _____<br>Telex: _____<br><br>Service Provider: _____<br>Attention:_____<br>Email address _____ |
| **1.6** | The Authorized Representatives are:<br>For the Procuring Entity:<br>For the Service Provider: _____ |
| **2.1** | The date on which this Contract shall come into effect is_____. |
| **2.2.2** | The Starting Date for the commencement of Services is_____. |
| **2.3** | The Intended Completion Date is_____. |
| **2.4.1** | If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Service Provider shall be_% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price. |
| **3.2.3** | Activities prohibited after termination of this Contract are: _____ |
| **3.4** | The risks and coverage by insurance shall be:<br>(i) Third Party motor vehicle _____<br>(ii) Third Party liability _____<br>(iii) Procuring Entity's liability and workers' compensation _____<br>(iv) Professional liability _____<br>(v) Loss or damage to equipment and property _____ |
| **3.5(d)** | The other actions are_____.] |
| **3.7** | Restrictions on the use of documents prepared by the Service Provider are: |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions ofContract |
|---|---|
| 3.8.1 | The liquidated damages rate is_____per day<br>The maximum amount of liquidated damages for the whole contract is _____percent of the final Contract Price. |
| 3.8.3 | The percentage_____to be used for the calculation of Lack ofperformance Penalty(ies) is_____. |
| 5.1 | The assistance and exemptions provided to the Service Provider are: _____ |
| 6.2(a) | The amount in Kenya Shillings_____. |
| 6.3.2 | The performance incentive paid to the Service Provider shall be: ____ _____ |
| 6.4 | Payments shall be made according to the following schedule:<br>• Advance for Mobilization, Materials and Supplies:_ percent of the Contract Price shall be paid on the commencement date against the submissionof a bank guarantee for the same.<br>• Progress payments in accordance with the milestones established as follows, subject to certification by the Procuring Entity, that the Services have been rendered satisfactorily, pursuant to the performance indicators:<br>_____(indicate milestone and/or percentage) _____<br>_____(indicate milestone and/or percentage)_____and<br>_____(indicate milestone and/or percentage) _____<br>Should the certification not be provided, or refused in writing by the Procuring Entity within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.<br>• The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%.<br>• The bank guarantee for the advance payment shall be released when the advancepayment has been fully amortized. |
| 6.5 | Payment shall be made within_____days of receipt of theinvoice and the relevant documents specified in Sub-Clause 6.4, and within _____days in the case of the final payment.<br>The interest rate is_____. |

| | |
|---|---|
| **6.6.1** | Price adjustment is in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are :<br>(a) For local currency:<br>$A_L$ is _____<br>$B_L$ is _____<br>$C_L$ is _____<br>$L_{mc}$ and $L_{oc}$ are the index for Labor from _____<br>$I_{mc}$ and $I_{oc}$ are the index for_____from _____<br>(b) For foreign currency |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions ofContract |
|---|---|
| | $A_F$ is _____<br>$B_F$ is _____<br>$C_F$ is _____<br>$L_{mc}$ and $L_{oc}$ are the index for Labor from _____<br>$I_{mc}$ and $I_{oc}$ are the index for_____from _____ |
| **7.1** | The principle and modalities of inspection of the Services by the Procuring Entityare as follows: _____<br>The Defects Liability Period is_____. |
| **9.1** | The designated Appointing Authority for a new Adjudicator is _____ |
| **9.2** | The Adjudicator is_____. Who will be paid a rate of _____per hour of work? The following reimbursable expensesare recognized: _____ |

## C. APPENDICES

### Appendix A - Description of the Services

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place ofperformance for different tasks, specific tasks to be approved by Procuring Entity, etc.*

### Appendix B - Schedule of Payments and Reporting Requirements

*List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Notapplicable."*

### Appendix C - Breakdown of Contract Price

*List here the elements of cost used to arrive at the breakdown of the lump-sum price:*

1. *Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
2. *Reimbursable expenditures.*

*This appendix will exclusively be used for determining remuneration for additional Services.*

### Appendix D - Services and Facilities Provided by the Procuring Entity

### Appendix E - Framework Agreement

1.1 The Parties shall enter into this contract as a Framework Agreement within 28 days after the Contractor receivesthe Letter of Acceptance, unless the Particular Conditions establish otherwise. The Framework Agreement shall be basedupon FORM No. 3 – FRAMEWORK AGREEMENT annexed to the Particular Conditions. The costs of stamp duties andsimilar charges (if any) imposed by law in connection with entry into the Framework Agreement shall be borne by the Procuring Entity.

1.2 The Framework Agreement establishes the terms and conditions that will govern the contract awarded during the term ofthe Framework Agreement. The Framework Agreement establishes for the procurement works by package as and when required, over the specified period of time. The Framework Agreement does not commit a Procuring Entity to procure, nor a Firm to supply. The Framework Agreement allows the Procuring Entity to call the Contractor to commence the works on a particular package in a specified location within the duration of the agreement.

1.3 This Framework Agreement does not guarantee the contractor of being called for a contract to start and no commitmentis made with regard to possible number of packages to carry out.

1.4 This Framework Agreement does exclude the Procuring Entity from the right to procure the same Works from other firms.

1.5 This Framework Agreement does not stop the Procuring Entity from removing the contractor from the same Agreement.

1.6 FAs shall be established for a maximum period of three (3) years. The Procuring Entity may with the Consent of the Contractor extend this Agreement if the agreement period is less than three (3) years, if the initial engagement has been satisfactory.

1.7 **Call-off Contracts;** for work on a package to start, the Procuring Entity shall issue a notice of acceptance of

a particular package requesting the contractor to furnish a Performance Security and to start the works thereafter, and providing the contractor with details of location where the works, are to be carried out. The call-off statement shall specifythe objectives, tasks, deliverables, timeframes and price or price mechanism. The price for individual call-off contracts

shall be based on the prices detailed in the Framework Agreement.

Names of all Service Lines and Packages awarded to the Tenderer.

| Description and Noof Service Line or Package | Name of Tenderer | Address of the Tenderer | Awarded Tender price |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

## D. FORMS

## SECTION VIII -CONTRACT FORMS

**FORM NO. 1 - PERFORMANCE SECURITY** – (Unconditional Demand Bank Guarantee)

*[Guarantor letterhead or SWIFT identifier code]*

Beneficiary:_____*[insert name and Address of* Procuring Entity*]*

**Date:**_____*[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:**_____

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

1. We have been informed that_____(hereinafter called "the Applicant") has entered into Contract No._____*dated*_____with the Beneficiary, for the execution of_____ (herein after called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee isrequired.

3. At the request of the Applicant, we as Guarantor, hereby irrevocably under take to pay the Beneficiary any sumor sums not exceeding in total an amount of___(),[1]such sum being payable in the types and proportions ofcurrenciesinwhichtheContractPriceispayable,uponreceiptbyusoftheBeneficiary'scomplyingdemand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed documentaccompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under theContract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specifiedtherein.

4. This guarantee shall expire, no later than the….Day of……, 2…[2], and any demand for payment under it mustbe received by us at this office indicated above on or before that date.

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

_____

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

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

---

[1]*The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter ofAcceptance, less provisional sums, if any, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2]*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity*

*might consider adding the following text to the form, at the end of the pen ultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

## FORM No. 2 - PERFORMANCE SECURITY OPTION 2 – (Performance Bond)

*[Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guaranteeinstead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*
**Beneficiary:** *[insert name and Address of* ProcuringEntity*]* **Date:**_*[Insert date of issue]*

**PERFORMANCE BOND No.:**_____

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

1. By this Bond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (herein after called "theSurety"), are held and firmly bound unto ] as Obligee (herein after called "the Procuring Entity")in the amount of_____for the payment of which sum well and truly to be made in thetypes and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bindthemselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by thesepresents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the___ day of_____, 20_____, for_____in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are herein after referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null andvoid; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by theProcuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
   1) Complete the Contract in accordance with its terms and conditions; or
   2) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completingthe Contract in accordance with its terms and conditions, and upon determination by the Procuring Entityand the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the amount set forth inthe first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall meanthe total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordancewith its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has causedthese presents to be sealed with his corporate seal duly attested by the signature of his legal representative, thisday__of_____20_____.

SIGNED ON_____on behalf

ofby_____in the capacity

of In the presence of

SIGNED ON_____on behalf

ofBy_____in the capacity

of In the presence of

## FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

*[Guarantor letter head or SWIFT identifiercode] [Guarantor letter head or SWIFT identifier code]*

**Beneficiary:** _____*[Insert name and Address of* Procuring Entity*]*

**Date:**_____*[Insert date of issue]*

**ADVANCE PAYMENTGUARANTEE No.:**_____*[Insert guarantee reference number]* **Guarantor:***[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Applicant") has entered intoContract No.__*dated*_____with the Beneficiary, for the execution of_____ (herein after called "the Contract").

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

3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of___()[1] upon receipt by us of the Beneficiary's complyingdemand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document ac companying or identifying the demand, stating either that the Applicant:
   a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works;or
   b) has failed to repay the advance payment in accordance with the Contract conditions, specifying theamount which the Applicant has failed to repay.

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

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

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

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

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

[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment asspecified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.*

[2] *Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following ext. to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

## FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

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

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

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

Tender Reference No.:_____[*insert identificationno*] Name of the Assignment:_____*[insert name of the assignment]* to:_____*[insert complete name of Procuring Entity]*

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

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

Details of beneficial ownership

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

*OR*

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

*OR*

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

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

*of thevoting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governingbody of the Tenderer]"*

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

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

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

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

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

**Public Procurement Regulatory Authority (PPRA)**
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