



Kenya National Highways Authority

Quality Highways, Better Connections

TENDER No. KeNHA/2562/2022

**SUPPLY, INSTALLATION, SERVICE AND MAINTENANCE OF FIRE
FIGHTING EQUIPMENTS
AT BARABARA PLAZA AND TEN REGIONAL OFFICES**

MARCH 2022

**DIRECTOR CORPORATE SERVICES
KENYA NATIONAL HIGHWAYS
AUTHORITY
P.O. BOX 49712-00100
NAIROBI**

**DIRECTOR GENERAL
KENYA NATIONAL HIGHWAYS
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P.O. BOX 49712-00100
NAIROBI**

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INVITATION TO TENDER

PROCURING ENTITY: Kenya National Highways Authority – P.O.Box 49712-00100, NAIROBI.

CONTRACT NAME AND DESCRIPTION: Supply, Installation, Service and Maintenance of Firefighting Equipment

The Kenya National Highways Authority (KeNHA) is a State Corporation established under the Kenya Roads Act, 2007, with the responsibility for the management, development, rehabilitation and maintenance of national roads.

The Authority invites bids from eligible and competent Contractors for the **SUPPLY, INSTALLATION, SERVICE AND MAINTENANCE OF FIRE FIGHTING EQUIPMENTS** at Barabara Plaza and Ten Regional Offices to be funded through Fuel Maintenance Levy Fund (RMLF).

1. Tendering will be conducted under open competitive national method using a standardized tender document.
2. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [8:00am to 5:00 pm] at the address given below.
3. A complete set of tender documents may be obtained by interested tenderers from the Kenya National Highways Authority website: www.kenha.co.ke or PPIP portal: www.tenders.go.ke free of charge. Bidders are encouraged to download tender documents to minimise physical visits to the KeNHA Offices.

Tender documents obtained electronically will be free of charge. Tenderers downloading documents from a designated Website shall advise the Procurement Entity that they have downloaded the tender documents, giving full contact addresses of the tenderer

Attention:	Supply Chain Management
Street Address:	Kenya National Highways Authority, Barabara Plaza, JKIA, Off Mazao Road (Opposite Aviation House)
Floor/Room No.:	2 nd Floor South Wing, Block C
City:	NAIROBI, KENYA
Telephone:	+254 700423606, +254 20 4954329
Email addresses:	procurement@kenha.co.ke: dg@kenha.co.ke

4. Tender documents may be viewed and downloaded for free from the website: www.kenha.co.ke or PPIP portal www.tenders.go.ke. Tenderers who download the tender document must forward their particulars immediately to procurement@kenha.co.ke to facilitate any further clarification or addendum.
5. All Tenders must be accompanied by Original Tender Security of **Ksh.50,000.00** in the form of Unconditional Bank Guarantee from a reputable bank in Kenya valid up to 30 days beyond the tender validity period and in the format provided.
6. Completed tenders must be delivered to the address below on or before **29th March 2022 at 11:00 am**. Electronic Tenders will not be permitted.
7. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
8. Late tenders will be rejected.
9. The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

procurement@kenha.co.ke

Deputy Director, Supply Chain Management

Kenya National Highways Authority, Barabara Plaza,

Jomo Kenyatta International Airport (JKIA), Off Mazao Road,

P.O. Box 49712 –00100

NAIROBI, KENYA

so as to be received on or before **29th March 2022 at 11.00am**

B. Address for Submission of Tenders.

Kenya National Highways Authority

Attention: Deputy Director Supply chain Management

Street Address: Kenya National Highways Authority, Barabara Plaza, JKIA, Off Mazao Road (Opposite Aviation House)

Floor/Room No.: 2nd Floor South Wing, Block C

City: NAIROBI, KENYA

Telephone: +254 700423606, +254 20 4954329

Email addresses: procurement@kenha.co.ke: dg@kenha.co.ke

C. Address for Opening of Tenders.

Opening of the Tenders will take place immediately thereafter at the KeNHA Offices, 2nd Floor Boardroom, Block C, Barabara Plaza, in the presence of Tenderers/Representatives who wish to attend.

Yours sincerely,

Deputy Director, Supply Chain Management

FOR: DIRECTOR GENERAL

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A General Provisions

1 Scope of Tender and Definitions

1.1 The Procuring Entity as define in the Appendix to Conditions of Contract invites tenders for Maintenance Service of Fire Fighting Equipments, plant/equipment or vehicles and, if applicable, any related services incidental thereto, as specified in Section VII, Schedule of Requirements. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS**.

1.2 Throughout this tendering document:

- 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 used by the Procuring Entity) with proof of receipt;
- b) If the context so requires, “singular” means “plural” and vice versa;
- 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 official public holidays.

2 Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, 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.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified 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 the Form of Tender.

2.3 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 shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

3 Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be 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 behalf of 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. A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number members shall be specified in the **TDS**.

- 3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3 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 position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - e Or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works 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 Procuring Entity for the Contract implementation; or
 - g would be providing Lease Items, 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 under common control with that firm; or
 - h has a close business or family relationship with a professional staff of the Procuring Entity who:
 - i are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or
 - j would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship p has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.
- 3.4 A Tenderer shall not be involved in corrupt, coercive, obstructive, collusive, or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.
- 3.5 A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontract or in more than one Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered 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.
- 3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to be prequalified for a tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.
- 3.9 Firms and individuals may be ineligible if their countries of origin (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 taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of Lease Items or contracting for supply of Lease Items or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

- 3.10 For purposes of granting a margin of preference, a tender is considered a national tenderer if it is registered in Kenya, has more than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as national tenderers and eligible for national preference only if the individual member firms are registered in Kenya or have more than 51 percent ownership by nationals of Kenya, and the JV shall be registered in Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.11 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the Leases under this Invitation for tenders.
- 3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, 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.
- 3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4 Eligible Lease Items and Related Services

- 4.1 All the Lease Items and Related Services to be supplied under the Contract and financed by the Procuring Entity shall have their origin from Eligible Countries in accordance with ITT 3.8.
- 4.2 For purposes of this ITT, the term “Lease Items” includes, landed properties, buildings and related accommodations, vessels (land, air and sea), vehicles, machinery, plant and equipment, “related services” including services such as insurance, installation, training, and maintenance.
- 4.3 The term “origin” means the country where the Lease Items have been sourced from, manufactured, processed, or assembled.
- 4.4 A lease item may be considered ineligible if it has items, 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.

B. Contents of Tendering Document

5 Sections of Tendering Document

- 5.1 The tendering document consist of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1 Tendering Procedures

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

PART 2 Supply Requirements

v) Section V - Schedule of 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

5.2 The Specific Procurement Notice, Invitation to Tenders Notice, issued by the Procuring Entity is not part of this tendering document.

5.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of 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.

5.4 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.

6 Clarification of Tendering Document

A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified in the **TDS**. The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document 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 web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT8 and ITT 22.2.

7 Amendment of Tendering Document

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

7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have 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 webpage in accordance with ITT 7.1.

7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 22.2.

C. Preparation of Tenders

8 Cost of Tendering

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

9 Language of Tender

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

10 Documents Comprising the Tender

10.1 The Tender shall comprise the following:

- a **Form of Tender** prepared in accordance with ITT 11;
- b **Price Schedules:** completed in accordance with ITT 11 and ITT 13;
- c **Tender Security or Tender – Securing Declaration,** in accordance with ITT 18.1;
- d **Alternative Tender:** if permissible, in accordance with ITT 12;
- e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 29.3;
- f **Qualifications:** documentary evidence in accordance with ITT 16 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
- g **Tenderer Eligibility:** documentary evidence in accordance with ITT 16 establishing the Tenderer eligibility to tender;
- h **Eligibility of Lease Items and Related Services:** documentary evidence in accordance with ITT 15, establishing the eligibility of the Lease Items and Related Services to be supplied by the Tenderer;
- i **Conformity:** documentary evidence in accordance with ITT 15 and 28, that the Lease Items and Related Services conform to the tendering document; and
- j Any other document required **in the TDS.**

10.2 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 letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

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

11 Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.

11.2 Each item on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Items not priced for full quantity on the Schedule of Requirements will be rejected. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE ITEMS ON THE SCHEDULE OF REQUIREMENTS. Tenders will be evaluated and awarded on basis of each item.

11.3 Where tenders are being invited for individual Items/lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify so in their Tender the price reductions applicable to each Item or alternatively, to individual items. Discounts shall be submitted in accordance with ITT 13.1, provided the Tenders for all lots (contracts) are opened at the same time.

11.4 All duties, taxes, and other levies payable by the Contract or under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

12 Alternative Tenders

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

13 Tender Prices and Discounts

13.1 The prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below.

- 13.2 The price to be quoted in the Form of Tender in accordance with ITT 14.1 shall be the total price of all the items but the attachment of the Schedule of prices, excluding any discounts offered.
- 13.3 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender, in accordance with ITT 14.1.
- 13.4 Prices quoted by the Tenderer shall be fixed during the time of the Lease under the Contract and not subject to variation on any account, unless otherwise specified **in the TDS**. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 29. However, if in accordance with **the TDS**, prices quoted by the Tenderer shall be subject to adjustment during the Lease under the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.
- 13.5 If so specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4 provided the Tenders for all lots (contracts) are opened at the same time.
- 13.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered. The Tenderer may obtain insurance services from any eligible country in accordance with ITT 3, Eligible Tenders. The tender shall include Related Services required to maintain the leased item as specified in the Schedule of Requirements (inclusive of any applicable taxes).

14 Currencies of Tender and Payment

- 14.1 The currency (ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings unless otherwise specified **in the TDS**.

15 Documents Establishing the Eligibility and Conformity of the Lease Items and Related Services.

- 15.1 To establish the eligibility of the lease items and Related Services in accordance with ITT 5, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.
- 15.2 To establish the conformity of the Lease items and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Lease Items conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Lease Items and Related Services, demonstrating substantial responsiveness of the Lease Items and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Lease Items during the period **specified in the TDS** following commencement of the use of the Lease Items by the Procuring Entity.
- 15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

16 Documents Establishing the Eligibility and Qualifications of the Tenderer

- 16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- that, if required **in the TDS**, a Tenderer that does not own the Lease Items it offers shall submit the Owner's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the Owner of the Lease Items.
 - that, if required **in the TDS**, in case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the related services of the leased items as obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 16.3 Tenderers 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 lessor or group of lessors 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 process or contract management.
- 16.4 The purpose of the information described in ITT 16.3 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 and control.
- 16.5 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 16.3. The obligations to require this information shall continue for the duration 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.
- 16.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as 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 at the date of submission to the Procuring Entity.
- 16.7 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.
- 16.8 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 procurement or contract management process, then:
- i) If the procurement process is still ongoing, 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.
 - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 16.9 If a tenderer submits information pursuant to these requirements that is incomplete, in accurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 16.8 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 error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

17 Period of Validity of Tenders

- 17.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 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 made in writing. If a Tender Security is requested in accordance with ITT 19, 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, except as provided in ITT 18.3.

18 Tender Security

- 18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**. In this case a Tender-Securing Declaration or a Tender Security shall be for each item. Alternatively, a tenderer may aggregate all the Items tendered for and provide one Tender-Securing Declaration or a Tender Security in the required amounts, as the case may be.
- 18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 18.3 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand bank guarantee in any of the following forms at the Tenderer option:
- i. cash;
 - ii. a bank guarantee;
 - iii. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
 - iv. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.
 - v. Any other form specified in the **TDS**.
- 18.4 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for twenty-eight (28) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.
- 18.5 If a Tender Security is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.
- 18.6 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46.
- 18.7 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract. The Procurement Entity shall also return tender security to the tenderers where;
- a. The procurement proceedings are terminated
 - b. All tenders were determined non-responsive and
 - c. Where a bidder decline to extent the tender validity period.

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

- a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
 - i) If the successful Tenderer fails to sign the Contract in accordance with ITT 45; or
 - ii) Furnish or make available the Leased items.

18.9 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 letter of intent referred to in ITT 4.1 and ITT 11.2.

18.10 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

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

19 Format and Signing of Tender

19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 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.

19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation **as specified in the TDS** and shall be attached to the Tender. The name and position held by each person 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.

19.4 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.

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

D. Submission and Opening of Tenders

20 Sealing and Marking of Tenders

20.1 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 number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- a in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT11; 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 ITT 13, and if relevant:
 - i. in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and
 - ii. in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies 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.

- 20.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

21 Deadline for Submission of Tenders

- 21.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the 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**.
- 21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 8, 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.

22 Late Tenders

- 22.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

23 Withdrawal, Substitution, and Modification of Tenders

- 23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 20.3, (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 20 and 21 (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 accordance with ITT 22.
- 23.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.
- 23.3 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 or any extension thereof.

24 Tender Opening

- 24.1 Except as in the cases specified in ITT 23 and ITT 24.2, 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 chooses to attend Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 22.1, shall be as specified **in the TDS**.
- 24.2 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 behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

- 24.3 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 valid authorization to request the substitution and is read out at Tender opening.
- 24.4 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.
- 24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there 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, if required; and any other details as the Procuring Entity may consider appropriate.
- 24.6** Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.
- 24.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 24.8 The Procuring Entity shall prepare a record 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;
 - c Any alternative Tenders;
 - d The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
- 24.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the opening register shall be distributed to all Tenderers upon request.

E. Evaluation and Comparison of Tenders

25 Confidentiality

- 25.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 40.
- 25.2 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.
- 25.3 Notwithstanding ITT 26.2, 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.

26 Clarification of Tenders

- 26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. 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 the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall besought, 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 ITT 31.
- 26.2 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.

27 Deviations, Reservations, and Omissions

27.1 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 the requirements specified in the tendering document; and
- c “Omission” is the failure to submit part or all of the information or documentation required in the tendering document.

28 Determination of Responsiveness

28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.

28.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material 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 Lease Items and Related Services specified in the Contract; or
 - ii. Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or
- b if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 16 and ITT 17, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

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

29 Non-conformities, Errors and Omissions

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

29.2 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. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

29.3 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 comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

30 Correction of Arithmetical Errors

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

30.2 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 to disqualification 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, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail

31 Conversion to Single Currency

- 31.1 No conversion to single currency is expected since all tenders will be in Kenya shillings.

32 Margin of Preference and reservations

- 32.1 No Margin of Preference and Reservations shall be allowed in this tender.

33 Evaluation of Tenders

- 33.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Most Advantageous 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.
- 33.2 To evaluate a Tender, the Procuring Entity shall consider the following:
- a Price adjustment due to discounts offered in accordance with ITT 14.4;
 - b Price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and
 - c The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.
- 33.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of the Lease Contract, shall not be considered in Tender evaluation.
- 33.4 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.
- 33.5 The Procuring Entity's evaluation of a Tender will include and consider:
- a taxes, which will be payable on the Lease Items if a contract is awarded to the Tenderer;
 - b any allowance for price adjustment during the period of the Lease contract, if provided in the Tender.
- 33.6 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of Lease and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified **in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITT 34.2 (f).

34 Comparison of Tenders

- 34.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 34.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost for all Lease Items, and related services, together with prices for any required installation, training, commissioning and other services.

35 Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

- 35.1 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.
- 35.2 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.
- 35.3 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

- 35.4 An abnormally high tender 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.
- 35.5 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 the 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 may be.
- 35.6 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.

36 Qualification of the Tenderer

- 36.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 36.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.
- 36.3 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 qualifications to perform satisfactorily.

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

- 37.1 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

38. Award Criteria

- 38.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

39. Notice of Intention to enter into a Contract/Notification of award

- 39.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:
- a) The name and address of the Tenderer submitting the successful tender;
 - b) The Contract price of the successful tender;
 - c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
 - d) the expiry date of the Standstill Period; and
 - e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

40. Standstill Period

- 40.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 40.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

41 Debriefing by the Procuring Entity

- 41.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. .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.

42 Letter of Award

- 42.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

43 Signing of Contract

- 43.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 43.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

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

44 Performance Security

- 44.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to 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 Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.
- 44.2 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 that event the Procuring Entity may award the Contract to the Tenderer offering the next Most Advantageous Tender.
- 44.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

45 Publication of Procurement Contract

- 45.1 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 the following 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 selection method 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.

46 Procurement Related Complaint

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

SECTION II - TENDER DATA SHEET (TDS)

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

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT Reference	A. General
ITT 1.1	<p>The name of the Tender is SUPPLY,INSTALLATION SERVICE AND MAINTENANCE OF FIRE FIGHTING EQUIPMENT AT BARABARA PLAZA AND TEN REGIONAL OFFICES</p> <p>The Procuring Entity is <i>Kenya National Highways Authority</i></p> <p>The Reference number of the Tender No. is KeNHA/2562/2022</p> <p>The number and identification of the lots (contracts) comprising the Tender are: (N/A)</p>
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: Two [2]
ITT 4.12	The Procuring Entity may require tenderers to be registered with Professional Body as stated in the Qualification Form.
	B. Contents of Tendering Document
ITT 8.1	<p>For Clarification of Tender purposes only, the Procuring Entity's address is:</p> <p>For the attention: <i>Director General</i> Kenya National Highways Authority, Barabara Plaza, JKIA, Off Mazao Road (Opposite Aviation House) City: NAIROBI, KENYA Telephone: +254 700423606, +254 20 4954329 Email addresses: procurement@kenha.co.ke: dg@kenha.co.ke</p> <p>Requests for clarification should be received by the Procuring Entity no later than: 7 Days Prior to Tender Submission Date</p> <p>Web page: www.kenha.go.ke or www.ppip.go.ke</p>
ITT 8.2	The Firms or their Affiliates that provided consulting services for the contract being tendered for are: N/A
ITT 8.4	Bidders shall be expected to attend the Pretender Site Visit per the details listed on the Tender Notice. The Procuring Entity may publish Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the website: www.kenha.co.ke
ITT 9.1	The Procuring Entity will respond to request for clarification in not more than 4 days from and shall publish its response at the website www.kenha.co.ke
	C. Preparation of Tenders
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: [N/A]

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for completion <i>shall not be</i> permitted.
ITT 15.3	Alternative technical solutions shall not be permitted for the following parts of the Services:
ITT 16.7	The prices quoted by the Tenderer <i>shall not</i> be subject to adjustment during the performance of the Contract. Any Variation shall be as guided by the PPAD Act 2015 and Regulations 2020.
ITT 19.3	Prequalification : N/A
ITT 20.1	The Tender validity period shall be <i>140days</i> from the specified date of opening as indicated in the invitation to Tender
ITT 21.1	A Tender Security <i>Shall Be</i> required and the amount and currency of the Tender Security shall be <u>Ksh. 50,000 in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 140 days from the date of tender opening.</u>
ITT 22.1	In addition to the original of the Tender, the number of copies is: None
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <i>Certificate of Independent Tender Determination Part B of Form of Tender</i>
	D. Submission and Opening of Tenders
ITT 23.1	For <u>Tender submission purposes</u> only, the Procuring Entity's address is: Director General Kenya National Highways Authority, 2nd Floor, Block C, Barabara Plaza, JKIA, Off Mazao Road City: NAIROBI, KENYA Telephone: +254 700423606, +254 20 4954329 Email addresses: procurement@kenha.co.ke: dg@kenha.co.ke
ITT 24.1	The deadline for Tender submission is: Date: <i>Tuesday 29th March, 2022</i> Time: <i>11:00AM</i> Tenderers <i>shall not</i> have the option of submitting their Tenders electronically.
ITT 26.1	The Tender opening shall take place at the Venue and Time <u>As indicated in the invitation to Tender</u>
ITT 27.6	The Form of Tender and priced Activity Schedule shall be initialed by all representatives of the Procuring Entity conducting Tender opening. If initialization is required, it shall be conducted as follows: <ul style="list-style-type: none"> • <i>By all members of the Tender opening committee</i> • <i>In the pages they shall deem appropriate</i>
	E. Evaluation and Comparison of Tenders
ITT 34.1	A margin of domestic preference <i>shall</i> apply. <i>[If a margin of preference applies, the application methodology shall be defined in the Evaluation and Qualification</i>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<i>Criteria]</i>
ITT 34.2	The invitation to tender is extended to all eligible bidders who meet the minimum qualifications.
F. Award of Contract	
ITT 49.1	The proposed Adjudicator, their hourly fee and biographical data shall be as governed by the Laws of Kenya.
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA website info@ppra.go.ke_or complaints @ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: <i>Director General</i></p> <p>Procuring Entity: <i>Kenya National Highways Authority (KeNHA)</i></p> <p>Email address: <i>dg@kenha.co.ke</i></p> <p>In summary, a Procurement-related Complaint may challenge any of the following: the terms of the Tender Documents; and the Procuring Entity's decision to award the contract.</p>

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 Shilling equivalent using the rate of exchange determined as follows:
- For business 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 is to be converted) was originally established.
 - Value of single contract- Exchange rate prevailing on the date of the contract signature.
 - Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining 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 other factors, 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 arrive at 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

- 2.1 The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and 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, a template may be attached or clearly described all information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]

- 3 **Price evaluation for each item:** in addition to the criteria listed in ITT 34.2 (a)–(d) the following criteria shall apply:

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

- Alternative Completion Times**, if permitted under ITT 13.2, will be evaluated as follows:
.....
- Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows:
- Other Criteria**; if permitted under ITT 35.2(d):

4 Multiple Contracts (ITT 34.4)

Multiple contracts will be permitted in accordance with ITT 34.4. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

OPTION 1

- i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
- ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest the tenderers.

OPTION 2

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

5 Alternative Tenders (ITT 12.1)

An alternative if permitted under ITT 12.1, will be evaluated as follows:

“A tenderer may submit an alternative Tender with or without a Tender for the base case. The Procuring Entity shall consider Tenders offered for alternatives as specified in the Technical Specifications of Section VII, Schedule of Requirements. All Tenders received, for the base case, as well as alternative Tenders meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITT 34 to determine the Lowest Evaluated Tender.”

6 Qualification (ITT 35)

- 6.1 After determining the substantially responsive Tender which offers the Lowest -evaluated price in accordance with ITT 33, and, if applicable, the assessment of any Abnormally Low or high Tender (in accordance with ITT35) the Procuring Entity shall carry out the post-qualification of the tenderer in accordance with ITT36, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer qualifications.

- 6.2 For lease of infrastructural facilities (real estate)

List the requirements (e.g. the property is in the right location, it is in good status of maintenance, there are proper services for water, power, etc., the space is adequate, access, there is case of lease litigation, etc.

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

- 6.3 For lease of plant/equipment, vehicles (movable assets)

- i) Confirm the offered items meet the specifications, and the capacity, age etc.
- ii) Confirm their availability, etc.
- iii) **Financial Capability** - The tenderer shall furnish documentary evidence that it meets the following financial requirement(s): *[list the requirement(s) including period]*
- iv) **Documentary Evidence**- The tenderer shall furnish documentary evidence to demonstrate that the Lease Items it offers meet the following usage requirement: *[list the requirement(s)]*

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

6.4 After determining the substantially responsive Tender which offers the lowest-evaluated price meets the requirements in Items 6.2 and 6.3 above, the Procuring Entity shall carry out the post-qualification using the following criteria:

a) History of non-performing lease 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 (*specify 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 (a) 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 (*specify 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 years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

SECTION III: QUALIFICATION CRITERIA

QUALIFICATION FORM				
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
A. PRELIMINARY EVALUATION				
1.	Nationality	Nationality in accordance with ITT 4.5	Forms ELI - 1.1 and 1.2, with attachments	
2.	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 5.1	Forms ELI - 1.4	
3.	Conflict of Interest	No conflicts of interest in accordance with ITT 4.3	Form of Tender	
4.	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 4.6	Form of Tender - Form SD 1	
5.	State- owned Enterprise	Meets conditions of ITT 4.7	Forms ELI - 1.1 and 1.2, with attachments	
6.	Special Conditions of Contract	Form properly filled & signed	Appendix to Form of Bid in the Prescribed Format	
7.	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 4.8.	To be confirmed from Internal records by the procuring entity	
8.	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON - 1	

QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
9.	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer for the last three (3) years.	Form CON - 1	
10.	Declaration of Fair employment laws and practices	Bidders shall declare they are not guilty of any serious violation of fair employment laws and practices and will be bound to abide by the industry CBA at minimum	Form CON - 2	
11.	Tender Security	Tender Security Form	Form in the Prescribed Format	
12.	NSSF Compliance Certificate	-Valid and Current	Copy of Current NSSF Compliance Certificate	
13.	NHIF Compliance Certificate	-Valid and Current	Copy of Current NHIF Compliance Certificate	
14.	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.15.	Provide Valid Tax Compliance Certificate	
15.	Serialization of the Bid	Bidders shall sequentially serialize all pages of each tender submitted. Any written Pages or document attached or inserted Documents MUST be sequentially serialized.	The Serialization MUST be numerically sequential starting from Numeric 1.	
16.	Completeness of tender document	The person or persons signing the bid shall initial all pages of the bid where entries have been made.	All pages with entries (Typed or hand written) must be initialed.	

QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		Bidder shall own all alterations made in the tender document	Any alterations made in the tender document must be countersigned.	
17.	Ownership	Details of ownership with respective shareholding and citizenship.	Provide CR12 Form issued in the last six (6) Months.	
18.	NCA Practicing Certificate	NCA 5 or 6 or 7 Registration for relevant (Electrical/ Mechanical) Engineering Services (Fire Fighting Equipment Installation)	Copy of Valid Practicing Certificate	
19.	Registration Certificate/ Certificate of Incorporation	The firm must be registered in Kenya.	Provide copy of Registration Certificate	

B. TECHNICAL EVALUATION

1.	Financial Capability	i) Bidders shall provide audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last 3 years shall be submitted and must demonstrate the current	Form FIN - 3.1, with attachments Attachments include: i. Audited accounts All pages must be initialed and stamped by both a practicing Auditor registered with ICPAK and	10Marks
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QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		soundness of the Tenderer's financial position and indicate its prospective long-term profitability (as demonstrated by Financial Evaluation ratio	<i>one of the Directors. Auditor's practicing membership number from ICPAK must be indicated and a valid practicing license shall be provided.</i>	
			<p><i>The Financial ratio Form to be signed by the Auditor registered with ICPAK and one of the Directors</i></p> <ul style="list-style-type: none"> <i>Financial Ratios</i> <p>Computation shall be made for the following Ratios and marks awarded to each of the ratios:</p> <p>-Current ratio</p> <p>A Current ratio of 2:1 and above (5marks)</p> <p>Others below 2:1 gets Zero</p> <p>- Annual turnover</p> <p>Annual turnover of Ksh. 500,000.00 and above =5marks</p> <p>Others prorated at:</p> <p>Annual turnover x 5Marks/Ksh. 500,000.00</p>	10 Marks

QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements.	<ul style="list-style-type: none"> • Line of Credit • Bank statements Etc. 	3marks
2.	Bidders Experience	i) The bidder should describe the nature of experience they have in maintenance and service support of Firefighting Equipment and indicate the value of such contracts handled in the last Three Years	Attach copy of current Contract	6Marks
		ii) Give three reference sites that you have done annual maintenance on firefighting/ Mechanical Ventilation in the past three years.	Copy of recommendation letter on Client Letterhead	6Marks
3.	Methodology and Work Plan	The bidder Must Describe their methodology and work plan to be applied in carrying out the following:- i) Preventive Maintenance	Periodic Schedule and Services to be carried out.	20 Marks
		ii) Breakdown or Service Callout and Support	Commitment letter indicating time limits for responding to emergency.	10 Marks
4.	Key Personnel and Technical Qualification	The bidder Must provide the names and roles of the personnel and technical staff who will be involved in the preventive maintenance projects and callout service and support including their Curriculum Vitae. (Attach registration with	Schedule F (Form PER. 1 and PER. 2)	25Marks

QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		<p>professional organisation as applicable) Evidence of 5 qualified Technicians in Electrical or Mechanical Engineering or related field with 5 years of experience. Attach the following for each of the staff:</p> <p>1. Team Leader Academic Qualifications and experience:</p> <p>A team leader Should be in possession of; i) Degree in Engineering and at least 3 years' experience</p> <ul style="list-style-type: none"> • CV-duly signed by the owner-2.5 Marks • Copies of Certificates —2.5 Marks <p>Total marks(5Marks)</p> <p>2. Technicians Tenderer to propose Eight (4) No. Technicians Academic qualification and experience: Minimum qualification of Craft certificate in Electrical or Mechanical Engineering or related field with 5 years of experience. Or A minimum of a Diploma in Electrical or Mechanical Engineering or related field with 3 years' experience.</p> <p>a) 4 No. CV duly signed by their owners — each CV-2.5 Marks (Total 10 marks)</p> <p>b) 4No.Academic Certificates for the technicians proposed for the service - Each certificate-2.5 Marks (Total 10 marks)</p> <p>4 No. class B or C EPRA certificates for the technicians /electricians proposed above for the service- 1 technician per each sub-region that the contractor bids for. EPRA certificates</p>		

QUALIFICATION FORM

Item No.	Qualification Subject	Qualification Requirement	Document To be Completed/provided by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		MUST be attached) – 2.5 Marks per Technician/ Electrician (Total 10 marks). The CVs should be signed by both the employer and employee.		
5.	Environment Health and Safety Policy.	The bidder must clearly demonstrate and provide the Environment Health & Safety (EHS) policy of the company	Attach the Environment Health & Safety (EHS) policy of the company.	10 Marks
				100
<i>Tenderers who score less than the required pass (75%) will be automatically disqualified. Tenderers who pass the technical evaluation will be evaluated further.</i>				
C. FINANCIAL EVALUATION: The Lowest Evaluated Bidder may be subjected to Financial Evaluation which include but not limited to sensitivity analysis of the rates				
D. POST QUALIFICATION: The procuring entity may verify the documents provided by the bidder with the issuing authority.				

****Bidders attaining 75% from the Technical Evaluation will proceed to Financial Evaluation***

FORM OF TENDER

INSTRUCTIONS TO TENDERERS

- (i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.
- (ii) All italicized text is to help Tenderer in preparing this form.
- (iii) Tenderer must complete and sign and TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender.
- i) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.
 - A) Tenderer's Eligibility- Confidential Business Questionnaire
 - B) Certificate of Independent Tender Determination
 - C) Self-Declaration of the Tenderer

FORM OF TENDER

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

Invitation to Tender No.: *[insert identification]* Alternative No.: *[Not Applicable]*

To:

We, the undersigned, declare that:

- a) *No reservations:* We have examined and have no reservations to the tendering document, including Addenda issued in accordance with Instructions to Tenderers (ITT) ;
- 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 Kenya in accordance with ITT 4.8.
- d) *Conformity:* We offer to execute in conformity with the tendering document and in accordance with the construction or service schedule the following Works:
[Tender Number and Name]
- e) *Tender Price:* The total price of our Tender is [name of currency] (*amount in figures and words*).
- f) *Combined Price:* We hereby confirm that our combined price for Rehabilitation Works and Improvement Works does not exceed the threshold given in the TDS ITT 37.5, which is [insert percentage of the total contract price].
- g) *Tender Validity Period:* Our Tender shall be valid for a period specified in TDS 18.1 (or as amended if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (or as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of 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) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.4, other than alternative Tenders submitted in accordance with ITT 13;
 - a) *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 Procuring Entity. Further, we are not ineligible under Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
 - b) *State-owned enterprise or institution:* [select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 4.7];
 - c) *Commissions, gratuities and fees:* We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(If none has been paid or is to be paid, indicate “none.”).

- d) *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;
- e) *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;
- f) *Fraud and Corruption:* We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption;
- g) *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 of Independent Tender Determination” attached below.
- r) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from www.ppra.go.ke during the procurement process and the execution of any resulting contract.
- s) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
 - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
 - a) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - b) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.
- t) Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed 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]

Name in the capacity of _____

Signed

Duly authorized to sign the Tender for and on behalf of

Dated on _____ day of _____, _____

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 a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

a) Tenderer's details

	ITEM	
1	Name of Procuring Entity	Kenya National Highways Authority
2	Reference Number of the Tender	KeNHA/2562/2022
3	Date and Time of Tender Opening	29th March, 2022
4	Name of Tenderer	
5	Full Address and Contact Details of the Tenderer	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person
6	Current Trade License Registration Number and Expiring date	
	Name, country and full address (postal and physical addresses, email, and telephone number) of Registering Body/Agency	
7	Description of Nature of Business	
8	Maximum value of business which the Tenderer handles	
9	State if Tenders Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) 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.

	Name 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.

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

i) 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 controls, is controlled or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process		

	Type of Conflict	Disclosure YES or NO	If YES provide details of the relationship with Tenderer
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

f) Certification

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

Full Name_____

Title or Designation_____

(Signature)

(Date)

B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the **KENYA NATIONAL HIGHWAYS AUTHORITY** 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 in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual 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, as 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 attached document(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 no consultation, 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 as specifically 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 the Contract, whichever 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]

C. SELF-DECLARATION FORMS

FORM SD 1: SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of
..... (*insert name of the Company*) who is a Bidder in respect of Tender
No.....for.....(*insert tender
title/description*) for..... (*insert name of the Procuring entity*) and duly
authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in
procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp

**FORM SD 2: SELF DECLARATION THAT THE TENDERER WILL NOT ENGAGE IN
ANY CORRUPT OR 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 any
member 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 bidders
participating in the subject tender
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

FORM SD 3: 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 and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and 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.....

APPENDIX 1-FRAUD AND CORRUPTION

(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

- 1.2 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 engaged in 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 1.1 above.
- 1.3 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 below 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, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
 - 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an 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 remedy the procuring entity may have;
 - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who 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 the procurement or contract; and
 - c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) 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 director indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

- i) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows: “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of 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 improper purpose, 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:
 - 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
 - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) 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 to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award¹ 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 Acts and 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, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all

accounts, 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 tendering, 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 thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

Tenderer Information Form

TENDERER'S QUALIFICATION FORMS FORM ELI-1.1- TENDERER INFORMATION FORM

Form ELI-1.1
Tenderer Information Form
Date: _____
ITT No. and title: _____
Page _____ of _____ pages
Tenderer's name:
In case of Joint Venture (JV), name of each member:.....
Tenderer's actual or intended country of registration: [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 Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
<p>1. Attached are copies of original documents of:</p> <p style="margin-left: 40px;">I. <i>Certificate of Incorporation and CR12</i> of the legal entity named above, in accordance with ITT 4.1.</p> <p style="margin-left: 40px;">II. <i>Copies of National Identification documents for Directors</i></p> <p><input type="checkbox"/> In case of a JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1.</p> <p><input type="checkbox"/> In case of a state-owned enterprise or institution, in accordance with ITT 4.7. documents establishing:</p> <ul style="list-style-type: none"> • Legal and financial autonomy • Operation under commercial law • Establishing that tenderer is not under the supervision of the Procuring Entity, <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership (<i>Not Applicable</i>).</p>

OTHER FORMS

2 TENDERER'S JV MEMBERS INFORMATION FORM

[The Tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be 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: <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> 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. <input type="checkbox"/> 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 CON – 1 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			
<input type="checkbox"/> Contract non-performance did not occur for the last three (3) years from the day of tender opening. <input type="checkbox"/> Contract(s) not performed for the last three (3) years from the day of tender opening			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (Kenya Shilling equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/number; and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]
Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
<input type="checkbox"/> No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 8. <input type="checkbox"/> Pending Litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 9 as indicated below			
Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (Kenya Shilling equivalent)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (Kenya Shilling equivalent)

FORM CON – 2: DECLARATION FORM – FAIR EMPLOYMENT LAW AND PRACTICES

Date

To

The Director General,

Kenya National Highways Authority (KeNHA),

P.O. Box 49712-00100

NAIROBI

We (name and address) _____

_____ declare the following:

1. Have not been involved in and will not be involved in violation of fair employment laws and practices.
2. THAT what is declared hereinabove is true to the best of my knowledge, information and belief

-----	-----
Name of Bidder's authorized Representative	Signature	Date

(To be signed by authorized representative and officially stamped)

FORM CON – 3: DECLARATION OF KNOWLEDGE OF SITE/SITE VISIT

This is to certify that

[Name/s].....

.....

Being the authorized representative/Agent of [Name of bidder]

.....

.....

Has familiarised himself/herself with the Site conditions in accordance with the Instructions to bidders and the Tender Notice for purposes of bidding fo this road project.

**SUPPLY, INSTALLATION, SERVICE AND MAINTENANCE
OF FIREFIGHTING EQUIPMENT**

Having studied the tender Documents, and gained knowledge of local conditions on site likely to influence the works and cost thereof, I certify that I am satisfied with the decription of the works and understand the scope of works as specified and as implied in this tender.

.....

.....

(Signed and Stamped byAuthorised BiddersAgent/ Representative) (Designation)

FORM FIN – 3.1: FINANCIAL SITUATION AND PERFORMANCE

PART 1

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

1. Financial data

Type of Financial information (Kenya Shillings)	Historic information for previous _____ years, _____ (amount in Millions (KSh.))		
	2019	2020	2021
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 Operating Activities			

2. Sources of Finance

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

No.	Source of finance	Amount (Kenya Shilling equivalent)
1	<i>Letter of line of Credit from a recognized Financial Institution</i>	
2	<i>Bank account balance (demonstrated by bank statements)</i>	
3		

3. Financial documents

The Tenderer and its parties shall provide copies of financial statements for the last *two (2)* years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- a) Reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent 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 for the two (2) years required above; and complying with the requirements

PART 2

Detailed Financial Situation Evaluation

No.	Description	Auditors Assessment 2019	Auditors Assessment 2020	Auditors Assessment 2021	Evaluation Score Award Criteria
1.	Financial Ratios				Max score=4 Marks
a.	Current Ratio= <u>Current Assets</u> Current Liabilities				Current Ratio more than 1 = 1 marks
b.	Debt to Equity Ratio = <u>Total Liabilities</u> Total Equity				Equity Capital Ratio less than 1 = 1 Marks
c.	Working Capital = Current Assets-Current Liabilities				Positive Working Capital = 1 marks
d.	Operating Cash Flow Ratio = Cash Flow from <u>Operations</u> Current Liabilities				Operating Cash-flow more than 1 = 1 marks
2.	Working Capital in Ksh.				Working Capital is equal or more than 10% of Engineers Estimate= 4 Marks

The above Financial Ratios have to be derived from first Principles from the Audit Statements. The Auditor who has undertaken the analysis has to demonstrate the financial ratios and append his signature and stamp to the Document as below:

The Auditor shall be required to provide his/her workings and demonstrate the source of the workings from the various Audited statements by including the Page Numbers and references of the source of the figures used in the computation of the assigned values.

The Auditor undertaking the above Financial Analysis MUST duly fill the Contact Sheet below in all aspects and attach current annual practising license.

Financial ratios Computed by a Certified Public Accountant:

CPA: Name	
ICPAK Number	
Telephone Number	
Email Address	
Postal Address	
Physical Address	
Contact Person	
Mobile Contact of the Contact Person	
Signature	
Date	
Personal/Corporate Stamp	

Ratios attested by the Company Director:

Director's Name	
ID/Passport Number	
Telephone Number	
Email Address	
Postal Address	
Physical Address	
Signature	
Date	
Personal/Corporate Stamp	

FORM FIN - 3.3: 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 Form 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.

Current Contract Commitments					
No.	Name of Contract	Procuring Entity's Contact Address, Tel, Fax	Value of Outstanding Work (Kenya Shilling equivalent)	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [KSh./month]
1					
2					
3					
4					
5					

FORM EXP - 4.1: GENERAL RELEVANT WORK EXPERIENCE

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ _____ Brief Description of the Works and Services performed by the Tenderer: _____ _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	<i>Main Contractor/ Subcontractor/ Management Contractor</i>
		Contract name: _____ _____ Brief Description of the Works and Services performed by the Tenderer: _____ _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	
		Contract name: _____ _____ Brief Description of the Works and Services performed by the Tenderer: _____ _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ _____	

FORM EXP - 4.2(A): SPECIFIC WORK AND 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 <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-Contractor <input type="checkbox"/>
Total Contract Amount			Kenya Shillings	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(b) of Section III:				
1. Amount				
2. Physical size of required Works and Services items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				

SCHEDULE FORMS

*[The Tenderer shall fill in these Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Activity Schedules** shall coincide with the List of Maintenance services specified in the Procuring Entity's Requirements.]*

WORK SCHEDULES AND SPECIFICATIONS

The Specifications and Priced Activity Schedules

Date: _____,

ITT No: _____,

Alternative No: _____

1	2	3	4	5	6	7
Service Line/ Package	Description of Services	Units	Delivery Date	Quantity and physical unit	Unit price	Total Price per Service (Col. 5*6)
<i>[insert number of the Service]</i>	<i>[insert name and full description of the services required]</i>	<i>[Insert number of such services required].</i>	<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units]</i>	<i>[insert unit price per unit]</i>	<i>[insert total price per unit]</i>
1	Supply, Installation, Service and Maintenance of firefighting equipment.	As per TOR	As per TOR	As per TOR		
Total Tender Price						

1. Method Statement

[Procuring Entity shall provide main features of the expected method of carrying out the contract, including indicating the material, personnel and equipment inputs].

4. OTHERS – TIME SCHEDULE

(to be used by Tenderer when alternative Time for Completion is invited in ITT 14.2)

SECTION V – SCHEDULE OF REQUIREMENTS

The Kenya National Highways Authority equipment for emergency preparedness for fire response includes:

1. Fire alarm system.
2. Hose reels.
3. Wet risers.
4. Sprinkler system.
5. Portable fire extinguishers.
 - Carbon dioxide
 - Foam
 - Water
 - Dry powder

EQUIPMENT INVENTORY.

1. BARABARA PLAZA

ITEM	DESCRIPTION	UNIT	QTY
A.	SPRINKLER SYSTEM		
1.	Electric centrifugal pump	No.	1
2.	Jokey pump	No.	1
3.	Diesel engine mounted pump and associated fittings	No.	1
4.	Air pressure vessel	No.	3
5.	Water piping and associated fittings	Lot.	1
6.	Electrical panels and associated fittings	No.	3
7.	Water reservoir tank and associated fittings	No.	5
8.	Hydrants	No.	11
B	HOSE REEL SYSTEM		
1.	Hose reel flexible pipe and associated fittings	No.	23
2.	Hose reel pumps	No.	10
3.	Hose reel pumps electrical panels	No.	5
4.	Hose reel pressure vessel	No.	5
5.	Hose pipe work and associated fittings	Lot.	1
6.	Hose reel water reservoir tank and associated fittings	No.	5
7.	Delivery hose reels	No.	20
8.	Landing valves	Pcs	20
C.	PORTABLE FIRE EXTINGUISHERS		
1.	9L H2O fire extinguishers	No.	23
2.	5Kg CO2 fire extinguishers	No.	23
3.	9L foam fire extinguishers	No.	23
5.	9Kg dry powder fire extinguisher	No.	23
ITEM	DESCRIPTION	UNIT	QTY
D.	FIRE ALARM SYSTEM		
1.	The alarm system is Menvier Type, DF6000 series, Total 4 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot.	5

2. REGIONAL AND CORRIDOR OFFICES

No.	ITEM DESCRIPTION	UNIT	QTY
A. NAIROBI REGION (INDUSTRIAL AREA)			
1.	9L H ₂ O Fire extinguishers	No.	2
2.	5Kg CO ₂ Fire extinguishers	No.	4
3.	9L Foam Fire extinguishers	No.	1
4.	9Kg Dry powder fire extinguisher	No.	2
B. JUJA CORRIDOR- C OFFICES			
1.	9L H ₂ O fire extinguishers	No.	1
2.	5Kg CO ₂ fire extinguishers	No.	1
3.	9Kg Dry powder fire extinguisher	No.	1
C. ATHI RIVER CORRIDOR A OFFICES			
1.	9L H ₂ O fire extinguishers	No.	4
2.	5Kg CO ₂ fire extinguishers	No.	3
3.	6Kg Dry powder fire extinguisher	No.	3
D. LOWER EASTERN REGIONAL OFFICE-MACHAKOS			
1.	9L H ₂ O fire extinguishers	No.	3
2.	5Kg CO ₂ fire extinguishers	No.	3
3.	9L foam fire extinguishers	No.	2
E. SULTAN HAMUD CORRIDOR A OFFICES			
1.	9L H ₂ O fire extinguishers	No.	1
2.	5Kg CO ₂ fire extinguishers	No.	1
F. MWATUNGE (VOI) CORRIDOR A OFFICES			
1.	9L H ₂ O fire extinguishers	No.	1
2.	5Kg CO ₂ fire extinguishers	No.	1
3.	9L foam fire extinguishers	No.	1
G. MARIAKANI CORRIDOR A OFFICES			
1.	9L H ₂ O fire extinguishers	No.	1
2.	5Kg CO ₂ fire extinguishers	No.	1
H. COAST REGIONAL OFFICE MOMBASA			
1.	9L H ₂ O fire extinguishers	No.	2
2.	5Kg CO ₂ fire extinguishers	No.	2
3.	9L foam fire extinguishers	No.	1
I. NORTH EASTERN REGIONAL OFFICE			
1.	9L H ₂ O fire extinguishers	No.	3
2.	5Kg CO ₂ fire extinguishers	No.	3
3.	9L foam fire extinguishers	No.	1
J. MWINGI CORRIDOR C OFFICES			
1.	9L H ₂ O fire extinguishers	No.	1
2.	5Kg CO ₂ fire extinguishers	No.	1
K. UPPER EASTERN REGION (ISIOLO)			
1.	9L H ₂ O Fire Extinguisher	No.	4
2.	5kg CO ₂ Fire Extinguisher	No.	3

3.	9L Form Fire Extinguisher	No.	2
4.	The alarm system is Menvigard Type, MG104 series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot	1
L. NANYUKI CORRIDOR- C OFFICES			
1.	9L H2O fire extinguishers	No.	1
2.	5Kg CO2 fire extinguishers	No.	1
M. KARATINA CORRIDOR –C OFFICES			
1.	9L H2O fire extinguishers	No.	1
2.	5Kg CO2 fire extinguishers	No.	1
N. NYERI REGIONAL OFFICE			
1.	9L H2O type Fire Extinguisher	No.	3
2.	5Kg CO2 Fire Extinguisher	No.	3
3.	9L Form Fire Extinguisher	No.	3
4.	Hose reel flexible pipe and associated fittings	No.	2
5.	The alarm system is Menvigard Type, MG104 series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot	1
O. GILGIL CORRIDOR B-OFFICES			
1.	9L H2O fire extinguishers	No.	2
2.	5Kg CO2 fire extinguishers	No.	2
3.	9L foam fire extinguishers	No.	1
P. SOUTH RIFT REGIONAL OFFICE			
1.	9L H2O fire extinguishers	No.	3
2.	5Kg CO2 fire extinguishers	No.	3
3.	9L foam fire extinguishers	No.	2
Q. NORTH RIFT REGIONAL OFFICE -ELDORET			
1.	9L H2O fire extinguishers	No.	3
2.	5Kg CO2 fire extinguishers	No.	3
3.	9L foam fire extinguishers	No.	1
4.	Hose reel flexible pipe and associated fittings	Lot	2
R. WESTERN REGIONAL OFFICE -KAKAMEGA			
1.	9L H2O fire extinguishers	No.	6
2.	5Kg CO2 fire extinguishers	No.	6
S. NYANZA REGIONAL OFFICE-KISUMU			
1.	9L H2O type Fire Extinguisher	No.	7
2.	5Kg CO2 Fire Extinguisher	No.	8
3.	9L Form Fire Extinguisher	No.	2
4.	Hose reel flexible pipe and associated fittings	No.	3
5.	The alarm system is Zeta-Simplicity Plus Type, EN-54-2 EN 54-4 & series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot	1
T. SUNEKA			
1.	9L H2O fire extinguishers	No.	1
2.	5Kg CO2 fire extinguishers	No.	1

SECTION -VI DESCRIPTION OF SERVICES

This part will include any deliverables under the service contract.

Number	Description	Quantity	Delivery Time
1	Servicing and Maintenance of firefighting equipment.	twice a year	Start: June 1 st 2022 End: May 31 st 2024

The supplier shall provide for the following;

- a) Labor necessary to inspect, install replacement of parts and service the subject.
- b) Equipment's to maintain it in good operating condition.
- c) Regularly inspect the equipment. Every 6 months and inspection performance as per check list (supplier to provide check list).
- d) Provide emergency service as needed between inspections during normal working hours.
- e) Instruct client in the safe operation of equipment to realize greatest operation efficiency e.g. one training on extinguisher use and one fire drill.
- f) Provide complete service reports indicating what repairs if any were done for each inspection, service done.

NOTES

Portable equipment

- Check by weighing the extinguishers and cartridges where applicable
- Topping up or recharging the fire extinguishers, where applicable
- Testing the working parts of the appliances
- Inspect the Hose Reel, check for any Leakages and functioning on the Nozzles and sort if any.
- Assess the general condition of the equipment.
- Check and ensure the accessibility of the equipment
- Check on the accessibility of exists, passageways etc
- Enter particulars of the inspection, tests and service carried out onto the record card appropriate to each of the fire appliances
- Issue a report detailing any issues and recommendations that need to be attended.

Pumped System Equipment (Fire Pumps)

- Check and assess the general conditions of the existing pumps.
- Carry out Pumps General maintenance and servicing as necessary.
- Check on Pumps start-manual stop mechanism
- Check and maintain working pressure switches for each pump.

- Check and maintain working push buttons on the control panel
- Carry out General maintenance and servicing of the diesel Engine pump
- Test run the installations for a period of quarter of an hour
- Maintain a proper working firefighting system.
- On the Sprinkler system; drain water at least once a year, check pressure gauges, check its alarm status. Repair any leakages noted.
- Electric driven pumps, carryout routine maintenance as per manufacturer's specifications.
- Issue a detailed report

Fire Alarm System.

- Maintain a healthy control panel including the batteries.
- Dismantle, cleanup and re-fit the detectors and bells.
- Generate smoke/heat on each detector and confirm that signal is received by control panel and triggers the bells and flashers.
- Operate all the manual pull stations and confirm that signal is received by the control panel.
- Operate the control panel and confirm that any authority with jurisdiction receives the alarm.
- Issue a detailed report.

Repairs:

During the contract period, the contractor will be required to attend to any failure of the firefighting equipment and undertake due troubleshooting as required and restore it to normal operation. The cost of such call outs, troubleshooting and repair work shall be inclusive in the total price quoted for the whole contract. However, in the event that any part is to be replaced as a result of such repairs, these shall be sourced by the client (KeNHA) separately and the Contractor shall be expected to install the sourced spare parts.

PRICE SCHEDULE

Name of Tenderer:

Tender Number:

Tender Name:

No	Location	Type of Equipment	Size	QTY	Nature of Work	Unit cost VAT incl.	Total cost (VAT incl.)
A	BARABARA PLAZA	SPRINKLER SYSTEM					
		Electric centrifugal pump	No	1	Service		
		Jokey pump	No	1	Service		
		Diesel engine mounted pump and associated fittings	No	1	Service		
		Air pressure vessel	No	3	Service		
		Water piping and associated fittings	Lot	1	Service		
		Electrical panels and associated fittings	No.	3	Service		
		Water reservoir tank and associated fittings	No.	5	Service		
		Hydrants	No.	11	Service		
		HOSE REEL SYSTEM					
		Hose reel flexible pipe and associated fittings	No.	23	Service		
		Hose reel pumps	No.	10	Service		
		Hose reel pumps electrical panels	No.	5	Service		
		Hose reel pressure vessel	No.	5	Service		
		Hose pipe work and associated fittings	Lot.	1	Service		

		Hose reel water reservoir tank and associated fittings	No.	5	Service		
		Delivery hose reels	No.	20	Service		
		Landing valves	Pcs	20	Service		
		PORTABLE FIRE EXTINGUISHERS					
		H ₂ O fire extinguishers	9L	23	Refill		
		CO ₂ fire extinguishers	5Kg	23	Refill		
		Foam fire extinguishers	9L	23	Refill		
		Dry powder fire extinguisher	9Kg	23	Refill		
		FIRE ALARM SYSTEM					
		The alarm system is Menvier Type, DF6000 series, Total 4 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot.	5	Service		
B	Nairobi Area 1. Nairobi Regional Office 2. Juja Corridor C Offices	PORTABLE FIRE EXTINGUISHERS					
		H ₂ O fire extinguishers	9L	3	Refill		
		CO ₂ fire extinguishers	5Kg	5	Refill		
		Foam fire extinguishers	9L	1	Refill		
		Dry powder fire extinguisher	9Kg	3	Refill		
C	LOWER EASTERN 1. Athi River Corridor A Offices 2. Machakos Regional office 3. Sultan Hamud Corridor A Offices	H ₂ O fire extinguishers	9L	9	Refill		
		CO ₂ fire extinguishers	5Kg	8	Refill		
		Foam fire extinguishers	9L	2	Refill		
		Dry powder fire extinguisher	6Kg	3	Refill		

	4. Mwingi Corridor C Offices						
D	COASTAL REGION 1. Mombasa Regional Office 2. Mwatunge (Voi) Corridor A Offices 3. Mariakani Corridor A Offices	H ₂ O fire extinguishers	9L	4	Refill		
		CO ₂ fire extinguishers	5Kg	4	Refill		
		Foam fire extinguishers	9L	2	Refill		
E	NORTH EASTERN REGIONS 1. Garissa	H ₂ O fire extinguishers	9L	3	Refill		
		CO ₂ fire extinguishers	5Kg	3	Refill		
		Foam fire extinguishers	9L	1	Refill		
F	UPPER EASTERN REGION 1. Isiolo	H ₂ O Fire Extinguisher	9L	4	Refill		
		CO ₂ 6Kg Fire Extinguisher	5Kg	3	Refill		
		Form Fire Extinguisher	9L	2	Refill		
		The alarm system is Menvigard Type, MG104 series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot	1	Service		
G	CENTRAL REGION 1. Nyeri Regional Office 2. Nanyuki Corridor C Office	H ₂ O Fire Extinguisher	9L	5	Refill		
		CO ₂ 6Kg Fire Extinguisher	5Kg	5	Refill		
		Form Fire Extinguisher	9L	3	Refill		
		Hose reel flexible pipe and associated fittings	No.	2	Service		

	3. Karatina Corridor C Offices	The alarm system is Menvigard Type, MG104 series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses, smoke detectors, heat detectors and bells/sounders plus the associated wiring system.	Lot	1	Service		
H	SOUTH RIFT REGION 1. Nakuru Regional Office 2. Gilgil Corridor C Office	H ₂ O Fire Extinguisher	9L	5	Refill		
		CO ₂ 6Kg Fire Extinguisher	5Kg	5	Refill		
		Form Fire Extinguisher	9L	3	Refill		
I	NORTH RIFT REGION	H ₂ O Fire Extinguisher	9L	3	Refill		
		CO ₂ Fire Extinguisher	5Kg	3	Refill		
		Form Fire Extinguisher	9L	1	Refill		
		Hose reel flexible pipe and associated fittings	No	2	Service		
J	WESTERN REGION -Kakamega Region	H ₂ O Fire Extinguisher	9L	6	Refill		
		CO ₂ 6Kg Fire Extinguisher	5Kg	6	Refill		
K	NYANZA REGION 1. Kisumu Regional Office 2. Suneka Camp	H ₂ O Fire Extinguisher	9L	8	Refill		
		CO ₂ Fire Extinguisher	5Kg	9	Refill		
		Form Fire Extinguisher	9L	2	Refill		
		Hose reel flexible pipe and associated fittings	No.	3	Service		
		The alarm system is Zeta-Simplicity Plus Type, EN-54-2 EN 54-4& series, Total 3 loops. It has one main panel and one repeater panel, which encompasses; break glasses,	Lot	1	Service		

		smoke detectors, heat detectors and bells/sounders plus the associated wiring system.					
Total Sum							

SCHEDULE OF UNIT RATES FOR ANTICIPATED EQUIPMENTS DURING THE CONTRACT PERIOD.

ITEM	DESCRIPTION	UNIT RATE IN (KSH)
A. SPRINKLER SYSTEM	Electric centrifugal pump	
	Jokey pump	
	Diesel engine mounted pump and associated fittings	
	Air pressure vessel	
	Water piping and associated fittings	
	Electrical panels and associated fittings	
	Hydrants	
B. HOSE REEL SYSTEM	Hose reel flexible pipe and associated fittings	
	Hose reel pumps	
	Hose reel pumps electrical panels	
	Hose reel pressure vessel	
	Hose pipe work and associated fittings	
	Delivery hose reels	
	Landing valves	
C. PORTABLE FIRE EXTINGUISHERS	9L H ₂ O fire extinguishers	
	5Kg CO ₂ fire extinguishers	
	9L Foam fire extinguishers	
	9Kg Dry powder fire extinguisher	
D. FIRE ALARM SYSTEM	Break Glass	
	Smoke Detector	
	Heat detector	
	Bell/Sounders and associated wiring System	

FORM OF TENDER SECURITY - DEMAND GUARANTEE

Beneficiary: _____

Invitation to Tender No: _____

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

We have been informed that _____ (herein after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of under Invitation to Tender No. ____ ("the ITT").

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

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

- a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Form of Tender ("the Tender Validity Period"), or any extension there to be provided by the Applicant; or
- b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to be provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's Tendering document.

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, issued to the Beneficiary in relation to such contract 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 on or before that date.

[signature(s)]

5. 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]

1) For the attention 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 to all 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. The transmission 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

Name:	<i>[insert name of successful Tenderer]</i>
Address:	<i>[insert address of the successful Tenderer]</i>
Contract price:	<i>[insert contract price of the successful Tender]</i>

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

Name of Tenderer	Tender price	Evaluated Tender price (if applicable)
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>

2) 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 Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing 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 the 3 Business Days deadline, we will provide the debriefing within five (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 in writing 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 the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

3) How to make a complaint?

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

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 decision to 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 Standstill Period and received by us before the Standstill 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 tendering process, 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).

4) 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 to Award.

The Standstill Period may be extended as stated in Section 4 above. If you have any questions regarding this Notification please don't hesitate to contact us. 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 ofdated the...day of20.....in the matter of Tender No.....of20..... 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 of20.....

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]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (Procuring Entity).

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section X, Contract Forms, of the tender document.

Please return the attached Contract dully signed Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract

4 FORM OF CONTRACT [Form head paper of the Procuring Entity]

LUMP-SUMREMUNERATION

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, [name of Service Provider] (herein after 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 be jointly 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 the General 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, and the 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 and the Priced Activity Schedule; and
 - f) The following Appendices: *[Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Subcontractors Appendix

D: Breakdown of Contract Price

2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in the Contract, 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 of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in the irrespctive names as 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]

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

1. General Provisions

1.1 Definitions

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

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- e) “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;
- f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- g) “Day works” means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- h) “Procuring Entity” means the Procuring Entity or party who employs the Service Provider
- i) “Foreign Currency” means any currency other than the currency of Kenya;
- j) “GCC” means these General Conditions of Contract;
- k) “Government” means the Government of Kenya;
- l) “Local Currency” means Kenya shilling;
- m) “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 in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- n) “Party” means the Procuring Entity or the Service Provider, as the case may be, and “Parties” means both of them;
- o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- p) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- q) “Service Provider's Tender” means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- s) “Specifications” means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity
- t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- v) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency responsible for oversight of public procurement.
- w) “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 appointed from time to time by the Procuring Entity and notified to the Contractor.

- x) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction 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 language for 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 have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as are specified 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, as the 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 **specified in 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 subcontractors and 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 constitute a 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 included in 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 may be **stated in the SCC**.

2.2 Commencement of Services

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, 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 the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, 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 the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.5 Value Engineering

2.5.1 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.

2.5.2 The 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 the Facilities.

2.5.3 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 percentage specified 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.

2.6 Force Majeure

2.6.1 Definition

For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.6.2 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 that the 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.

2.6.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended

for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.6.5 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider 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.

2.7 Termination

2.7.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to 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 paragraph 2.2 a. of Attachment 1 to the GCC, in competing for or in executing the Contract

2.7.2 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 from the 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.

2.7.3 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following 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 of the 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, and employ 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 at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or 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 remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall 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 Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or 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 conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active 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 information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior 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 Subcontractors', as the case may be) own cost but on terms and conditions approved by the 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 insurance has 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 the following 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 and Subcontractors"),
- 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 Bin 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, and the 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 liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from 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 payment to 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 calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in 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 a bank 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 Completion Date 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 execution of 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 C are 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 any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance 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 and experience 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 Provider such 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 or decreased 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

6.1.1 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-Clauses 2.4 and 6.3.

6.1.2 Where the contract price is different from the corrected tender price, in order to ensure the contract or is not paid less or more relative to the contract price (*which would be the tender price*), any part payment valuation 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*.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) No price will be payable in foreign currency.

6.3 Payment for Additional Services, and Performance Incentive Compensation

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 as set out in the Performance Incentive Compensation appendix.

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 for each 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 factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c \text{ Lmc/Loc} + C_c \text{ Imc/Ioc}$$

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 invoice date 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 Z_o/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_o 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 Z_n 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 of all 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 be paid in that way.
- 6.7.2 All work to be paid for as Dayworks 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-Clause 1.6 within two days of the Services being performed.
- 6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

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 the SCC**. 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 Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 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 the length 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 this amount, 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 became aware, 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 28 days, the Time for Completion shall not be 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-Clause shall 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 as 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 on the 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-keeping and/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 circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the

Project 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:

- a) This fully detailed claim shall be considered as interim;
- b) 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
- c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or 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 Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall never the less 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-Clause 3.5 [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 are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time frame defined 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 accordance with Sub-Clause 8.2 [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 Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of 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 practical completion 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) Whether or not a certificate has been improperly withheld or is not in accordance 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

Where a Notice of Dissatisfaction 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 after the 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 amicably in 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 of the 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 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.
- 8.4.5 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.
- 8.4.6 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 it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Law Society of Kenya
 - or
 - ii) 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 may be on the construction of this Contract or on any matter or thing of whatsoever 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 be entitled 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 any certificate.
- 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. The Adjudicator

9.1. 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 30 days, the Adjudicator shall be designated by the Appointing Authority **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 reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is <i>The Chartered Institute of Arbitrators (Kenya)</i>
1.1(w)	Project Manager is: Director Corporate Services
1.1(e)	The contract name is : <i>Supply, Installation Service and Maintenance of Fire Fighting Equipment at Barabara Plaza and Ten Regional Offices</i>
1.1(h)	The Procuring Entity is: <i>Kenya National Highways Authority</i>
1.1(m)	The Member in Charge is <i>N/A</i>
1.1(p)	The Service Provider is: _____
1.4	<p>The addresses are:</p> <p>Procuring Entity:</p> <p>The Employers address is:</p> <p>The Director General, Kenya National Highways Authority (KeNHA), P.O. Box 49712 - 00100 <u>NAIROBI</u></p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email address _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity:</p> <p>The Employers address is:</p> <p>The Director General, Kenya National Highways Authority (KeNHA), P.O. Box 49712 - 00100 <u>NAIROBI</u></p> <p>For the Service Provider: _____</p>
2.1	The date on which this Contract shall come into effect is <i>1st June, 2022</i>
2.2.2	The Starting Date for the commencement of Services is <i>14 Days after Contract Signing</i>
2.3	The Intended Completion Date is <i>31st May, 2024</i>
2.5.3	<p>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.</p> <p>– N/A-</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.2.3	Activities prohibited after termination of this Contract are: <i>Supply, Installation Service and Maintenance of Fire Fighting Equipment at Barabara Plaza and Ten Regional Offices</i>
3.4	The risks and coverage by insurance shall be: N/A
3.5(d)	The other actions are N/A
3.7	Restrictions on the use of documents prepared by the Service Provider are: <i>For Supply, Installation Service and Maintenance of Fire Fighting Equipment at Barabara Plaza and Ten Regional Offices</i>
3.8.1	The liquidated damages rate is N/A per day The maximum amount of liquidated damages for the whole contract is N/A percent of the final Contract Price.
3.8.3	The percentage 0.1% of Contract Price to be used for the calculation of Lack of performance
5.1	The assistance and exemptions provided to the Service Provider are: As Stated in the Schedule of Requirements
6.2(a)	The amount in Kenya Shillings _____.
47.1	The Service Provider shall provide Performance Security of 10% of the Tender Sum in the form of an Unconditional Bank Guarantee.
6.5	Payment shall be made on a monthly basis within 30 days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within 30 days in the case of the final payment. The interest rate is - N/A -
6.6.1	Price adjustment is N/A in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are - N/A - (a) For local currency: - N/A - A _L is _____ B _L is _____ C _L is _____ L _{mc} and L _{oc} are the index for Labor from _____ I _{mc} and I _{oc} are the index for _____ from _____ (b) For foreign currency - N/A - A _F is _____ B _F is _____ C _F is _____ L _{mc} and L _{oc} are the index for Labor from _____ I _{mc} and I _{oc} are the index for _____ from _____
7.1	The principle and modalities of inspection of the Services by the Procuring Entity are as follows: <i>Approval by Inspection and Acceptance Committee</i> The Defects Liability Period is - N/A -

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
9.1	The designated Appointing Authority for a new Adjudicator is <i>Director General KeNHA</i>
9.2	The Adjudicator is <i>The Chartered Institute of Arbitrators (Kenya)</i> . Who will be paid an hourly rate as rate Provided <i>The Chartered Institute of Arbitrators (Kenya) Guidelines</i> .The following reimbursable expenses are recognized: <i>N/A</i>
1.6	The Contractor address is: Name..... P.O Box..... City/Town..... Email..... Telephone.....
	Signature of Tenderer..... Date

Appendices

Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance 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 “Not applicable.”

Appendix C - Subcontractors

List under: C-1 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1.

Appendix D – Breakdown of Contract Price *List here the elements of cost used to arrive at the breakdown of the lump-sum price. This appendix will exclusively be used for determining remuneration for additional Services.*

Appendix E - Services and Facilities Provided by the Procuring Entity

Section X - Contract Forms

Table of Forms

1. PERFORMANCE SECURITY OPTION 1– (Unconditional Demand Bank Guarantee)
2. PERFORMANCE SECURITY OPTION 2– (Performance Bond)
3. ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]
4. BENEFICIAL OWNERSHIP DISCLOSURE FORM

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 _____ (herein after 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 is required.
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 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the.....Day of.....2.....², and any demand for payment under it must be 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 the final product.*

FORM No. 2 - PERFORMANCE SECURITY OPTION 2 - (Performance Bond)

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead 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 Procuring*

Entity] **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 _____ *[insert name and Address of Procuring Entity]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ *[insert name and Address of Procuring Entity]* 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 the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
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 and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, 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 completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and 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 hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the 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 accordance with 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 caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day_____of_____20_____.

SIGNED ON_____on behalf of

By_____in the capacity

of In the presence of_____,SIGNED ON

_____on behalf of

By_____in the capacity of

In the presence of _____

FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead or SWIFT identifier code]

[Guarantor letterhead or SWIFT identifier code]

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

Date: _____ *[Insert date of issue]*

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

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

1. We have been informed that _____ (herein after 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, 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 complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
 - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the 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 the Guarantor before the expiry of the guarantee.

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

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

¹The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

²Insert 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 text 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 identification no]

Name of the Assignment: _____ [insert name of the assignment] to:

_____ [insert complete name of Procuring Entity]

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

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

Details of beneficial ownership

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

OR

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

OR

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

Directly or indirectly holding 25% or more of the shares. Directly or indirectly 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]”

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

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

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

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

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