



Kenya National Highways Authority

Quality Highways, Better Connections

TENDER NO: KeNHA/2811/2024

REQUEST FOR PROPOSAL (RFP)

TO

**INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF
ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS
ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S) – Lot 1-8**

SEPTEMBER, 2024

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INVITATION TO TENDER

PROCURING ENTITY..... Kenya National Highways Authority

CONTRACT NAME AND DESCRIPTION. Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S) as specified below-

Lot 1: Existing toilet (Survey, Garden City, Witeithie & Jomoko)

Lot 2: Toilet to be installed by the bidder at own cost (Open Space available). AllSOPS Junction Outerling and Thika Superhighway – Nairobi Bound

Lot 3: Toilet to be installed by the bidder at own cost (Open Space available). Kasarani Interchange – Thika Bound.

Lot 4: Toilet to be installed by the bidder at own cost (Open Space available). Juja (Nairobi bound only)

Lot 5: Ruiru Interchange (clover A – Thika Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost)).

Lot 6: Ruiru Interchange – clover B – Thika Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))

Lot 7: Ruiru Interchange – clover C – Nairobi Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))

Lot 8: Ruiru Interchange – clover D - Nairobi Bound – (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))

1. The Kenya National Highways Authority invites sealed tenders for Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S).
2. Tendering will be conducted under open competitive method (**National**) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours **0800hrs to 1700hrs** at the address given in paragraph 4 below.
4. A complete set of tender document may be obtained by interested tenderers from the Kenya National Highways Authority (KeNHA) website: www.kenha.co.ke or Public Procurement Information Portal (PIIP) website www.tenders.go.ke free of charge or from KeNHA Headquarters Office, Barabara Plaza, 2nd Floor Block C, Supply Chain Department during normal working hours upon payment of a non-refundable fee of Kshs.1,000.00 (One Thousand Shillings Only) in form of a banker's cheque payable to Kenya National Highways Authority.
5. The Tender must be accompanied by a tender Security equivalent to **Kshs 100,000.00** in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 30 days beyond the tender validity period in the prescribed format in the tender document.
6. Completed tender document are to be enclosed in a plain sealed envelope clearly marked with tender name and reference number, and addressed to: -

**Deputy Director, Supply Chain Management
Kenya National Highways Authority,
Barabara Plaza, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters)
Block C, Second Floor
P. O. Box 49712 - 00100, Nairobi, Kenya**

and deposited in the Tender Box at the Barabara Plaza, Block C, Second Floor, JKIA, Nairobi, Off Mazao Road (Opposite KCAA Headquarters), so as to be received on or before, **17th October, 2024 at 11.00 AM**

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 time and venue as indicated in (6) above.

8. Late tenders will be rejected.

All interested bidders are required to continually check the Kenya National Highways Authority Website: www.kenha.co.ke or Public Procurement Information Portal (PIIP) website www.tenders.go.ke for any tender addendums or clarifications that may arise before the submission date.

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A General Provisions

1. Scope of Tender and Definitions

1.1 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for leasing of the real estate facilities, 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, community-based organization 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 lease 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, Palease, Brothers or Sister, 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 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 lease 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 ITT4.9. 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) 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, 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 with in 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 curlease 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:
 - (a) 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.
 - (b) 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
 - (c) 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 lessee or group of lessees 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, curlease 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, curlease 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, sub total 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, 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, please entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) diffelease 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 lease to the successful tenderer whose tender has been determined to be with highest value for money and which will be derived from preliminary, technical and financial evaluation.

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.

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 and Administrative Review.

- 46.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.
- 46.2 A request for administrative review shall be made in the form provided under contract forms.

Section II - Tender Data Sheet (TDS).

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	<p>The reference number of the Invitation for Tenders is: KeNHA/2811/2024</p> <p>The Procuring Entity is: Kenya National Highways Authority</p> <p>The name of the Contract is: Request for Proposal for Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S)</p> <p>The number and identification of lots (contracts) comprising this Invitation for Tenders is:</p> <p>Lot 1: Existing toilet (Survey, Garden City, Witeithie & Jomoko)</p> <p>Lot 2: Toilet to be installed by the bidder at own cost (Open Space available). AllSOPS Junction Outerung and Thika Superhighway – Nairobi Bound</p> <p>Lot 3: Toilet to be installed by the bidder at own cost (Open Space available). Kasarani Interchange – Thika Bound.</p> <p>Lot 4: Toilet to be installed by the bidder at own cost (Open Space available). Juja (Nairobi bound only)</p> <p>Lot 5: Ruiru Interchange (clover A – Thika Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost)).</p> <p>Lot 6: Ruiru Interchange – clover B – Thika Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))</p> <p>Lot 7: Ruiru Interchange – clover C – Nairobi Bound (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))</p> <p>Lot 8: Ruiru Interchange – clover D - Nairobi Bound – (Thika superhighway, Eastern and Northern by Pass Junction (Toilet facilities to be installed where necessary at own cost))</p>
ITT 1.2(a)	<p>[N/A]</p> <p>Electronic – Procurement System.</p> <p>The Procuring Entity shall use the following electronic - procurement system to manage this Tendering process: [www.kenha.co.ke]</p> <p>The electronic-procurement system shall be used to manage the following aspects of the Tendering process:</p> <p>[Issuing Tendering document, Clarifications, Addenda]</p>
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: N/A
ITT 5.3	There will be a Mandatory pre-tender site visit and Conference but limited to only One representative per bidder as specified in the detailed tender Notice.
B. Contents of Tendering Document	

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 6.	<p>Clarifications may be requested no later than [Seven (7)] days prior to the submission deadline.</p> <p>a). The contact information for requesting clarifications is: Email; procurement@kenha.co.ke and dpse@kenha.co.ke to reach Procuring Entity not later than Seven (7) days before tender submission date</p> <p>b) The Procuring Entity publish its responses at the KeNHA website: www.kenha.co.ke</p>
	C. Preparation of Tenders
ITT 10 (j)	The Tenderer shall submit the following additional documents in its Tender: <i>[list any additional document not already listed in ITT 11.1 that must be submitted with the Tender] N/A</i>
ITT 12.1	Alternative Tenders N/A
ITT 13.4	Prices quoted by the Bidder shall be fixed
ITT 14.1	The currency that shall be used for Tender evaluation and comparison purposes is Kenya Shillings
ITT 15.4	Period of time the Lease Items are expected to be functioning: An initial 5-year term renewable for an additional one term of 5 years, subject to satisfactory performance.
ITT 16.2 (a)	Owner's authorization is: <i>N/A</i>
ITT 16.2 (b)	Related services are: <i>N/A</i>
ITT 17.1	The Tender validity period shall be: Proposals shall remain valid for 140 days .
ITT 17.3 (a)	The Tender price shall be adjusted as follows: Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S) Lot 1-8 for an initial lease period of Five (5) years. We offer to pay KeNHA annual rent charge of Kshs..... for the next five (5) years and further offer to pay this annual rent charge at a growth rate of 10% after every subsequent year within the next 5 years rent period. This annual charge fees are inclusive of the local taxes in Kenya.
ITT 18.1	Original tender security Value of Kshs. 100,000.00 in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 30 days beyond the tender validity period in the prescribed format in the tender document.
ITT 18.3 (v)	Other types of acceptable securities: None
ITT 19.1	In addition to the original of the Tender, the number of copies is: Technical Proposal: One (1) Original only. Sealed Financial Proposal: One (1) Original only.
ITT 19.3	The bidder shall provide a written Power of Attorney as a confirmation of authorization to sign on behalf of the Tenderer.
	D. Submission and Opening of Tenders

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 21.1	<p>For <u>Tender submission purposes</u> only, the Procuring Entity’s address is:</p> <p>The Proposals must be submitted not later than: Date: 17th October, 2024. Time: 11:00hrs East African Time.</p> <p>The Proposal submission address is:</p> <p>Deputy Director – Supply Chain Management, Kenya National Highways Authority, P. O. Box 49712-00100, Nairobi. Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block C 2nd Floor.</p> <p>The Bidders SHALL NOT have the option of submitting their Proposals electronically.</p>
ITT 24.1	<p>The Tender opening shall take place at:</p> <p>Kenya National Highways Authority, P. O. Box 49712-00100, Nairobi Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block C, 2nd Floor Boardroom</p> <p>Date: 17th October, 2024 Time: at 11:00.AM (EAT).</p> <p>The electronic Tender opening procedures shall be: Not Applicable (N/A).</p>
ITT 24.6	<p>The Form of Tender and Price Schedules shall be initialed by All the Tender Opening Committee Members representatives of the Procuring Entity conducting Tender opening.</p>
ITT 29.3	<p>The manner of rectify quantifiable nonmaterial nonconformities described below: Not Applicable (N/A)</p>
E. Evaluation and Comparison of Tenders	
ITT 34.6	<p>The factors selected and expressed in monetary terms to facilitate comparison of Tenders are N/A _____</p>
F. Award of Contract	
ITT 42	<p>The maximum percentage by which quantities may be increased is: None The maximum percentage by which quantities may be decreased is: None</p>
ITT 46.1	<p>The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>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: Director General. Title/position: Director General. Procuring Entity: Kenya National Highways Authority.</p>

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>Email address: <i>dg@kenha.co.ke, procurement@kenha.co.ke</i></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none">1. the terms of the Tender Documents; and2. the Procuring Entity's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

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

- a) 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.
- b) Value of single contract- Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error 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 Highest 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 offered to pay the Authority the highest lease charges for renting for Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S)

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 table below provides details of the MANDATORY requirements to be submitted by the tenderer;

a). Preliminary examination for Determination of Responsiveness (Mandatory requirement)

S/No.	Mandatory Requirement
1.	Copy of Certificate of incorporation; When bidding as an organized registered group (Community Group), please support the registration certificate with; <ol style="list-style-type: none"> a) Names of the registered of members of your group. MUST be certified by the area Chief. b) Signed Minutes of the meeting held with agenda to discuss binding for Installation, Management, Operation and Maintenance of toilet facilities and open spaces at the targeted location. c) Consent signed by all members giving their contact details and No-Objection to bid as a group. This MUST be certified by the area Chief. The Chief must provide his/her contact details.
2.	Copy of recent CR 12 form (Issued within the last Six 6 months from the Tender Opening Date): For organized registered group (Community Group) provide list of current members certified by Area Chief clearly showing the groups leadership with their contact details, (the Certification date, stamp, location & details of the Chief must be specified and should be for this tender notice).
3.	Copy of Valid Tax Compliance Certificate: For organized registered group (Community Group), attach at least two (2) valid Tax Compliance Certificate from any of their current members.
4.	Original tender security Value of Kshs. 100,000.00 in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 30 days beyond the tender validity period in the prescribed format in the tender document.
5.	Curriculum vitae (CVs) of the proposed key staffs duly signed by the proposed individual with attachment of Copies of certificates and testimonial of the proposed key staffs.
6.	Letters of availability for the assignment signed by the proposed key staff
7.	The tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up (Form of Tender).
8.	The tenderer is neither precluded from entering into a Contract nor debarred by PPRA (Dully filled Form Self-Declaration forms (Form SD1).
9.	The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
10.	Submit certified detailed design drawings of the proposed toilet block and the landscaping layout with images of the final outlook of the open spaces. This MUST be done by a dully registered Engineer or a professional planer
11.	Must submit no objection letters/consent from relevant utility service providers for provision of services at the section i.e. Electricity, water and sewerage.
12.	Duly filled Price Schedule Form in accordance with format provided in the Tender document. (Prices quoted should be All Taxes and 0.03% Public Procurement Capacity Building Levy (Exclusive of All Taxes) must be in Kenya Shillings and shall remain valid within the validity period of the tender from the closing date of the tender)
13.	Demonstrated financial stability and capacity to undertake the rent, operate, and manage responsibilities by providing; <ol style="list-style-type: none"> a) Audited financial statements for the recent past three (3) years (2021, 2022 & 2023); b) Certified bank statements not older than 6 months from the date of opening the tender; and c) Cash flow projections for the next 5 years.
14.	Provide a clear and detailed operational plan outlining how the bidder intends to manage and maintain the facility to satisfaction of the customers including ensuring that the site is free from encroachment.

S/No.	Mandatory Requirement
15.	Give a comprehensive maintenance plan detailing how the bidder will address routine and emergency maintenance tasks of the maintaining the road reserve including site specific management plans for waste and safety.
16.	Provide a statement of Commitment to and compliance with health, safety, and environmental regulations. Where possible support the above statement with past performance evidence in maintaining high safety standards in similar operations.
17.	Provide plans for community engagement and social responsibility initiatives.
18.	Attach copy of the Pre-tender site visit and conference certificate
19.	The tender shall be valid for a period as specified in the data sheet
20.	Submit a dully filled confidential Business Questionnaire in format provided in the tender document.
21.	Completeness of tender document <ul style="list-style-type: none"> • All pages with entries (Typed or handwritten) must be initialed. • Any alterations made in the tender document must be countersigned • Bidders shall duly fill, stamp and sign all relevant forms/schedules provided for in the document that requires entries.
22.	Original Bid document must be duly serialized sequentially from page one up to the last including attachments/appendices and the document should be bound. - A Guide Note on Serialization is outlined in the Notes below.

NB:

- **Clarity on Serialization of Tender Documents by Prospective Bidders. Please note that all pages of the tender documents submitted by bidders shall be sequentially serialized. That is, serialization shall be undertaken by the bidder, by doing fresh numbering on its documents. The pagination of the tender documents as downloaded from the KeNHA website should not be used as a means of Serialization. The bidder's serialization should follow the same logical sequence from page one up to the last including attachments/appendices and the document should be bound.**
- **All submitted Documents may be verified from the issuing agencies, KeNHA Reserves the right to verify all submitted documents.**
- **Only Bidders who will have met all the Preliminary Requirements shall proceed for Technical Evaluation.**

b) Technical Proposal evaluation

No.	Parameters	Scores
1.	Submit a business proposal with the following minimum facilities: <ul style="list-style-type: none"> • Toilets (2 Marks) • Bathrooms (1Marks) • Any other facility necessary to complement the toilet or convenient for road user (1Marks) • Site lay out clearly showing location of each facility and entire open space/interchange with 3D final outlook images (colored). (16Marks) 	20
2.	Provide client references in Cleaning and Sanitary Services with a combined value of at least 1.5 Million in the last 3 three years from Tender Opening Date. (Provide Letters of Award, LSO or Contract Documents showing dates, amounts and client contact) 1.5 Million and above Contract – 15 Marks 1 Million Contract – 12 Marks 0.5 Million Contract – 10 Marks 0.1Million and Below – 5 Marks	15
3.	Provide your organizational /company structure showing Current establishment	5
4.	Provide detailed management plans to manage encroachment, waste as well as ensure health and safety of the facility and the surrounding environment.	5
5.	Facility Manager - 1 <ul style="list-style-type: none"> • Diploma in Housekeeping (Kenya Utalii College or Equivalent) – 2 Marks • Certificate in Housekeeping (Kenya Utalii College or Equivalent) – 1 Mark • Experience in Cleaning and Sanitation – (6 Years and Above - 3Marks), (4-5Years – 2Mark), (3 Years and below– 1 Mark) (No points will be awarded for CVs and Certificates not attached)	5
6.	Cleaner 1 <ul style="list-style-type: none"> • Certificate in Housekeeping (Kenya Utalii College, or Equivalent) –2 Marks • Experience in Cleaning and Sanitation – (4 Years and Above -3 Marks), (3Years – 2Marks) (2 Years and below– 1 Mark) (No points will be awarded for CVs and Certificates not attached)	5
7.	Cleaner 2 <ul style="list-style-type: none"> • Certificate in Housekeeping (Kenya Utalii College, or Equivalent) – 2 Marks • Experience in Cleaning and Sanitation – (4 Years and Above -3 Marks), (3Years – 2Marks) (2 Years and below– 1 Mark) (No points will be awarded if CVs and Certificates are not attached)	5
8.	Landscaper <ul style="list-style-type: none"> • Certificate in Landscaping, Environment or Equivalent – 2Marks • Experience in Cleaning and Sanitation – (4 Years and Above -3 Marks), (3Years – 2Marks) (2 Years and below– 1 Mark) (No points will be awarded if CVs and Certificates are not attached)	5
9.	Security Guard <ul style="list-style-type: none"> • Certificate of Good Conduct – 2 Marks 	5

No.	Parameters	Scores
	<ul style="list-style-type: none"> Experience as a Security Guard – (4 Years and Above -3 Marks), (3Years – 2Marks) (2 Years and below– 1 Mark) (No points will be awarded if CVs and Certificates are not attached) 	
10	<p>Operational plan – Should outline how the bidder plans to execute the assignment. Cleaning schedules -This shall include but not limited to area, timings (Daily, weekly, monthly or quarterly Plans)</p> <ul style="list-style-type: none"> The operator shall be required to provide operational plans for any other complimentary business to be established at the section before commencement of such operations. In event that any other business shall come to effect after the bid the operator shall inform the Authority in writing to ensure all operations are as per recommended guidelines. The operator shall be required to provide management plans to cater for waste management and safety management at the site that shall be reviewed and approved by the Authority. 	10
11	<p>Provide ownership/lease evidence of the following list of tools and equipment. (Purchase Receipts, Invoice & Logbooks where applicable)</p> <ul style="list-style-type: none"> Sanitary waste disposal truck/pick up– (1No.) – 4 Marks Walk Behind Scrubber (3pcs) -2 marks Floor Polisher – (3pcs) –2 Marks Wet and Dry Vacuum Cleaner - (2pc) – 2 Marks <p>(Current Lease agreement will earn half of marks assigned. No points will be awarded for Expired lease agreements)</p>	10
12	<p>Provide financial statements for the last 2 years clearly demonstrating the following Ratios. (Financially stable ratios will earn more marks)</p> <ul style="list-style-type: none"> -Working Capital Ratio – 2.5 Marks - Turn Over ratio – 2.5 Marks - Current ratio – 2.5 Marks - Fixed Asset ratio – 2.5 Marks <p>Financial statement where all pages have not been initialized and stamped by both a practicing Auditor registered with ICPAK and one of the Directors shall NOT be considered. Auditor’s practicing number by ICPAK must be indicated in all pages of the financial statements.</p>	10
	TOTAL MARKS	100

NB.

Cut off points for the technical evaluation shall be 75% and bidders who shall not have attained this mark shall not proceed to the next stage of the evaluation process.

Minimum required points for the technical proposal score is 75%. Tenderers who fail to attain this minimum score, will have their financial proposal returned un opened by the procuring entity.

c) Financial proposal evaluation/qualification.

- Price evaluation will be considered for those tenderers who have attained minimum score of 75% in the technical proposal evaluation.
- The financial qualification will be the **HIGHEST** rent charge offered.

a) Deviation in payment schedule. [insert one of the following]

i) *Tenderers shall state their Tender price for the payment schedule outlined in the SCC. Tenders shall be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in Tender price they wish to offer for such alternative payment schedule. The Procuring Entity may consider the alternative payment schedule and the reduced Tender price offered by the tenderer selected on the basis of the base price for the payment schedule outlined in the SCC.*

or

ii) *The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum [insert adjustment rate].*

The Bidder who shall be determined to have the highest **annual rent offer fee** shall be considered and recommended for award.

The proposal submission address is:

***Deputy Director Supply Chain Management
Kenya National Highways Authority
P.O. Box 49712-00100
Block C, 2nd Floor, Barabara Plaza
NAIROBI***

The outer envelope shall also be clearly marked:

“KeNHA/2811/2024: Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S) (Specify the Lot)

Proposals must be submitted not later than the following date and time:

17th October 2024 at 11.00 a.m.

The address to send information to the Director is:

**Director Policy, Research and Compliance
Kenya National Highways Authority
P.O. Box 49712-00100,
NAIROBI, KENYA**

The minimum technical score required to pass is **75%**

The assignment is expected to commence **14 (fourteen) days after signing of the contract by all parties.**

3 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 tenderer 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.

4 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.”

5 Qualification (ITT 35)

- 5.1 After determining the substantially responsive Tender which offers the lowest-evaluated cost 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.

- 5.2 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.

- 5.3 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.

- 5.4 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 IV: -

TERMS OF REFERENCE (TOR) FOR

LOT 1 (SURVEY, GARDEN CITY, WITEITHIE, JOMOKO)

INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S)

Request for Proposal is invited from reputable firms, registered Community Groups (Pursuant to the Community Groups Registration Act, 2022) to Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S) for LOT 1.

KeNHA shall rent its space on the road reserve at selected locations for a period of Five (5) year term with renewable option for another One terms subject to performance satisfaction.

Please note,

- a) Should KeNHA require this space for other road use e.g. expansion of the road BEFORE the expiry of the lease term, a written notice to that effect will be issued by the Director General to the operator giving 90 days' notice to clear from the said space on the road reserve.
- b) Upon receipt of the notice, the Authority through the office of the Corridor Director, Corridor Maintenance 'C', shall appoint a liaison officer or firm that shall coordinate matters relating to stakeholder engagement and encroachment control at the section. The operator will proceed and clear from the said space of road reserve by removing any structures therein that might affect the service levels at own cost and without placing any claim for the business loss to the Authority and shall maintain said space as per the guidelines and conditions given by the Authority.
- c) For all and any other businesses operating within the leased area, the Terms and Conditions within this document shall be binding to all parties and no claim shall be placed on the Authority for any loss incurred thereafter.
- d) The operator/bidder shall be the recognized party by the Authority in charge of all the open spaces with the Authority's reserve at the section and shall be responsible for the operation and maintenance of all the toilet blocks therein.
- e) KeNHA will refund the operator any rent that could have been paid for an expired period and this will mark the end of the lease/ rental contract engagement.
- f) The selected bidders shall and maintain the toilets and the other agreed facilities for a period of Five (5) years. User charges shall be collected from the commuters/ users.

The application containing the **Proposal** in the prescribed formats sealed in **an** envelope, completed in all respects, shall be submitted to KeNHA, clearly super-scribing on the envelope "**PROPOSAL FOR INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S) as specified in the detailed long tender notice.**

It is the responsibility of interested party alone to ensure that its proposals are delivered at the prescribed address within the stated deadline. KeNHA shall not be held responsible for any delay in delivery or loss of document(s) during transit.

Back Ground

Constitutions of Kenya, 2010

Article 42 and 43 of Kenya Constitution, 2010, provides for right to a clean and healthy environment with reasonable standards of sanitation.

Road Acts 2007

Section 22 (1) (d), of the Kenya Roads Act, 2007, empowers KeNHA to provide such amenities or facilities for persons making use of the services or facilities provided by the Authority as may appear to the Authority necessary or desirable. KeNHA's Mandate under this Act includes Management of Class S, A and B roads in Kenya. In this case, Thika Super highways (Class S) is under management of KeNHA and road users requires convenient sanitation facilities while using this section of the road.

Court Order

In case of NAIROBI ELC PETITION NO.37 OF 2017, ANDRIAN KAMOTHO VS COG, KeNHA, KeRRA, KURA AND CS, MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENTS AND PUBLIC WORKS (MOTIHU& PW), declared that failure by the Government to construct toilets along National Highways is a violation of Article 42 and 43 of the constitution. The court ordered that the road agencies come up with the framework for implementation of the Article 42 and 43 of the constitution. Therefore, toilet facility at selected locations is in compliance with the Constitution of Kenya, 2010 as well as the Court directive.

CURRENT SITUATION ALONG THIKA ROAD

Lack of Public Toilets

It is disappointing to note that in this modern age, there is lack of toilet at selected locations serving the vast population along Thika Road, despite having high vehicular traffic, informal and formal businesses and various Matatu stages at the section which requires proper sanitary facilities to serve the public. This has resulted to the practice of open defecation which has the potential to contribute to the people suffering from the contaminating effects of open defecation particularly women and children. Using proper toilets prevents the transfer of bacteria, viruses and parasites found in human excreta which otherwise contaminate water resources, soil and food. This contamination is a major cause of diarrhea; this can be biggest killer of children and leads to other major diseases such as cholera, schistosomiasis and trachoma.

Improving access to sanitation is a critical step towards reducing the impact of these diseases. It also helps create physical environments that enhance safety, dignity and self-esteem.

Safety is also important for women and children, who otherwise risk sexual harassment and assault when defecating in secluded areas.

Lack of wash points

The COVID-19 pandemic has already demonstrated how vulnerable our communities are. During the Coronavirus Disease 19 (COVID-19) pandemic, keeping hands clean is especially important to help prevent the virus from spreading. The highlighted sections along Thika Road has high traffic of pedestrians, the Authority needs to provide the wash points which is critical in reducing the spread of the disease. It is thus important for the Authority to invest more in providing basic risk-reducing services such as clean water to enable hand-washing among other uses.

No littering Points/bins

Thika Superhighway is an area with high human traffic. Some carry snacks, drinks and water in disposable packages. Traders also sell their goods and services with grocery bags, food wrappers, disposable cups, eggs, straws, Cigarette etc. The most littered items within the area include cigarette butts, food wrappers, disposable cups, grocery bags, straws, beverage cans, plastic bottles egg shells

Litter has the potential to cause harm to human health, safety, welfare, as well as the environment. The harmful impact of litter includes trapping or poisoning animals, killing aquatic life directly through choking and indirectly through its impact on water quality. Littering can be a fire hazard and it attracts pests and rodents. Litter carry germs and rats are carriers of many types of diseases that make people ill. Young children fall on litter and can get injured. It is therefore important to ensure that the area is well managed to curb the perennial dumping challenges experienced

Unauthorized Hawkers

Along Thika superhighway, crowds of pedestrian's maneuver through the narrow passage between neatly arranged goods laid out on white canvas bags on the pavement, dodging street traders who hold out pairs of jeans, tops and handbags in their direction. In addition, there are various service providers including breakdowns, food sellers and water suppliers for drinking water. There are also sausages, smokies and egg vendors who pull their trollies around. This has been increasing especially after this Covid Pandemic period when most of the Kenyans lost their employment.

This Request for proposal seeks to solve the following problems

- a) Solid and liquid waste management issue
- b) Littering within the road reserve
- c) Healthy and safety concerns
- d) Sanitation concerns
- e) Adequate hand washing points
- f) Organized hawking within the reserve

Further this RFP aims to achieve the following solutions

- a) Improve/Upgrading of the environmental standards by providing toilets, hand-washing points and cleaning points along part of the roadside amenities as per the Kenya Road Act, Section 22 (1).
- b) Provision of Litter bins.
- c) Toilets at specific points within the area.
- d) Have hand washing points which are strategically located to be able to enhance public health.
- e) Collaboration with the existing traders and hawkers to establish stalls for them so that they can be more organized in selling their goods and services.
- f) Landscaping and tree planting initiative within the area as a way to combat climate change.
- g) Development of an Encroachment Control Plan to safeguard the Authority's road reserve and assets.

The RFP includes the following documents:

- 01. Terms of References (ToR)
- 02. Agreement Format
- 03. Technical Proposal
- 04. Financial Proposal

INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S)

LOT 1 (Survey, Garden City, Witeithie, Jomoko)

The proposed toilets should normally include following facilities:

- a. Easily accessible for the physically challenged/ handicapped persons
- b. Separate toilet blocks for men and women with separate entries
- c. Water storage tanks-minimum 10,000 litres
- d. Waste water disposal system
- e. Store room for keeping the cleaning & scavenging materials /equipment
- f. Wash Hand Basins

Conditions:

- a. The operator shall collect the user charges for the facilities (toilets / bathing room) as per conditions of contract
- b. Water and electricity bills for the facility shall be borne by the selected bidder
- c. The operator shall maintain the above toilets for a period of Five (5) years and the user charges as per predefined rates will be collected.
- d. KeNHA will grant license for a 5-year period with termination possibility at no claim to the Authority should any other use of the space e.g road expansion need arises.
- e. For sections within the aforementioned that have existing sanitary facilities, they shall be audited to ensure they meet the required standards, the terms and conditions within this contract shall be binding to all parties and overall responsibility for maintenance shall fall on the bidder.
- f. In event of sublet of any part of the works to a 3rd party, the conditions of the agreement shall be communicated in writing to the Authority.
- g. The Authority shall NOT be held liable for any loss occurring due to loss of business of any kind resulting from actions undertaken by the Authority to use any part of the road reserve after coming into effect of this agreement.

Selection Process

The committee constituted by KeNHA will evaluate the RFPs and select the bidder the who will offer the highest annual license fee, subject to fulfillment of other minimum evaluation criteria as per RFP document.

Eligibility Criteria

- a. The Applicant shall be either a society, trust, company a registered self-help group, Registered Community Groups (Pursuant to the Community Groups Registration Act, 2022) or a ‘not for profit’ company / organization under the Companies Act or the relevant state Acts (Documentary evidence shall have to be submitted with the ‘Technical Proposal’).
- b. Applicant named above must be duly registered with the appropriate Authority under the appropriate law for at least three (3) years (Documentary evidence shall have to be submitted with the ‘Technical Proposal’).
- c. The applicant must have necessary financial resources to be able to maintain and operate the facility (Documentary evidence in respect of financial resources shall have to be submitted with the ‘Proposal’).
- d. The applicant must have the capacity to mobilize the required manpower to operate the facility (Documentary evidence shall have to be submitted with the ‘Proposal’).

Minimum Technical Qualification

The selected operator/organization/group should have at least three (3) years' experience in maintaining public / community toilets / Notified area. Preference will be given to applicants who are engaged in similar works and have experience in the field.

Documents to be attached with the Application

The RFP shall include the following documents.

- a. Organization details of current activities, background of promoters & management structure.
- b. Details of projects of similar magnitude successfully implemented in the past **three (3) years**.

Minimum Specifications / facilities for Public Toilet

The operator will maintain the cleanliness around the area up to the extent of 50 metres and also ensure that the location up to the aforesaid extent, is litter free.

Design and Build of the facilities

The operator shall be responsible for the design and build of the facility at the section subject to review of the designs. The works shall be supervised by the client or the clients' representatives. Inspection of the facility shall be done jointly by both parties to audit all fixtures and fittings and ensure they are in proper working condition.

Sanitation and Water Supply

In respect of the maintenance of the sanitation & water supply, fittings and fixtures, all the necessary sanitary fittings shall be of standard specifications and the work shall be done through licensed plumbers having a certificate to this effect. The fixtures should be leak proof.

Site Handover

The site shall be clear and free of all and any encroachment or unauthorized businesses. The client shall assist the operator in clearing the encroachment at the section. Thereafter, the operator shall be responsible in ensuring that the section is encroachment free.

Standards of Maintenance of Public Toilets

- The operator shall engage at least one cleaner per shift of eight hours for every unit of Public Toilet for cleaning round the clock, including public holidays. The following sanitation works shall be carried out. Daily washing with water.
 - Sweeping up to 50 mtrs extent around the facility and sprinkling of disinfectant mixture of 200 gms (50 gms bleaching powder and 150 gms lime).
 - 0.5 liters of acid per unit.
 - Removal and disposal of solid waste.
 - Guarding the facility (protecting the facility against damage and misuse) and to prevent open defecation around the facility
- a. The operator or his representative shall personally visit the Public toilets at least twice per day to keep watch over the performance of the workers
 - b. The operator shall carry out the work by engaging Labour and equipment and provide the materials for cleaning and arrange for sufficient water supply for the facility
 - c. The operator should arrange for sufficient water supply at the structure for cleaning and washing.

d. The following materials and equipment shall be supplied by the Operator to the staff engaged in maintaining the facility.

- Hard Brooms
- Soft brooms
- Coir brush
- Scraping Sheets
- Bamboo Baskets
- Plastic containers
- Bamboo Reapers
- Plastic Buckets
- Plastic Mugs
- Sponge pieces
- Washing Soap
- Identity Cards
- Apron inscribed with KeNHA Logo
- Phenyle
- Acid
- Bleaching powder and lime powder

e. The authorized KeNHA representative will supervise the work from time to time and point out any unsatisfactory service rendered by the selected operator and shall be entitled to give instructions for improvement as may be considered necessary and the selected operator shall be bound to carry out the instruction(s) for improvement of the services.

f. In the event of unsatisfactory service, negligence or slackness on the part of the operator in carrying out the work or instruction(s), the Operator shall be required by KeNHA to give a satisfactory response failure to which KeNHA shall commence termination of the Contract, if there is no improvement even three (3) repeated instructions over similar issue.

g. The selected operator shall ensure that the labour engaged by him to carry out the work shall not claim any right whatsoever against KeNHA by virtue of service rendered under this contract and shall not hamper the work by resorting to industrial action directed to KeNHA.

h. The selected operator shall be held responsible for all or any of the act done by the staff /workers and shall be responsible for the payment of wages or any loss or damage caused by them during the course of service or work undertaken and shall also be responsible and be liable for payment of any compensation under workmen compensation Act. KeNHA will not be liable for any such event whatsoever.

i. The operator shall not engage child labour and shall engage in fair labour practices including granting annual leave to workers

j. The operator should make available Suggestion Box and Complaint Register within the premises of the Public Toilets for users.

k. The operator shall not sublease or assign any part or portion of the work or the whole of the works on the basis of the commission to others without the Consent of Kenya National Highways Authority (KeNHA). Further, any complimentary services or business intended to be operated at the section by the operator or third party shall be disclosed in the submission of bid indicating nature of the business.

l. KeNHA reserve the authority to terminate the contract on the basis of non-performance or due to Authority convenience

m. KeNHA also reserves the right to alter, modify, change or remove any of the conditions mentioned in the agreement, with prior notice to the operator.

Performance monitoring

KeNHA or its appointed agent shall monitor if the operator is maintaining the toilet facility to the specified standards. In the event of three (3) consecutives noncompliance or nonperformance incidences, the contract will be terminated and the operator will forfeit the performance surety. The pass mark is 80% and the table

below provides the parameters under which the performance will be monitored;

S/No.	Performance indicator	YES	NO	Marks	Remarks by the monitoring Officer
1	Daily sweeping around the entire facility and sprinkling of disinfectants			5%	
2	Cleaning and washing of the facilities not done (twice daily)			10%	
3	Cleaning and washing of toilets done (every hour)			15%	
4	Maintenance of the green Area/ Beautifications of the area			10%	
4	Supervisors present (per day)			15%	
5	Phenyl not used (per wash)			10%	
6	Acid not used (weekly)			10%	
7	Written complaint from the user(s) to the Authority			10%	
8	Keeping record of monitoring report			15%	
Total score				100%	

Terms & Conditions

- i. This AGREEMENT shall be governed by and constructed in accordance with the laws of Kenya.
- ii. The selected bidders shall maintain the Public toilets and the open spaces for a period of five (5) years. User charges shall be collected from the users (toilets/bathroom).
- iii. The operator shall fix timing of the opening and closing of the complex. This shall be communicated to the Authority from time to time for monitoring and inspection purposes.
- iv. The operator shall collect the user charges from the users of Public toilets which are to be approved by the KeNHA. **Any revision in for the Toilet and support facilities charges, shall be done in consultation with KeNHA.** The operator shall operate and maintain the facilities to the satisfaction of KeNHA and regularly clean the toilets, urinals, floors, walls, and ceilings of the interior as well as the exterior of the complexes and ensure continuous serviceability including continuous availability of clean water. He shall ensure that the requisite quantity of cleaning materials such as phenyl, acid, naphthalene balls are used to ensure that the toilets is clean and free from foul smell at all time and that soap, towels, hand driers are available at all times.
- v. The selected operator/ organization shall maintain the facility as per maintenance schedule agreed between the operator and KeNHA. KeNHA may engage third party evaluators to check the quality of maintenance and in case the maintenance is found not to meet the standards KeNHA may penalize the operator/ organization.
- vi. The operator shall ensure that each toilet facility displays a signboard “This Toilet facility was built and is maintained by KeNHA.,” The height of the lettering shall be 15cm.
- vii. The charges towards electricity, water, sewage and other such amenities or any type of Tax to be paid as required by the operator shall be included in the maintenance cost and will not be borne by the KeNHA.
- viii. The operator shall pay an annual fee as offered in the bid. However, KeNHA reserves the right to negotiate or fix the annual fees if it is convinced that the highest bidder has quoted below the market lease rate per meter squared. Before issuance of work order, the operator has to deposit the amount of annual License fee within seven (7) days for the first year and thereafter within the first fourteen (14) days of subsequent years failing which interest will be charged @ 12% per annum for the total amount due. The Contract shall be terminated in case of default of payment for three (3) months from the due date of payment
- ix. The operator shall not display or allow to display or exhibit any picture / posture /statute or other articles in any part of the premises that are repugnant to the general standards of morality. The operator expressly

- agrees that the decision of the KeNHA in this regard shall be conclusive and binding on the operator.
- x. There should be provision of advertisement spaces in each public toilet. The size of the advertisement space shall be decided by KeNHA in consultation with the selected operator. However, final decision of KeNHA in this regard shall be conclusive and binding on the operator.
 - xi. The operator shall ensure that the premises are not used for playing games etc., which involves stakes / betting, play cards etc., or for any un-lawful activities.
 - xii. Operator/ organization can use the premises for displaying any bill boards, advertisements, neon / glow signs. Bidders who wish generate additional revenue through advertisement should should declare such at the time of bidding and in build advertising feature in the submitted design. Placement of advert after bidding will be subject to a fresh application and approval from the Authority.
 - xiii. The operator shall ensure adequate water for general cleanliness of the public Toilets for which KeNHA shall have no objection to the operator for installing borehole at each site in addition to the water that may be supplied. Rain or underground water storage can be incorporated as an additional requirement to increase water reliability. These are optional and the operator should not put a claim to KeNHA.
 - xiv. The title of interest, ownership and rights with regard to public Toilets /fittings provided therein and the land allotted by the KeNHA shall vest with the KeNHA.
 - xv. In case of loss due to theft or damage to the assets created in the public Toilets, the operator shall be responsible for making good immediately at own cost and shall continue to keep the complex operational and available for public use, at all times, as prescribed.
 - xvi. Disputes if any arising during the maintenance / service period between KeNHA and the operator shall be referred to the Dispute Adjudication Board.
 - xvii. KeNHA shall have the right to cancel / terminate the Contract at any stage in case of breach of any of the stipulated terms and condition by the operator or in case their performance is not satisfactory. KeNHA shall be entitled to terminate the agreement in case of any neglect or lapse on the part of the operator in respect of maintenance of the public toilets in clean and hygienic conditions and to keep the public facility in a state of good repairs at times. Such cancellation or termination of Contract shall be preceded by a notice of 30 days, whereby the operator shall be directed to provide a written response on the breach of its contractual obligations
 - xviii. The site and the work & service assigned to the operator by the KeNHA shall not be transferred by the operator to any person, trust, society or institution in any manner whatsoever at any time whether during or after the termination of this agreement without approval from the Authority.
 - xix. In event of other pre-existing toilet and sanitary facilities within the proposed area/ reserve space. The same shall be subjected to a formal audit to ensure they comply with the prescribed standards. Thereafter, the management and maintenance of the said facilities shall be the responsibility of the bidder and no part shall claim any loss arising from the same from the Authority.
 - xx. Provision of inclined ramp should be provided at the entrance of the premises of the public toilets.
 - xxi. The operator or his employees or agents shall conduct themselves in Courteous manner and politely deal with the users of these public Toilets.
 - xxii. The operator will not use or allow any person to use public toilets for residential purpose and shall not keep any animal / motor vehicle in or around the complex other than one attendant and one security guard per shift of eight hours to ensure continuous service delivery.
 - xxiii. The operator shall be allowed to plant flowers and other shrubs around each toilet block subject to the approval by the KeNHA who is responsible for ensuring right of way to the public.
 - xxiv. The operator shall ensure enforcement of existing labour laws, Minimum Wages Act and at no time, shall KeNHA be drawn into litigations on these matters
 - xxv. The operator shall execute the agreement within Seven (7) days on the receipt of issuance of letter of award.
 - xxvi. The operator shall ensure that water supply, sewerage, drainage, electricity, telephone etc., in this vicinity encountered during the period of running /maintenance of the toilet block are not damaged. In case these are required to be shifted, the same shall be done by the permission of KeNHA
 - xxvii. On the completion of the contract period, the operator shall hand over the vacant possession of the public Toilets along with fixtures and fittings, inventory, structures in good working condition to the KeNHA

within 24 hours and will not put any resistance failure to which the premises shall be vacated by way of eviction and KeNHA shall assume the occupation without any notice whereupon the operator will have no claim.

- xxviii. The operator shall be given consideration for extension in the event of lapse of the contract after evaluation of the performance. The operator shall also be granted an extension of time in the event that tendering of new contracts shall not have been done as at the lapse of the existing contract to ensure continuity in provision of services to the general public.
- xxix. The operator shall be granted the rights to construct permanent structures at the section but the client shall not be liable for damage in event of cancellation or expiry of the contract period.
- xxx. Any of the conditions mentioned above can be altered, modified, changed or removed by the appropriate authority as per the necessity and with prior notice to the operator and the new conditions shall be binding on the part of the operator.

Disclaimer

- i) The information contained in this Request for Proposal (“RFP”) document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the KeNHA or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP document and such other terms and conditions subject to which such information is provided.
- ii) This RFP document is neither an agreement nor an offer by KeNHA to the prospective Bidders or any other person.
- iii) This RFP document does not purport to contain all the information that each Bidder may require.
- iv) RFP document may not be appropriate for all persons, and it is not possible for KeNHA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP document.
- v) The statements and information contained in this RFP document may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the statements and information contained in this RFP document and obtain independent advice from appropriate sources.
- vi) Information provided in this RFP document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Therefore, KeNHA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- vii) KeNHA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RFP document and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP document or arising in any way with short- listing of Bidder(s) for participation in the Selection Process.
- viii) KeNHA also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP document.
- ix) KeNHA may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information or assessment contained in this RFP document. The issue of this RFP document does not imply that KeNHA is bound to short-list Bidders for next stage of the Selection Process for the Project and KeNHA reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

- x) The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, with any demonstrations or presentations which may be required by KeNHA or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and KeNHA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

Interpretation

- a. In respect of interpretation of any ambiguity in this RFP or anything contained herein, the decision of the Authority shall be final and binding.
- b. In respect of any point not covered herein or partially covered herein, the decision of the Authority shall be final and binding.

Note.

The Bidder shall be granted rights optimally manage the open spaces within the selected location to guarantee return on investment for sustainable maintenance of the toilet facility provided they include such innovative ideas in the detailed design at the time of bidding (With clear outlook of the final images for the envisioned proposal). Any other thereafter will be upon seeking approval from the Director General, KeNHA.

SECTION IV: (Continuation)

TERMS OF REFERENCE (TOR) FOR LOT 2, 3, 4, 5, 6, 7 & 8

INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S)

Request for Proposal is invited from reputable firms, registered Community Groups (Pursuant to the Community Groups Registration Act, 2022) to Installation, Operation, Management and Maintenance of roadside amenities and open spaces at selected locations along Nairobi- Thika superhighway (A2S) for LOT 2, 3, 4, 5, 6, 7 & 8

KeNHA shall rent its space on the road reserve at selected locations for a period of Five (5) year term with renewable option for another two terms subject to performance satisfaction.

Please note,

- a) Should KeNHA require this space for other road use e.g. expansion of the road BEFORE the expiry of the lease term, a written notice to that effect will be issued by the Director General to the operator giving 90 days' notice to clear from the said space on the road reserve.
- b) Upon receipt of the notice, the Authority through the office of the Corridor Director, Corridor Maintenance 'C', shall appoint a liaison officer or firm that shall coordinate matters relating to stakeholder engagement and encroachment control at the section. The operator will proceed and clear from the said space of road reserve by removing any structures therein that might affect the service levels at own cost and without placing any claim for the business loss to the Authority and shall maintain said space as per the guidelines and conditions given by the Authority.
- c) For all and any other businesses operating within the leased area, the Terms and Conditions within this document shall be binding to all parties and no claim shall be placed on the Authority for any loss incurred thereafter.
- d) The operator/bidder shall be the recognized party by the Authority in charge of all the open spaces with the Authority's reserve at the section and shall be responsible for the installation, operation and maintenance of all the toilet blocks therein.
- e) KeNHA will refund the operator any rent that could have been paid for an expired period and this will mark the end of the lease/ rental contract engagement.
- f) The selected bidders shall install and maintain the toilets and the other agreed facilities for a period of Five (5) years. User charges shall be collected from the commuters/ users.

The application containing the **Proposal** in the prescribed formats sealed in **an** envelope, completed in all respects, shall be submitted to KeNHA, clearly super-scribing on the envelope **"PROPOSAL FOR INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S) as specified in the detailed long tender notice.**

It is the responsibility of interested party alone to ensure that its proposals are delivered at the prescribed address within the stated deadline. KeNHA shall not be held responsible for any delay in delivery or loss of document(s) during transit.

Back Ground

Constitutions of Kenya, 2010

Article 42 and 43 of Kenya Constitution, 2010, provides for right to a clean and healthy environment with reasonable standards of sanitation.

Road Acts 2007

Section 22 (1) (d), of the Kenya Roads Act, 2007, empowers KeNHA to provide such amenities or facilities for persons making use of the services or facilities provided by the Authority as may appear to the Authority necessary or desirable. KeNHA's Mandate under this Act includes Management of Class S, A and B roads in Kenya. In this case, Thika Super highways (Class S) is under management of KeNHA and road users requires convenient sanitation facilities while using this section of the road.

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CURRENT SITUATION ALONG THIKA ROAD

Lack of Public Toilets

It is disappointing to note that in this modern age, there is only one single toilet block serving the vast population along Thika Road, despite having high vehicular traffic, informal and formal businesses and various Matatu stages at the section which requires proper sanitary facilities to serve the public. This has resulted to the practice of open defecation which has the potential to contribute to the people suffering from the contaminating effects of open defecation particularly women and children. Using proper toilets prevents the transfer of bacteria, viruses and parasites found in human excreta which otherwise contaminate water resources, soil and food. This contamination is a major cause of diarrhea; this can be biggest killer of children and leads to other major diseases such as cholera, schistosomiasis and trachoma.

Improving access to sanitation is a critical step towards reducing the impact of these diseases. It also helps create physical environments that enhance safety, dignity and self-esteem.

Safety is also important for women and children, who otherwise risk sexual harassment and assault when defecating in secluded areas.

Lack of wash points

The COVID-19 pandemic has already demonstrated how vulnerable our communities are. During the Coronavirus Disease 19 (COVID-19) pandemic, keeping hands clean is especially important to help prevent the virus from spreading. The highlighted sections along Thika Road has high traffic of pedestrians, the Authority needs to provide the wash points which is critical in reducing the spread of the disease. It is thus important for the Authority to invest more in providing basic risk-reducing services such as clean water to enable hand-washing among other uses.

No littering Points/bins

The Thika Superhighway is an area with high human traffic. Some carry snacks, drinks and water in

disposable packages. Traders also sell their goods and services with grocery bags, food wrappers, disposable cups, eggs, straws, Cigarette etc. The most littered items within the area include cigarette butts, food wrappers, disposable cups, grocery bags, straws, beverage cans, plastic bottles egg shells

Litter has the potential to cause harm to human health, safety, welfare, as well as the environment. The harmful impact of litter includes trapping or poisoning animals, killing aquatic life directly through choking and indirectly through its impact on water quality. Littering can be a fire hazard and it attracts pests and rodents. Litter carry germs and rats are carriers of many types of diseases that make people ill. Young children fall on litter and can get injured. It is therefore important to ensure that the area is well managed to curb the perennial dumping challenges experienced

Unauthorized Hawkers

Within the open spaces at the selected location locations/ Interchange, crowds of pedestrian's maneuver through the narrow passage between neatly arranged goods laid out on white canvas bags on the pavement, dodging street traders who hold out pairs of jeans, tops and handbags in their direction. In addition, there are various service providers including breakdowns, food sellers and water suppliers for drinking water. There are also sausages, smokies and egg vendors who pull their trollies around. This has been increasing especially after this Covid Pandemic period when most of the Kenyans lost their employment.

This Request for proposal seeks to solve the following problems

- g) Solid and liquid waste management issue
- h) Littering within the road reserve
- i) Healthy and safety concerns
- j) Sanitation concerns
- k) Adequate hand washing points
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Further this RFP aims to achieve the following solutions

- h) Improve/Upgrading of the environmental standards by providing toilets, hand-washing points and cleaning points along part of the roadside amenities as per the Kenya Road Act, Section 22 (1).
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- j) Toilets at specific points within the area.
- k) Have hand washing points which are strategically located to be able to enhance public health.
- l) Collaboration with the existing traders and hawkers to establish stalls for them so that they can be more organized in selling their goods and services.
- m) Landscaping and tree planting initiative within the area as a way to combat climate change.
- n) Development of an Encroachment Control Plan to safeguard the Authority's road reserve and assets.

The RFP includes the following documents:

- 05. Terms of References (ToR)
- 06. Agreement Format
- 07. Technical Proposal
- 08. Financial Proposal

INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S) LOT 2, 3, 4, 5, 6, 7 & 8

The proposed toilets should normally include following facilities:

- g. Easily accessible for the physically challenged/ handicapped persons
- h. Separate toilet blocks for men and women with separate entries
- i. Water storage tanks-minimum 10,000 litres
- j. Waste water disposal system
- k. Store room for keeping the cleaning & scavenging materials /equipment
- l. Wash Hand Basins

Conditions:

- h. The operator shall collect the user charges for the facilities (toilets / bathing room) as per conditions of contract
- i. Water and electricity bills for the facility shall be borne by the selected bidder
- j. The operator shall maintain the above toilets for a period of Five (5) years and the user charges as per predefined rates will be collected.
- k. KeNHA will grant license for a 5-year period with termination possibility at no claim to the Authority should any other use of the space e.g road expansion need arises.
- l. For sections within the aforementioned that have existing sanitary facilities, they shall be audited to ensure they meet the required standards, the terms and conditions within this contract shall be binding to all parties and overall responsibility for maintenance shall fall on the bidder.
- m. In event of sublet of any part of the works to a 3rd party, the conditions of the agreement shall be communicated in writing to the Authority.
- n. The Authority shall NOT be held liable for any loss occurring due to loss of business of any kind resulting from actions undertaken by the Authority to use any part of the road reserve after coming into effect of this agreement.

Selection Process

The committee constituted by KeNHA will evaluate the RFPs and select the bidder the who will offer the highest annual license fee, subject to fulfillment of other minimum evaluation criteria as per RFP document.

Eligibility Criteria

- e. The Applicant shall be either a society, trust, company a registered self-help group, Registered Community Groups (Pursuant to the Community Groups Registration Act, 2022) or a ‘not for profit’ company / organization under the Companies Act or the relevant state Acts (Documentary evidence shall have to be submitted with the ‘Technical Proposal’).
- f. Applicant named above must be duly registered with the appropriate Authority under the appropriate law for at least three (3) years (Documentary evidence shall have to be submitted with the ‘Technical Proposal’).
- g. The applicant must have necessary financial resources to be able to maintain and operate the facility (Documentary evidence in respect of financial resources shall have to be submitted with the ‘Proposal’).
- h. The applicant must have the capacity to mobilize the required manpower to operate the facility (Documentary evidence shall have to be submitted with the ‘Proposal’).

Minimum Technical Qualification

The selected operator/organization/group should have at least three (3) years' experience in maintaining public / community toilets / Notified area. Preference will be given to applicants who are engaged in similar works and have experience in the field.

Documents to be attached with the Application

The RFP shall include the following documents.

- c. Organization details of current activities, background of promoters & management structure.
- d. Details of projects of similar magnitude successfully implemented in the past **three (3) years**.

Minimum Specifications / facilities for Public Toilet

The operator will maintain the cleanliness around the area up to the extent of 50 metres and also ensure that the location up to the aforesaid extent, is litter free.

Design and Build of the facilities

The operator shall be responsible for the design and build of the facility at the section subject to review of the designs. The works shall be supervised by the client or the clients' representatives. Inspection of the facility shall be done jointly by both parties to audit all fixtures and fittings and ensure they are in proper working condition.

Sanitation and Water Supply

In respect of the maintenance of the sanitation & water supply, fittings and fixtures, all the necessary sanitary fittings shall be of standard specifications and the work shall be done through licensed plumbers having a certificate to this effect. The fixtures should be leak proof.

Site Handover

The site shall be clear and free of all and any encroachment or unauthorized businesses. The client shall assist the operator in clearing the encroachment at the section. Thereafter, the operator shall be responsible in ensuring that the section is encroachment free.

Standards of Maintenance of Public Toilets

- The operator shall engage at least one cleaner per shift of eight hours for every unit of Public Toilet for cleaning round the clock, including public holidays. The following sanitation works shall be carried out. Daily washing with water.
 - Sweeping up to 50 mtrs extent around the facility and sprinkling of disinfectant mixture of 200 gms (50 gms bleaching powder and 150 gms lime).
 - 0.5 liters of acid per unit.
 - Removal and disposal of solid waste.
 - Guarding the facility (protecting the facility against damage and misuse) and to prevent open defecation around the facility
- n. The operator or his representative shall personally visit the Public toilets at least twice per day to keep watch over the performance of the workers
- o. The operator shall carry out the work by engaging Labour and equipment and provide the materials for cleaning and arrange for sufficient water supply for the facility

- p.** The operator should arrange for sufficient water supply at the structure for cleaning and washing.
- q.** The following materials and equipment shall be supplied by the Operator to the staff engaged in maintaining the facility.
- Hard Brooms
 - Soft brooms
 - Coir brush
 - Scraping Sheets
 - Bamboo Baskets
 - Plastic containers
 - Bamboo Reapers
 - Plastic Buckets
 - Plastic Mugs
 - Sponge pieces
 - Washing Soap
 - Identity Cards
 - Apron inscribed with KeNHA Logo
 - Phenyle
 - Acid
 - Bleaching powder and lime powder
- r.** The authorized KeNHA representative will supervise the work from time to time and point out any unsatisfactory service rendered by the selected operator and shall be entitled to give instructions for improvement as may be considered necessary and the selected operator shall be bound to carry out the instruction(s) for improvement of the services.
- s.** In the event of unsatisfactory service, negligence or slackness on the part of the operator in carrying out the work or instruction(s), the Operator shall be required by KeNHA to give a satisfactory response failure to which KeNHA shall commence termination of the Contract, if there is no improvement even three (3) repeated instructions over similar issue.
- t.** The selected operator shall ensure that the labour engaged by him to carry out the work shall not claim any right whatsoever against KeNHA by virtue of service rendered under this contract and shall not hamper the work by resorting to industrial action directed to KeNHA.
- u.** The selected operator shall be held responsible for all or any of the act done by the staff /workers and shall be responsible for the payment of wages or any loss or damage caused by them during the course of service or work undertaken and shall also be responsible and be liable for payment of any compensation under workmen compensation Act. KeNHA will not be liable for any such event whatsoever.
- v.** The operator shall not engage child labour and shall engage in fair labour practices including granting annual leave to workers
- w.** The operator should make available Suggestion Box and Complaint Register within the premises of the Public Toilets for users.
- x.** The operator shall not sublease or assign any part or portion of the work or the whole of the works on the basis of the commission to others without the Consent of Kenya National Highways Authority (KeNHA).

Further, any complimentary services or business intended to be operated at the section by the operator or third party shall be disclosed in the submission of bid indicating nature of the business.

- y. KeNHA reserve the authority to terminate the contract on the basis of non-performance or due to Authority convenience
- z. KeNHA also reserves the right to alter, modify, change or remove any of the conditions mentioned in the agreement, with prior notice to the operator.

Performance monitoring

KeNHA or its appointed agent shall monitor if the operator is maintaining the toilet facility to the specified standards. In the event of three (3) consecutives noncompliance or nonperformance incidences, the contract will be terminated and the operator will forfeit the performance surety. The pass mark is 80% and the table below provides the parameters under which the performance will be monitored;

S/No.	Performance indicator	YES	NO	Marks	Remarks by the monitoring Officer
1	Daily sweeping around the entire facility and sprinkling of disinfectants			5%	
2	Cleaning and washing of the facilities not done (twice daily)			10%	
3	Cleaning and washing of toilets done (every hour)			15%	
4	Maintenance of the green Area/ Beautifications of the area			10%	
4	Supervisors present (per day)			15%	
5	Phenyl not used (per wash)			10%	
6	Acid not used (weekly)			10%	
7	Written complaint from the user(s) to the Authority			10%	
8	Keeping record of monitoring report			15%	
Total score				100%	

Terms & Conditions

- xxxi. This AGREEMENT shall be governed by and constructed in accordance with the laws of Kenya.
- xxxii. The selected bidders shall maintain the Public toilets and the open spaces for a period of five (5) years. User charges shall be collected from the users (toilets/bathroom).
- xxxiii. The operator shall fix timing of the opening and closing of the complex. This shall be communicated to the Authority from time to time for monitoring and inspection purposes.
- xxxiv. The operator shall collect the user charges from the users of Public toilets which are to be approved by the KeNHA. **Any revision in for the Toilet and support facilities charges, shall be done in consultation with KeNHA.** The operator shall operate and maintain the facilities to the satisfaction of KeNHA and regularly clean the toilets, urinals, floors, walls, and ceilings of the interior as well as the exterior of the complexes and ensure continuous serviceability including continuous availability of clean water. He shall ensure that the requisite quantity of cleaning materials such as phenyl, acid, naphthalene balls are used to ensure that the toilets is clean and free from foul smell at all time and that soap, towels, hand driers are available at all times.
- xxxv. The selected operator/ organization shall maintain the facility as per maintenance schedule agreed between the operator and KeNHA. KeNHA may engage third party evaluators to check the quality of maintenance and in case the maintenance is found not to meet the standards KeNHA may penalize the operator/ organization.
- xxxvi. The operator shall ensure that each toilet facility displays a signboard “This Toilet facility was built and is

- maintained by KeNHA.” The height of the lettering shall be 15cm.
- xxxvii. The charges towards electricity, water, sewage and other such amenities or any type of Tax to be paid as required by the operator shall be included in the maintenance cost and will not be borne by the KeNHA.
- xxxviii. The operator shall pay an annual fee as offered in the bid. However, KeNHA reserves the right to negotiate or fix the annual fees if it is convinced that the highest bidder has quoted below the market lease rate per meter squared. Before issuance of work order, the operator has to deposit the amount of annual License fee within seven (7) days for the first year and thereafter within the first fourteen (14) days of subsequent years failing which interest will be charged @ 12% per annum for the total amount due. The Contract shall be terminated in case of default of payment for three (3) months from the due date of payment
- xxxix. The operator shall not display or allow to display or exhibit any picture / posture /statute or other articles in any part of the premises that are repugnant to the general standards of morality. The operator expressly agrees that the decision of the KeNHA in this regard shall be conclusive and binding on the operator.
- xl. There should be provision of advertisement spaces in each public toilet. The size of the advertisement space shall be decided by KeNHA in consultation with the selected operator. However, final decision of KeNHA in this regard shall be conclusive and binding on the operator.
- xli. The operator shall ensure that the premises are not used for playing games etc., which involves stakes / betting, play cards etc., or for any un-lawful activities.
- xlii. Operator/ organization can use the premises for displaying any bill boards, advertisements, neon / glow signs. Bidders who wish generate additional revenue through advertisement should should declare such at the time of bidding and in build advertising feature in the submitted design. Placement of advert after bidding will be subject to a fresh application and approval from the Authority.
- xlili. The operator shall ensure adequate water for general cleanliness of the public Toilets for which KeNHA shall have no objection to the operator for installing borehole at each site in addition to the water that may be supplied. Rain or underground water storage can be incorporated as an additional requirement to increase water reliability. These are optional and the operator should not put a claim to KeNHA.
- xliv. The title of interest, ownership and rights with regard to public Toilets /fittings provided therein and the land allotted by the KeNHA shall vest with the KeNHA.
- xlv. In case of loss due to theft or damage to the assets created in the public Toilets, the operator shall be responsible for making good immediately at own cost and shall continue to keep the complex operational and available for public use, at all times, as prescribed.
- xlvi. Disputes if any arising during the maintenance / service period between KeNHA and the operator shall be referred to the Dispute Adjudication Board.
- xlvii. KeNHA shall have the right to cancel / terminate the Contract at any stage in case of breach of any of the stipulated terms and condition by the operator or in case their performance is not satisfactory. KeNHA shall be entitled to terminate the agreement in case of any neglect or lapse on the part of the operator in respect of maintenance of the public toilets in clean and hygienic conditions and to keep the public facility in a state of good repairs at times. Such cancellation or termination of Contract shall be preceded by a notice of 30 days, whereby the operator shall be directed to provide a written response on the breach of its contractual obligations
- xlviii. The site and the work & service assigned to the operator by the KeNHA shall not be transferred by the operator to any person, trust, society or institution in any manner whatsoever at any time whether during or after the termination of this agreement without approval from the Authority.
- xlix. In event of other pre-existing toilet and sanitary facilities within the proposed area/ reserve space. The same shall be subjected to a formal audit to ensure they comply with the prescribed standards. Thereafter, the management and maintenance of the said facilities shall be the responsibility of the bidder and no part shall claim any loss arising from the same from the Authority.
1. Provision of inclined ramp should be provided at the entrance of the premises of the public toilets.
- li. The operator or his employees or agents shall conduct themselves in Courteous manner and politely deal with the users of these public Toilets.
- lii. The operator will not use or allow any person to use public toilets for residential purpose and shall not keep

- any animal / motor vehicle in or around the complex other than one attendant and one security guard per shift of eight hours to ensure continuous service delivery.
- liii. The operator shall be allowed to plant flowers and other shrubs around each toilet block subject to the approval by the KeNHA who is responsible for ensuring right of way to the public.
 - liv. The operator shall ensure enforcement of existing labour laws, Minimum Wages Act and at no time, shall KeNHA be drawn into litigations on these matters
 - lv. The operator shall execute the agreement within Seven (7) days on the receipt of issuance of letter of award.
 - lvi. The operator shall ensure that water supply, sewerage, drainage, electricity, telephone etc., in this vicinity encountered during the period of running /maintenance of the toilet block are not damaged. In case these are required to be shifted, the same shall be done by the permission of KeNHA
 - lvii. On the completion of the contract period, the operator shall hand over the vacant possession of the public Toilets along with fixtures and fittings, inventory, structures in good working condition to the KeNHA within 24 hours and will not put any resistance failure to which the premises shall be vacated by way of eviction and KeNHA shall assume the occupation without any notice whereupon the operator will have no claim.
 - lviii. The operator shall be given consideration for extension in the event of lapse of the contract after evaluation of the performance. The operator shall also be granted an extension of time in the event that tendering of new contracts shall not have been done as at the lapse of the existing contract to ensure continuity in provision of services to the general public.
 - lix. The operator shall be granted the rights to construct permanent structures at the section but the client shall not be liable for damage in event of cancellation or expiry of the contract period.
 - lx. Any of the conditions mentioned above can be altered, modified, changed or removed by the appropriate authority as per the necessity and with prior notice to the operator and the new conditions shall be binding on the part of the operator.

Disclaimer

- xi) The information contained in this Request for Proposal (“RFP”) document or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of the KeNHA or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP document and such other terms and conditions subject to which such information is provided.
- xii) This RFP document is neither an agreement nor an offer by KeNHA to the prospective Bidders or any other person.
- xiii) This RFP document does not purport to contain all the information that each Bidder may require.
- xiv) RFP document may not be appropriate for all persons, and it is not possible for KeNHA, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP document.
- xv) The statements and information contained in this RFP document may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the statements and information contained in this RFP document and obtain independent advice from appropriate sources.
- xvi) Information provided in this RFP document to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. Therefore, KeNHA accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
- xvii) KeNHA, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP document or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RFP document and any assessment, assumption, statement or information contained therein or deemed to form part of this

RFP document or arising in any way with short- listing of Bidder(s) for participation in the Selection Process.

- xviii) KeNHA also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP document.
- xix) KeNHA may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information or assessment contained in this RFP document. The issue of this RFP document does not imply that KeNHA is bound to short-list Bidders for next stage of the Selection Process for the Project and KeNHA reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.
- xx) The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, with any demonstrations or presentations which may be required by KeNHA or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Bidder and KeNHA shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

Interpretation

- c.** In respect of interpretation of any ambiguity in this RFP or anything contained herein, the decision of the Authority shall be final and binding.
- d.** In respect of any point not covered herein or partially covered herein, the decision of the Authority shall be final and binding.

Note.

The Bidder shall be granted rights optimally manage the open spaces within the selected location to guarantee return on investment for sustainable maintenance of the toilet facility provided they include such innovative ideas in the detailed design at the time of bidding (With clear outlook of the final images for the envisioned proposal). Any other thereafter will be upon seeking approval from the Director General, KeNHA.

Section V - Tendering Forms

- i) Form of Tender
- ii) Tenderer Information Form
- iii) Tenderer JV Members Information Form
- iv) Price Schedule -Schedule of Requirements (Lease Items).
- v) Form of Tender Security – Demand Guarantee
- vi) Form of Tender Security (Insurance Guarantee)
- vii) Form of Tender- Securing Declaration
- viii) Owner's Authorization

Other Forms to be completed

- i) Tenderer's Eligibility- Confidential Business Questionnaire
- ii) Certificate of Independent Tender Determination
- iii) Self-Declaration Form
- iv) Appendix 1- Fraud and Corruption

i) FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS

- i) All italicized text is to help the Tenderer in preparing this form.*
- ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*
- iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

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

Tender Name and Identification:.....[insert identification]

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

To: [Insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal- Securing Declaration:**
We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 3.7;
- d) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- e) **Conformity:** We offer to lease in conformity with the Tendering Document and in accordance with the lease periods, the Lease items specified in the Schedule below:

[insert completed LIST OF RENT ITEMS AND PRICES]

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

Option 1, in case of one lot: Total price is:[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];

or

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

- g) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: [Specify in detail each discount offered.]
 - ii) The exact method of calculations to determine the net price after application of discounts are shown below:
[Specify in detail the method that shall be used to apply the discounts];

- h) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- i) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, Lessors, 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 the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];*
- l) **Commissions, gratuities, 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.”)

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We here by 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.
- p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from www.pppra.go.ke during the procurement process and the execution of any resulting contract.
- r) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.
- s) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
- i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any

conflict to interest.

- ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
- iii) Self-Declaration of the Tenderer—to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
- iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

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 the tenderer]*

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

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

Signature of the person named above: *[insert signature of person whose name and capacity are shown above]* **Date signed** *[insert date of signing]* **day of** *[insert month], [insert year]*

*: In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.

** : Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

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	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Curlease Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	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.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

d) Registered Company, provide the following details.

I) Private or public

Company.....

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

Nominal Kenya Shillings

(Equivalent).....

Issued Kenya Shillings

(Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

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

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	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 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, curlease and accurate as at the date of submission.

Full Name _____

Title or Designation _____

(Signature)

(Date)

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete 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]

SELF-DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (*insert name of the Company*) who is a Bidder in respect of **Tender No.....**for..... (*insert 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 here in above is true to the best of my knowledge, information and belief.

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

Bidder's Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/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 here in above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

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
Activities in Kenya 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.....

CERTIFICATE OF BIDDER’S PRE-TENDER 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.

REQUEST FOR PROPOSAL TO INSTALLATION, OPERATION, MANAGEMENT AND MAINTENANCE OF ROADSIDE AMENITIES AND OPEN SPACES AT SELECTED LOCATIONS ALONG NAIROBI- THIKA SUPERHIGHWAY (A2S)

Tender No. KeNHA/2811/2024

Lot No Description:

.....

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 by Authorised Bidders Agent/ Representative)

(Designation)

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

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and 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.

2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted 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 tenderer to whom was awarded contract, or a member of the group of tenderers 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 direct or 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.

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of 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.

¹For 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

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

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

Tender Name and Identification: *[insert identification]*

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</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 documents of registration of the legal entity named above, in accordance with ITT 3.1. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of curlease tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.14. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law 1. Establishing that the tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart and a list of Board of Directors.

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]*

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

Page _____ of _____ pages

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 3.1 <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of curlease tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <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 3.8.
8.	Included are the organizational chart and a list of Board of Directors,

PRICE SCHEDULE

[The tenderer shall fill in this Price Schedule in accordance and insert in Form of Tender as instructed. The list of line items in Columns 1 and 2 of the Price Schedules shall coincide with the List of Rent Items and Related Services specified by the Procuring Entity in the Schedule of Requirements.]

No.	Lot No.	Description of Rent Item and Related Services.	Duration of Rent (in Months)	Unit Price per Month (kshs)	Total price for whole Rent period (kshs.)
1		<i>[To be completed by Tenderer]</i>	60	<i>[to be completed by Tenderer]</i>	<i>[to be completed by Tenderer]</i>
Sub-total					
Add 0.03% Public Procurement Capacity Building Levy (Exclusive of All Taxes).					
Add VAT					
Total price for whole Rent period (5 Years) (Kshs)					

Name of Tenderer _____

Signed by the Tenderer _____

Dated _____

Note: Each LOT must a separate price schedule

16 FORM OF TENDER SECURITY- Bank Guarantee

Beneficiary: _____

Request for Tenders No: _____

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

1. We have been informed that _____ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of _____ under Request for Tenders No. _____ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas [*Name of the tenderer*] (herein after called “the tenderer”) has submitted its tender dated [*Date of submission of tender*] for the [*Name and/or description of the tender*] (herein after called “the Tender”) for the execution of ___ under Request for Tenders No. _____ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE of [**Name of Insurance Company**] having our registered office at (herein after called “the Guarantor”), are bound unto [*Name of Procuring Entity*] (herein after called “the Procuring Entity”) in the sum of (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

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

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

 [*Date*]

 [*Witness*]

 [*Signature of the Guarantor*]

 [*Seal*]

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

TENDER-SECURING DECLARATION FORM {r 46 and 155 (2)}

[The Bidder shall complete this Form in accordance with the instructions indicated]

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

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

To:*[insert complete name of Purchaser]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of.....*[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:- (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or(ii)fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
 - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:..... Capacity / title (director or partner or sole proprietor, etc.) Name:

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

Tenderer] Dated on day of, *[Insert date of signing]*

Seal or stamp

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

OWNER'S AUTHORIZATION

[The tenderer shall require the Owner to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Owner and should be signed by a person with the proper authority to sign documents that are binding on the Owner. The tenderer shall include it in its Tender, if so indicated in the TDS.]

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

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

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

To:*[insert complete name of*

Procuring Entity] WHEREAS

We.....*[insert complete name of Manufacturer]*, who are official manufacturers of.....*[insert type of Lease Items manufactured]*, having factories at.....*[insert full address of Manufacturer's factories]*, do hereby authorize.....*[insert complete name of tenderer]* to submit a Tender the purpose of which is to provide the following Lease Items, manufactured by us *[insert name and or brief description of the Lease Items]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Lease Items offered by the above firm.

Signed:*[insert signature(s) of authorized representative(s) of the Owner]*

Name:*[insert complete name(s) of authorized representative(s) of the Owner]*

Title: *[insert title]*

Dated on _____ day of _____, _____ *[insert date of signing]*

PART 2 - LEASE REQUIREMENTS

SECTION VI - SCHEDULE OF REQUIREMENTS

NOTES FOR PREPARING THE SCHEDULE OF REQUIREMENTS

The Schedule of Requirements shall be included in the Tendering document by the Procuring Entity, and shall cover, at a minimum, a description of the Lease Items and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT 42.1.

The date or period for lease should be carefully specified, considering (a) the implications of lease terms stipulated in the Instructions to tenderers; (b) the date prescribed here in from which the Procuring Entity's payment obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit, etc.).

2 Technical Specifications

- 2.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Lease Items and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:
- i) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.
 - ii) The TS shall require that all Lease Items and materials to be incorporated in the Lease Items be new, unused, and of the most recent or current lease models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.
 - iii) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.
 - iv) The PPRA encourages the use of metric units.
 - v) Standardizing technical specifications may be advantageous, depending on the complexity of the Lease Items and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of Lease Items.
 - vi) Standards for equipment, materials, and workmanship specified in the Tendering document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from the Procuring Entity's or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable.
 - vii) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.
 - viii) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:
 - a) Standards of materials and workmanship required for the production and manufacturing of the Lease Items.
 - b) Any sustainable procurement technical requirements shall be clearly specified.
- 2.2 The requirements to be specified shall be specific enough to not demand evaluation based on rated criteria/merit point system. Tenderers may be invited to offer Lease Items that exceeds the specified minimum sustainable procurement requirements.
- 2.3 The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Letter of Tender), where the tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.
- 2.4 When the Procuring Entity requests that the tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the tenderer in its Tender.
- 2.5 If a summary of the Technical Specifications (TS) has to be provided, the Procuring Entity shall insert information in the table below. The tenderer shall prepare a similar table to justify compliance with the requirements.

Summary of Technical Specifications - The Lease Items and Related Services shall comply with following Technical Specifications and Standards:

Lease Item No	Name of Lease Items or Related Service	Technical Specifications and Standards
[insert item No]	[insert name]	[insert TS and Standards]

Detailed Technical Specifications and Standards..... *[insert*

whenever necessary]. [Insert detailed description of TS]

3. Maintenance obligations and standards

(describe in detail how these will be handled and by which party).

4. Drawings

This Tendering document includes..... *[insert “the following” or “no”]*
drawings.N/A

[If documents shall be included, insert the following List of Drawings]

List of Drawings		
Drawing No.	Drawing Name	Purpose

Applicants **are** expected to provide **KeNHA** with detailed designs of the toilet facilities and for the open spaces, a tenderer may provide detail designs with construction costs of the highlighted provisional facilities clearly indicating the period required to recoup the investment costs to the Proposal Evaluation Committee to form an opinion of how the facility will look like with all facilities and its operations. For design submission proposals please use the table below

PROJECT: PUBLIC TOILETS

Building Material Specifications

NO.	SPECIFICATION	DESCRIPTION	MATERIALS
1	Foundation	Strip Foundation to S.E's specifications	Reinforced Concrete for footing base (600x200mm) , 200mm thick masonry walling 1000gauge Damp Proof Membrane (DPM) 50mm blinding- Sand 300mm compacted hardcore -Crushed Rock or -Construction waste i.e broken bricks etc
2	Floor slab	150mm thick R.C slab	150mm thick Reinforced Concrete
3	Walling	External walls	Approved 200mm thick Ndarugu , machine dressed stone, bedded and jointed in mortar
		Internal walls (load bearing)	Approved 200mm thick local stone, squared fine chisel dressed both sides, bedded and jointed in mortar
		Internal walls (non-load bearing)	Approved 100mm thick brick, natural stones chisel dressed both sides, bedded and jointed in mortar
4	Roofing	Roof sheets	Deco roof box profile sheets available in white and clear; 12,000mm length x 810mm width supported on Timber trusses

PROJECT: PUBLIC TOILETS

Building Material Specifications

NO.	SPECIFICATION	DESCRIPTION	MATERIALS
5	Windows	1500x600mm windows	1500x600mm steel casement window with burglar proofing (steel grilles) and glass window panes
6	Doors	D1 - Entrance door	1500x 2400 steel door Transom - burglar proofed with glass panes
		D2 - Gents entry, Ladies entry, Storage	900x 2400mm solid core timber flush doors Transom - wooden louvres
		D3 - Toilet doors	900x 2100mm hollow core timber flush doors
		D4 - Toilet doors for disabled persons	1200x 2100mm hollow core timber flush doors
6	Finishes	Floor finish	12mm textured terrazzo finish
		External wall finishes	Natural machine cut stone with horizontal and vertical keying on exterior
		Internal wall finishes	25mm thick plaster to all internal walls 200x300mm ceramic tiles cladding for ladies, gents and the lobby walls as per the Architect's specifications
7	Skirting	Terrazzo	12mmx 120mm terrazzo finish

5. Inspections and Tests

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

PART 3 - CONTRACT

SECTION VII - GENERAL CONDITIONS OF CONTRACT

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- a) “Contract” means the Contract Agreement entered into between the Procuring Entity/Lessor and the Lessee, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- c) “Contract Price” means the price payable to the Lessor as specified in the Contract Agreement, subject to such additions and adjustments there to or deductions there from, as may be made pursuant to the Contract.
- d) “Day” means calendar day.
- e) “Completion” means the fulfillment of the Related Services by the Lessor in accordance with the terms and conditions set forth in the Contract.
- f) “GCC” means the General Conditions of Contract.
- g) “Lease Items” means all of the infrastructural facilities, plant/equipment vehicles or such other physical items the Lessor is required to lease to the Lessee under the Contract.
- h) “Related Services” means the services incidental to the supply of the Lease Items, such as insurance, training and initial maintenance and other such obligations of the Lessor under the Contract.
- i) “SCC” means the Special Conditions of Contract.
- j) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Lease Items to be supplied or execution of any part of the Related Services is subcontracted by the Lessor.
- k) “Lessor” means the Procurement Entity and means the person, private or government entity, or a combination of the above, whose Tender for the Lease Contract has been accepted by the Lessee and is named as such in the Contract Agreement.
- l) “Lessee” means the successful bidder whose bid has been accepted by the Lessor for the Lease Contract and is named as such in the Contract Agreement as “Lessor”.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Fraud and Corruption

3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.

3.2 The Lessor requires the Lessee 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.

4 Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 **Entire Agreement-** The Contract constitutes the entire agreement between the Lessor and the

Lessee . and supersedes all communications, negotiations and agreements (whether written or oral), if any, of the parties with respect thereto made prior to the date of Contract.

4.3 **Amendment**

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.4 **Non-waiver**

- a Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- b Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.5 **Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5 **Language**

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Lessor and the Lessee, shall be written in the **English Language**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, this translation shall govern.
- 5.2 The Lessee shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Lessee.

6 **Joint Venture, Consortium or Association**

- 6.1 If the Lessee is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Lessor for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Lessor.

7 **Eligibility**

- 8.1 The Lessee and its Subcontractors shall have the nationality of an eligible country. A Lessee or Sub-Lessee shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

8 **Notices**

- 8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt.
- 8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9 **Governing Law**

The Contract shall be governed by and interpreted in accordance with the laws of Kenya. Throughout the execution of the Contract, the Lessee shall comply with the import of Lease Items and services prohibitions in Kenya:

- 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 from that country or any payments to any country, person, or entity in that country.

10 Settlement of Disputes

- 10.1 The Lessor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Lessee or the Lessor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Lease Items under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.
- 10.3 Notwithstanding any reference to arbitration herein,
- a The parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - b The Lessee shall pay the Lessor any monies due to the Lessor.

11 Inspections and Audit by the Procuring Entity

- 11.1 The Lessee shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease Items in such form and details as will clearly identify relevant time changes and costs.
- 11.2 Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Lessee shall permit and shall cause its subcontractors and sub consultants to permit, the Lessor and/or persons appointed by the Lessor or by other statutory bodies of the Government 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 the Lessor. The Lessee's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the Lessor's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

12 Scope of Lease Supply

- 12.1 The Lease Items and Related Services to be supplied shall be as specified in the Schedule of Requirements.

13 Delivery and Documents

- 13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Lease Items and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of Lease and other documents to be furnished by the Lessor are specified in the **SCC**.

14 Lessor's Responsibilities

- 14.1 The Lessor shall supply the Lease Items and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

15 Contract Price

- 15.1 Prices charged by the Lessor for the Lease Items supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Lessor in its Tender, with the exception of any price adjustments authorized in the **SCC**.

16 Terms of Payment

- 16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessor under this Contract shall be those in which the Tender price is expressed.
- 16.2 The Lessee shall pay to Lessor the advance payment stated in the SCC upon or before taking possession of the property. Thereafter, the Lessee shall pay the Lessor the sum stated in the SCC on or before the day of each month as stated in the SCC until the expiration of this lease.
- 16.3 If the Lessee fails to pay all amounts due within the number of day's specified in the SCC of their due dates, then the Lessor may terminate the contract under this lease and take back possession and control of the Lease Item(s). In the event of termination for non-payment, the Lessee shall remain liable for the balance due under this lease.
- 16.4 If the Lessee fails to make a payment on or before its due date, a late fee of an amount specified in the SCC shall be due and payable immediately to Lessor.
- 16.5 In the event that the Lessee fails to pay the Lessor any payment by its due date or within the period set forth in the SCC, the Lessee shall pay to the Lessor interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

17 Taxes and Duties

- 17.1 The Lessee shall be responsible for paying all taxes levied in Kenya.

18 Performance Security

- 18.1 If required as specified in the SCC, the Lessee shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Lessor as compensation for any loss resulting from the Lessee's failure to complete its obligations under the Contract.
- 18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Lessor in **the SCC**, or in another form at acceptable to the Lessor.
- 18.4 The Performance Security shall be discharged by the Lessor and returned to the Lessee not later than twenty-eight (28) days following the date of Completion of the Lessee's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

19 Copyright

- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Lessor by the Lessee herein shall remain vested in the Lessor, or, if they are furnished to the Lessor directly or through the Lessee by any third party, including Lessors of materials, the copyright in such materials shall remain vested in such third party

20 Confidential Information

- 20.1 The Lessor and the Lessee shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Lessee may furnish to its Sub-Lessee such documents, data, and other information it receives from the Lessee to the extent required for the Sub Lessee to perform its work under the Contract, in which event the Lessee shall obtain from such Sub Lessee an undertaking of confidentiality similar to that imposed on the Lessee under GCC Clause 20.

- 20.2 The Lessee shall not use such documents, data, and other information received from the Lessor for any purposes unrelated to the contract. Similarly, the Lessor shall not use such documents, data, and other information received from the Lessee for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- a the Lessor or the Lessee need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in the SCC;
 - b now or hereafter enters the public domain through no fault of that party;
 - c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - d otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21 Subcontracting

- 21.1 The Lessee shall notify the Lessor in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessee from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

22 Specifications and Standards

Technical Specifications and Drawings

- a) The Lease Items and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Lease Items' country of origin.
- b) The Lessor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Lessee, by giving a notice of such disclaimer to the Lessor.
- c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Lessor and shall be treated in accordance with GCC Clause 33.

23 Packing and Documents

No packing services and documents are needed, and if any, they are specified **in the SCC**, and in any other instructions ordered by the Lessor.

24 Insurance

- 22.1 Unless otherwise specified in the SCC, the Lease Items supplied under the Contract shall be fully insured by the Lessee - in a freely convertible currency from an eligible country - against loss or damage incidental to use, transportation, storage, and delivery, in a manner specified in the SCC.

25 Transportation and Incidental Services

- 25.1 The Lessor may be required to provide any or all of the following services, including additional services, if any, specified in **SCC**:
- a Performance or supervision of on-site assembly and/or start-up of the supplied Lease Items;
 - b Furnishing of tools required for assembly and/or maintenance of the supplied Lease Items;
 - c furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Lease Items;
 - d performance or supervision or maintenance and/or repair of the supplied Lease Items, for a period of time agreed by the parties, provided that this service shall not relieve the Lessee of any warranty obligations under this Contract; and
 - e training of the Procuring Entity's personnel, at the Lessor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Lease Items.
- 25.2 Prices charged by the Lessor for incidental services, if not included in the Contract Price for the Lease Items, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services

26 Inspections and Tests

- 26.1 The Lessee shall at its own expense and at no cost to the Lessor carry out all such tests and/or inspections of the Lease Items and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Lessor or its Subcontractor, at point of delivery, and/or at the Lease Items' final destination, or in another place in Kenya as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Lessor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Lessee.
- 26.3 The Lessor or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Lessor bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 26.4 Whenever the Lessee is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Lessor. The Lessee shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Lessor or its designated representative to attend the test and/or inspection.
- 26.5 The Lessor may require the Lessee to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Lease Items comply with the technical specification codes and standards under the Contract, provided that the Lessee's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of the Lessee's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Lessee shall provide the Lessor with a report of the results of any such test and/or inspection.
- 26.7 The Lessee may reject any Lease Items or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Lessor shall either rectify or replace such rejected Lease Items or parts thereof or make alterations necessary to meet the specifications at no cost to the Lessee, and shall repeat the test and/or inspection, at no cost to the Lessee, upon giving a notice pursuant to GCC Sub-Clause 26.4.
- 26.8 The Lessor agrees that neither the execution of a test and/or inspection of the Lease Items or any part thereof, nor the attendance by the Lessee or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Lessor from any warranties or other obligations under the

Contract.

27 Liquidated Damages

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

28 Warranty

- 28.1 The Lessor warrants that all the Lease Items are in conformity with the specifications of the Lease Items and are in good condition for use under the Lease agreement.
- 28.2 The Lessee will be entitled to refuse acceptance of any Lease Items not meeting the warranty under ITT 28.1 and demand for replacements.

29 Patent Indemnity

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

- a The use of the Lease Items by the Lessee or the use of the Lease Items; and
- b the sale of the products or services produced by the Lease Items.

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

- 29.2 If any proceedings are brought or any claim is made against the Lessor arising out of the matters referred to in GCC Sub-Clause 29.1, the Lessee shall promptly give the Lessor a notice thereof, and the Lessor **may** at its own expense and in its own or the Lessee's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Lessor fails to notify the Lessee within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Lessee shall be free to conduct the same on its own behalf.
- 29.4 The Lessor shall, at the Lessee's request, afford all available assistance to the Lessee in conducting such proceedings or claim, and shall be reimbursed by the Lessee for all reasonable expenses incurred in so doing.
- 29.5 The Lessee shall indemnify and hold harmless the Lessor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Lessor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Lessee.

30 Limitation of Liability

30.1 Except in cases of criminal negligence or willful misconduct,

- a The Lessor shall not be liable to the Lessee, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Lessor to pay liquidated damages to the Lessee, and
- b The aggregate liability of the Lessor to the Lessee, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Lessee to indemnify the Lessor with respect to patent infringement.

31 Change in Laws and Regulations

29.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Lessee has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32 Force Majeure

- 32.1 The Lessor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Lessor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessor. Such events may include, but not be limited to, acts of the Lessee in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Lessee shall promptly notify the Lessor in writing of such condition and the cause thereof. Unless otherwise directed by the Lessor in writing, the Lessee shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

33 Change Orders and Contract Amendments

- 33.1 The Lessor may at any time order the Lessee through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
 - a drawings, designs, or specifications, where Lease Items to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
 - b the method of shipment or packing;
 - c the place of delivery; and
 - d the Related Services to be provided by the Lessor.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Lessee's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Lessee for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Lessee's receipt of the Lessor's instructions.
- 33.3 Prices to be charged by the Lessor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services.

- 33.4 **Value Engineering:** The Lessee 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) the Lessee may incur in implementing the value engineering proposal; and
 - c a description of any effect(s) of the change on performance/functionality.
- 33.5 The Lessor 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 life cycle costs to the Lessee; or
 - c improves the quality, efficiency or sustainability of the Lease Items; or
 - d yields any other benefits to the Lessee, without compromising the necessary functions of the Facilities.
- 33.6 If the value engineering proposal is approved by the Lessor and results in:
- a a reduction of the Contract Price; the amount to be paid to the Lessor 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
 - c to (d) above, the amount to be paid to the Lessor shall be the full increase in the Contract Price.
- 33.7 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

34 Extensions of Time

- 34.1 If at any time during performance of the Contract, the Lessee or its subcontractors should encounter conditions impeding timely delivery of the Lease Items or completion of Related Services pursuant to GCC Clause 13, the Lessee shall promptly notify the Lessor in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessee's notice, the Lessor shall evaluate the situation and may at its discretion extend the Lessee's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Lessee in the performance of its Delivery and Completion obligations shall render the Lessee liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35 Termination

35.1 Termination for Default

- a The Lessor, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessee, may terminate the Contract in whole or in part:
 - i. if the Lessee fails to deliver any or all of the Lease requirements within the period specified in the Contract, or within any extension thereof granted by the Lessor pursuant to GCC Clause 34;
 - ii. if the Lessee fails to perform any other obligation under the Contract; or
 - iii. if the Lessee, in the judgment of the Lessor has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b In the event the Lessor terminates the Contract in whole or in part, pursuant to GCC Clause

35.1(a), the Lessor may procure, upon such terms and in such manner as it deems appropriate, Lease Items or Related Services similar to those undelivered or not performed, and the Lessee shall be liable to the Lessor for any additional costs for such similar Lease Items or Related Services. However, the Lessee shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency.

The Procuring Entity may at any time terminate the Contract by giving notice to the Lessor if the Lessor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Lessor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity

32.3 Termination for Convenience.

- a) The Lessor, by notice sent to the Lessor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Lessor's convenience, the extent to which performance of the Lessee under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Lease Items that are complete and ready for implementation within twenty-eight (28) days after the Lessor's receipt of notice of termination shall be accepted by the Lessor at the Contract terms and prices. For the remaining Lease Items, the Lessor may elect:
 - i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - ii) to cancel the remainder and pay to the Lessee an agreed amount for partially completed Lease Items and Related Services previously procured by the Lessee.

36 Assignment

33.1 Neither the Lessee nor the Lessor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

37 Import Restrictions

34.1 Notwithstanding any obligation under the Contract to complete all import formalities, any import restrictions attributable to the Lessor, to Kenya, or to the use of the products/Lease Items, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Lease Items, systems or services, and which substantially impede the Lessee from meeting its obligations under the Contract, shall release the Lessee from the obligation to provide deliveries or services, always provided, however, that the Lessee can demonstrate to the satisfaction of the Lessor that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the import of the products/Lease Items, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Lessor's convenience pursuant to Sub-Clause 35.3.

i) Terms & Conditions

- i. This AGREEMENT shall be governed by and constructed in accordance with the laws of Kenya
- ii. The selected bidders shall maintain the Public toilets for a period of 5 years. User charges shall be collected from the users (urinals/ toilets/bathing). 1st party after successful completion of the toilet will hand over the toilet to the concessionaire (2nd party).
- iii. The 2nd party (from the date work order is issued by the 1st party) will collect user charges after 6 days from the date of issuance of work order.

- iv. The toilet blocks shall be licensed for a period of 5 years. The period for each site shall exclude (the time taken to construct and inspect the facilities)
- v. The title of the land along with the structure built thereon for public toilet purpose with all fittings & fixtures will continue to vest with the 1st party.
- vi. The 2nd party shall collect the user charges from the users of Public toilets which are to be approved by the 1st party. Any revision in charges shall be determined by the 1st party in its sole discretion.
- vii. The 2nd party shall operate and maintain the complexes to the entire satisfaction of 1st party and clean regularly toilets, urinals, floors, walls, and ceilings of the interior as well as the exterior of the complexes and ensure continuous serviceability as also continuous availability of clean water. So he shall ensure that requisite quantity of cleaning materials such as phenyl, acid, naphthalene balls; and soaps, towels, hand driers are available to the extent required.
- viii. The 2nd party shall maintain the facility as per a maintenance schedule agreed between the two. The 1st party may engage third party evaluators to check the quality of maintenance and in case the maintenance is found to be deficient the 1st party may penalize the 2nd party.
- ix. The 2nd party shall ensure that each toilet facility displays prominently a sign “THIS LAND IS KENHA’S PROPERTY ” (1st party) along with the logo on the walls of the structure and well lit it. The height of the letters shall be at least 15 cm.
- x. The charges towards electricity, water, sewage and other such amenities as required by the 2nd party shall be included in the maintenance cost and will not be borne by the 1st party.
- xi. The 2nd party will have to pay an annual license fees to KeNHA as quoted in the bid.
- xii. The 2nd party shall not display or allow to display or exhibit any picture / posture /statute or other articles in any part of the premises that are repugnant to the general standards of morality. The 2nd party expressly agrees that the decision of the 1st party in this regard shall be conclusive and binding on the 2nd party.
- xiii. The 2nd party shall ensure that the premises are not used for playing games etc., which involves stakes / betting, play cards etc., or for any un-lawful activities.
- xiv. The 2nd party shall ensure adequate water for general cleanliness of the public Toilets for which 1st party shall have no objection to the 2nd party for installing a tube well at each site in addition to the water that may be supplied. Rain water storage can be incorporated as an additional requirement to decrease burden on potable water from public utility or underground.
- xv. The possession of the entire structure as constructed along with fittings and fixtures provided in the public convenience will be handed over to the 1st party in good working condition, on the conclusion of the agreement without any claim.
- xvi. The title of interest, ownership and rights with regard to public Toilets contracted by the 2nd party for 1st party along with fixtures / fittings provided therein along with its land allotted by the 1st party shall vest with the 1st party except that these will be operated and maintained by the 2nd party as agreed in this agreement.
- xvii. In case of loss due to theft or damage to the assets created in the public Toilets, the 2nd party shall be responsible for making good the same immediately at its own cost and shall continue to keep the complex operational and available for public use, to all times, as prescribed.
- xviii. Disputes if any, arising during the maintenance / service period between 1st party and the 2nd

party shall be referred to the dispute redressal committee.

- xix. The 1st party shall have the right to cancel / remove / terminate the Contract at any stage, in case of breach of any of the stipulated terms and condition by the 2nd party or in case their performance is not found satisfactory. The 1st party shall be entitled to terminate the agreement in case of any neglect or lapse on the part of the 2nd party in respect of the regular maintenance of the public Toilets for cleanliness and hygienic conditions and to keep the public convenience in a state of good repairs at the cost of 2nd party. Such cancellation/ removal or termination of agreement shall be preceded by a notice of 30 days, whereby the operator shall be directed to explain its conduct as to such breach /neglect/lapses or unsatisfactory performance.
- xx. The site and the work assigned to the 2nd party by the 1st party shall not be transferred by the 2nd party to any person, trust, society or institution in any manner whatsoever at any time whether during or after the termination of this agreement.
- xxi. The premises of public Toilets complex shall not be used by the 2nd party for purpose other than that for which it is allowed under the agreement for operation and maintenance.
- xxii. The 2nd party or its employees or agents shall behave and deal politely with due courtesy with the users of these public Toilets.
- xxiii. The 2nd party will not use or allow any person to use public convenience for residential purpose and not keep any animal / motor vehicle in or around the complex other than one attendant and one security guard to ensure continuous serviceability.
- xxiv. The 2nd party shall be allowed to plant flowering and other shrubs around each toilet block subject to the approval by the 1st party who is responsible for ensuring right of way to the public.
- xxv. The 2nd party shall ensure enforcement of existing labour laws. Minimum Wages Act and at no point of time, the 1st party shall be drawn into litigations on these counts.
- xxvi. The 2nd party shall execute the agreement within 7 (seven) days on the receipt of issuance of the 'letter of award'.
- xxvii. The 2nd party shall ensure that services of water supply, sewerage, drainage, electricity, telephone etc., in this vicinity encountered during the period of operation /maintenance of the toilet block are not damaged. In case these are required to be shifted, the same shall be done by the permission of the respective service Department / Operator.
- xxviii. On the completion of the contract period, the 2nd party shall hand over the vacant possession of the public Toilets along with fixtures and fittings, inventory, structures in good working condition to the 1st party within 24 hours and will not put any resistance failing which the premises shall be evicted and the 1st party shall assume the occupation without any notice whereupon the 2nd party will have no claim.
- xxix. Any of the conditions mentioned above can be altered, modified, changed or removed by the appropriate authority as per the necessity and with prior notice to the operator and the new conditions shall be binding on the part of the 2nd party.

ii) . Management, Operation and Maintenance of Public Toilets:

- i. The operator shall engage one person for every unit of Public Toilet for cleaning and washing the unit round the clock, including public holidays to carry out the following sanitation works:
- a) Daily washing with water.
- b) Sweeping up to 50 mtrs around the structure and sprinkling of disinfectant mixture of 200 gms (50 gms

- bleaching powder and 150 gms lime).
- c) 0.5 liters of acid per unit.
- d) Removal of solid waste.
- e) Sentry duties (protecting the structure against damage and misuse) and to prevent open urination surrounding the unit.
- f) Removal of handbills and washing of scrubbing inside and outside the structure.

The operator or his representative shall personally visit the Public toilets at least twice a day to supervise the workers

- ii. The operator shall carry out the work by engaging men and equipment and provide the disinfectants and implements for cleaning.
- iii. The operator should arrange for sufficient water supply at the structure for cleaning and washing.
- iv. The following implements / disinfectants shall be supplied by the Operator to the staff Engaged by them.
 - a) Compressor propelled mechanized cleaners
 - b) Hard Brooms
 - c) Soft brooms
 - d) Coir brush
 - e) Scraping Sheet
 - f) Bamboo Basket
 - g) Plastic containers
 - h) Bamboo Reapers
 - i) Plastic Buckets
 - j) Plastic Mug
 - k) Sponge piece
 - l) Washing Soap
 - m) Adequate quantity of Phenyl, Oxalic acids, Hydrochloric (diluted) Acids and Bleaching and lime powder
 - n) Photo Identity Cards for each staff
 - o) Apron for each staff with 1st party 2nd party's name printed on it
- v. The officials authorized by the 1st party will supervise the work from time to time and point out any unsatisfactory service rendered by the 2nd Party and shall be entitled to give suggestions as may be considered necessary and the 2nd Party shall be bound to carry out the work.
- vi. In the event of incomplete and unsatisfactory service, negligence or slackness is found on the 2nd party in carrying out the work, the 1st party shall call for the explanation and can proceed to terminate the contract, if there is no improvement as provided in the contract.
- vii. The operator shall ensure that the labour engaged by him to carry out the work shall not claim any right whatsoever against the corporation by virtue of service rendered under this contract and shall not hamper the work by resorting to industrial actions etc.
- viii. The operator shall be held responsible for all or any of the Act done by the staff /workers and shall be alone responsible for the payment of wages or any loss or damage caused by them during the course of service or work undertaken and shall also be responsible and be liable for payment of any compensation under workmen compensation Act. The KeNHA will not be liable for any such event whatsoever.

That operator shall not engage child labour and shall engage in fair labour practices

- ix. The operator shall not sublease or assign any part or portion of the work or the whole on the basis of the commission to others. If such conduct or action is found and brought to the notice of the 1st party, the 1st party shall proceed to terminate the contract as per the contract provision.

- x. The 1st party has the authority either to suspend or to cancel the contract when it is not desirable to continue the contract at any point of time without giving any notice.
- xi. The 1st party also reserves the right to alter, modify, change or remove any of the conditions mentioned in the agreement without assigning any reason to the 2nd party.

iii.) Basic Facilities to be provide with the Unit:

The facilities should essentially include:

- i. Separate toilet blocks for men and women with separate entries
- ii. Seats for children in the section for women
- iii. Waiting / circulating area
- iv. A room for the care taker – from where he / she can oversee both entries – men’s and women’s block.
- v. Separate bathing cubicles for men and women
- vi. Laundry area in male and female sections
- vii. Urinal facilities for men
- viii. Water storage facility-10,000 Litres Capacity
- ix. Waste water disposal system
- x. Store room for keeping the cleaning material / equipment

iv) Performance

1st party can terminate the contract on a three-month consecutive underperformance by the 2nd Party (Service Provider). The minimum set performance rating is 80%. (Propose to keep it at 80% based on the evaluation of the current minimum performance of existing toilet blocks) The performance rating shall be based on overall performance score and not individual performance indicator. The table below gives the Performance aspect to be monitored and the minimum acceptable performance rating;

S/No.	Performance indicator	Target Performance Rating	Min mum acceptable Performance Rating
1	Daily sweeping around the entire facility and sprinkling of disinfectants	5%	12%
2	Cleaning and washing of the facilities not done (twice daily)	10%	9%
3	Cleaning and washing of toilets done (every hour)	15%	17%
4	Maintenance of the green Area/ Beautifications of the area	10%	12%
4	Supervisors present (per day)	15%	7%
5	Phenyl not used (per wash)	10%	7%
6	Acid not used (weekly)	10%	8%
7	Written complaint from the user(s) to the Authority	10%	8%
8	Keeping record of monitoring report	15%	15%
Total score		100	80%

Complaints and Suggestions:

The 2nd Party (Service Provider) shall provide services to the satisfaction of the users. They should also maintain a complaint Register and suggestion Box within the premises, which shall be made available to the users/passengers. Notice to this effect should be put up at entry points to the toilet facility.

PROPOSED TENANCY AGREEMENT

This **AGREEMENT** is made thisday of In the year
BETWEEN KENYA NATIONAL HIGHWAYS AUTHORITY, P.O BOX 49712 - 00100 NAIROBI.
Hereinafter called 'the Landlord' which term shall include its staff housing committee) of the part and the Occupant of (Open space/ House Block.....), P.O Box..... Tel No.....hereinafter called 'the Tenant' **IT IS AGREED AS FOLLOWS:-**

- i. The Landlord agrees to let and the Tenant agrees to rent the Open space..... (Square meters) mentioned along Thika Superhighway A2S, at
- ii. That the tenant should make his/her payments through E- citizen Digital Government payment system on account as advised by the Authority. The tenant shall then present payment evidence to any KeNHA Regional offices and obtain official receipt for rent paid. Kenya National Highways authority will not accept responsibility of any claims lodged of payments made in any other form other than the method aforementioned.
- iii. Initially, the tenancy will be for a period of five (5) years only, but can be renewed for a further term 2 terms of 5 years each at a rate as agreed by the Landlord.

THE TENANT HEREBY AGREES WITH THE LANDLORD AS FOLLOWS:-

- i. To pay the monthly Rent on the day and in the manner aforesaid clear of all deductions whatsoever.
- ii. The tenants will be liable for the maintenance of existing assets/inventory list and will be asked to account for them even upon exit. They shall sign an inventory list of the fixed assets.
- iii. To settle with the Kenya Power and Lighting Company Limited for the supply of Electricity and the Water Company for the supply of water and to pay all charges arising thereof during the tenancy as soon as the bills are received.
- iv. On termination of this lease by either party, the Tenant hereby undertakes to settle all the outstanding Electricity and Water bills before departure and to furnish copies of the paid bills to the Landlord or his appointed agent to avoid interruption of the supply of the Electricity and Water.
- v. To keep the premises clean and in good tidy condition and free from all rubbish or pools and hand over the property at the expiry or earliest determination of the tenancy in the same condition and repair as upon entry, wear and tear accepted.
- vi. To be responsible for all damages that will occur during the said tenancy due to negligence or willful act on the part of the Tenant and or his Dependants. This includes Walls, Ceilings, Floors, Windows, Doors, Cupboards, Electrical and wiring and Plumbing System. The tenant will repair all damages at his own expense before handing over the premises back to the Landlord or his authorized agents. Alternatively, the Landlord may undertake such repairs on behalf of the Tenant and deduct the full cost of the repairs will be determined by an independent contractor appointed by the Landlord.
- vii. To replace any keys (or the appropriate locks) that will have been given to the Tenant and may be lost or broken during the tenancy.

- viii. To be responsible for all **normal running repairs** and maintenance in connection with internal plumbing, fittings, immersion heaters, windows, locks and fasteners, and should ensure that they are all in good working condition before taking occupation of the premises.
- ix. To use the spaces or premises according to the terms set out in this tenancy agreement and not to use the space or the premise for any other unauthorized purpose without the consent in writing of the Landlord or his authorized agents.
- x. The tenant binds himself not to use any apparatus nor keep any combustibles or hazardous goods on the premises which would in any way allow cooking gas/lighting increase a fire risk but only the ordinary apparatus for household purposes.
- xi. Not to do or permit or suffer to be done anything in or upon the premises or any part thereof which may at any time be or become a nuisance or annoyance to the neighbors or injurious or detrimental to the reputation of the premises.
- xii. In case of leased spaces, the tenant agrees to act as barrier to protect the adjacent spaces from encroachment as agreed with the Land lord.

IT IS HEREBY AGREED BETWEEN THE LANDLORD AND THE TENANT AS FOLLOWS:

- (i) The Landlord or its authorized agents retain the right to enter the premises to carryout inspection, but will first have to obtain the permission of the Tenant, and such permission to enter the premises should not be unreasonably withheld and that the tenant will also during the last two months of the tenancy permit any person or persons to enter and inspect the premises at reasonable times upon production of an order to view from the Landlord or her authorized agents.
- (ii) The Landlord shall be responsible either directly or through appointed agent/representative or officer in conducting structured engagements at the section in view of controlling or removing encroachment that directly or indirectly affects either the service levels or works to be undertaken by the Tenant.
- (iii) In the event of the Tenant leaving or changing his place or employment, the Landlord should be informed immediately in writing giving full name and address of his new place of employment.
- (iv) If the said rent or any part thereof or any costs and charges hereby made payable by the Tenant to the Landlord, shall at any time be in arrears of unpaid for seven (7) days after the same shall have become due (whether any formal or legal demand therefore shall have been made or not) or if the Tenant shall become bankrupt or enter into a composition with his creditors or go into receivership or liquidation or otherwise become unable to pay the rent, or if the Tenant shall at any time fail or neglect to perform or observe any of the agreements or conditions herein contained or implied, the Landlord or his authorized agents shall have the full right to cancel this Lease and to re-enter the premises without further notice to the Tenant, and take possession of the said premises and dispose thereof as he may think fit anything to the contrary herein contained notwithstanding and without prejudice to any claim on the Tenant's part for arrears of rent, damages or otherwise. The tenant shall agree to be removed from the house on failure to pay the house rent.
- (v) In the event that the Tenant wishes to terminate the tenancy before the expiry of this Lease, the Tenant shall have the right to do so by giving the Landlord one (1) months' NOTICE in writing of his

intention to do so, or pay the Landlord one (1) months' rent in lieu of notice. Same condition will apply should the Landlord wish to terminate the tenancy before the Expiry date of this lease. The tenant shall not have the right to apply the deposit in payment of the last month's rent, unless prior written consent has been given by the Landlord.

- (vi) Apart from the house rent there will be a service charge for estate maintenance. The amount of the service charge will depend on the house type and its payable together with the house rent on or before 8th of the following month.

IN WITNESS whereof the Tenant and the Landlord have hereunto set their respective hands the day and the year first hereinbefore written.

SIGNED by the LANDLORD Representative
Regional Director, Corridor C

SIGNED by the TENANT

.....
.....

In the presence of WITNESS

In the presence of WITNESS

.....
.....

TENANCY FORM

Tenant's Details

Name:

I.D/Passport No:
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Address:
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E-Mail Address:
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Telephone No:
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Office:
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Resident:
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Cell Phone:
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Occupation:
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Employer:
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Address:
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Telephone:
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If self-employed:
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Name of business:
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Address:

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Tel No:

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Locality of Business:

Other Detail:
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County:
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Location:

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Sub Location:

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Area Chief:

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Sureties:

1. Name:

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Cell phone:

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.....

1. Name:

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.....

Cell phone:

Section VIII - Special Conditions of Contract

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

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

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	<p>The Lessor is:</p> <p>Director General Kenya National Highways Authority, P. O. Box 49712-00100, Nairobi. Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block A, 4th Floor</p> <p>Roadside Reserve along Nairobi – Thika Superhighway (A2S)</p>
GCC 4.2	<p>The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by: <i>[exceptional; refer to other internationally accepted trade terms]</i></p> <p>The version edition of Incoterms shall be <i>INCOTERMS 2015</i></p>
GCC 8.1	<p>For notices, the Lessee’s address shall be:</p> <p>Director General Kenya National Highways Authority, P. O. Box 49712-00100, Nairobi. Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block A, 4th Floor Email: dg@kenha.co.ke</p> <p>Attention: Director – Planning, Research & Compliance Kenya National Highways Authority, P. O. Box 49712-00100, Nairobi. Barabara Plaza, Jomo Kenyatta International Airport, Mazao Road, Off Airport North Road, Block C, 4th Floor Telephone: +254 020 2989000 E-mail: dpsec@kenha.co.ke</p>
GCC 10.2	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:</p> <p><i>[The Tendering document should contain one clause to be retained in the event of a Contract with a foreign Lessee and one clause to be retained in the event of a Contract with a Lessee who is a national of Kenya. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the Tendering document.</i></p> <p><i>“Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Lessee and clause 10.2 (b) shall be retained in the case of a Contract with a national of Kenya”]</i></p> <p>(a) Contract with foreign Lessor: <i>[For contracts entered into with foreign Lessees, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Lessor may wish to</i></p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p><i>consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]</i></p> <p>(i) <i>If the Lessor chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</i></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p>(ii) <i>If the Lessor chooses the Rules of ICC, the following sample clause should be inserted:</i></p> <p>GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p> <p>(iii) <i>If the Lessor chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:</i></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.</p> <p>(iv) <i>If the Lessor chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:</i></p> <p>GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p><i>(b) Contracts with Lessee who is a national of Kenya:</i></p> <p>In the case of a dispute between the Lessor and a Lessee who is a national of Kenya, the dispute shall be referred to arbitration in accordance with the laws of Kenya.</p>
GCC 15.1	<p>The prices charged for the Lease Items supplied and the related Services performed <i>[insert “shall” or “shall not,” as appropriate]</i> be adjustable.</p> <p>NOT</p> <p>If prices are adjustable, the following method shall be used to calculate the price adjustment <i>[see attachment to these SCC for a sample Price Adjustment Formula]</i></p>
GCC 16.2	<p>The Lessor may terminate the contract if the Lessee fails to pay all amounts due within 90 days.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 16.3	<p>The advance payment shall be N/A</p> <p>The Monthly Payments shall be _____ and shall be paid on or before _____ day of each month until the expiration of this lease. The lease shall be paid in advance on the first day of each financial year. The financial year is a period of 12 months beginning from the date of specified in the contract as the start date of the lease contract.</p>
GCC 16.4	The late fee of 10% on the outstanding amount shall be due and payable immediately to the Lessor.
GCC 16.5	<p>The payment-delay period after which the Lessee shall pay interest to the Lessor shall be 15 days.</p> <p>The interest rate that shall be applied is 10 %</p> <p>We offer to pay KeNHA annual lease charges of Kshs.....for the next three (3) years and further offer to pay this annual fees at a growth rate of 5% after every subsequent three years within the initial five years lease period. This annual license fee is inclusive of the local taxes in Kenya</p>
GCC 18.1	<i>A Performance Security of 10% of the annual lease charge shall be required and which will become refundable at the end of the lease period</i>
GCC 18.3	The Performance Security shall <i>inform of a Performance Bond</i> and shall be denominated in <i>Kenya shillings</i> .
GCC 18.4	Discharge of the Performance Security shall take effect immediately after possession of site and shall remain valid until the expiry of 5 years Rent period.
GCC 23.	The packing, marking and documentation within and outside the packages shall be: <i>[insert in detail the type of packing required, the markings in the packing and all documentation required]</i>
GCC 24.1	<i>The insurance coverage shall be as specified in the Incoterms. The lessee shall at all times ensure that the toilet facilities and other assets within the open spaces are insured against all possible risks that could damage the Authority's reserve. This shall be agreed upon at the time of signing the lease contract</i>
GCC 25.2	<p>Incidental services to be provided are: N/A</p> <p><i>[Selected services covered under GCC Clause 25.2 and/or other should be specified with the desired features. The price quoted in the Tender price or agreed with the selected Lessee shall be included in the Contract Price.]</i></p>
GCC 26.1	The inspections and tests shall be carried out on all functional areas within the facility on monthly basis or as and when necessary. The inspection shall include physical check of the functionality of the utilities such as water, power and sewer, general observation of the facility aesthetic/ Cleanliness, interviews administered the persons offering services within the facility as well as analysis of customer's feedback.
GCC 26.2	The Inspections and tests shall be conducted within the toilet facilities and open spaces along the reserve
GCC 27.1	The liquidated damage shall be: 2% per week of the annual lease charge
GCC 27.1	The maximum amount of liquidated damages shall be: 10 % of the annual rent charge
GCC 33.6	<p>If the value engineering proposal is approved by the Lessor the amount to be paid to the Lessor shall be __% (insert appropriate percentage. -N/A</p> <p>The percentage is normally up to 50%) of the reduction in the Contract Price.</p>

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SECTION IX - CONTRACT FORMS

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

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Table of Forms

Notification of Intention to Award

Request for Review

Letter of Award

Contract Agreement

Performance Security

Advance Payment Security

Beneficial Ownership Disclosure

FORM No 1: 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 Tender Information Form on the format below.

FORMAT

1. For the attention of Tenderer's Authorized Representative
 - i) Name:[insert Authorized Representative's name]
 - ii) Address:[insert Authorized Representative's Address]
 - iii) Telephone:[insert Authorized Representative's telephone/fax numbers]
 - iv) 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.]

2. Date of transmission: [email]_____ on.....[date] _____ (local time)

This Notification is sent by (Name and designation)_____

3. Notification of Intention to Award
 - i) Procuring Entity:[insert the name of the Procuring Entity]
 - ii) Project:[insert name of project]
 - iii) Contract title:[insert the name of the contract]
 - iv) Country:[insert country where ITT is issued]
 - v) 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:

4. Request a debriefing in relation to the evaluation of your tender

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

- a) The successful tenderer
 - i) Name of successful Tender _____

 - ii) Address of the successful Tender _____

 - iii) Contract price of the successful Tender Kenya Shillings _____
(in words _____)
- b) Other Tenderers

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. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

Lease Item N°	Description of Lease Item and Related Services.	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).
- b) 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 (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
 - i) Attention: *[insert full name of person, if applicable]*
 - ii) Title/position: *[insert title/position]*
 - iii) Agency: *[insert name of Procuring Entity]*
 - iv) Email address: *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) 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 (3) 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.
- e) 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.
- f) 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) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
 - i) Attention: *[insert full name of person, if applicable]*
 - ii) Title/position: *[insert title/position]*
 - iii) Agency: *[insert name of Procuring Entity]*
 - iv) Email address: *[insert email address]*
- c) 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.
- d) Further information: For more information refer to the Public Procurement and Disposals Act

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
- i) 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.
 - ii) The complaint can only challenge the decision to award the contract.
 - iii) You must submit the complaint within the period stated above.
 - iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

FORM NO. 2 - REQUEST FOR REVIEW

FORM FOR REVIEW (r.203 (1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....**APPLICANT**

AND

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

Request for review of the decision of the..... (Name of the Procuring Entity 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

FORM NO 3: LETTER OF AWARD

[letter head paper of the Procuring Entity]

.....*[date]*

To:*[name and address of the Contractor]*

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 Contract Data]* for the Accepted Contract Amount..... *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by..... *(name of 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 VIII, Contract Forms, of the Tender Document.

Authorized Signature:

Name and Title of Signatory:

Name of Procuring Entity:

Attachment: *Contract Agreement*

FORM NO. 4 LETTER OF AWARD

[use letterhead paper of the Procuring Entity]

.....*[date]*

To:*[name and address of the Lessor]*

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

This is to notify you that your Tender dated.....*[insert date]* for the Lease Items on the list below is hereby accepted by our Agency.

OFFERED ITEMS AND PRICES

1	2	3
Lease Item N°	Description of Lease Item and Related Services.	Tender Price
1		
2		
3		
4		
Total Tender Price		Xxxx

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

Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

FORM NO 5 - CONTRACT AGREEMENT

[The successful tenderer shall fill in this form in accordance with the instructions indicated]

THIS AGREEMENT made the *[insert: number]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

- (1) *[insert complete name of Procuring Entity and having its principal place of business at [insert: address of Procuring Entity]* (herein after called “Procuring Entity”), of the one part;
and
 - (2) *[insert name of Lessor]*, a corporation incorporated under the laws of *[insert: country of Lessor]* and having its principal place of business at *[insert: address of Lessor]* (herein after called “the Lessor”), of the other part.
3. WHEREAS the Procuring Entity invited Tenders for certain Lease Items and ancillary services, viz., *[insert brief description of Lease Items and Services]* and has accepted a Tender by the Lessor for the supply of those Lease Items and Services, the Procuring Entity and the Lessor agree as follows:
- i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
 - ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - a) the Letter of Acceptance
 - b) the Letter of Tender
 - c) the Addenda Nos.____(if any)
 - d) Special Conditions of Contract
 - e) General Conditions of Contract
 - f) the Specification (including Schedule of Requirements and Technical Specifications)
 - g) the completed Schedules (including Price Schedules)
 - h) any other document listed in GCC as forming part of the Contract
 - iii) In consideration of the payments to be made by the Procuring Entity to the Lessor as specified in this Agreement, the Lessor hereby covenants with the Procuring Entity to provide the Lease Items and Services and to remedy defects the rein inconformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the Lessor in consideration of the provision of the Lease Items and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed:*[insert signature]* in the capacity of*[insert title or other appropriate designation]*

In the presence of*[insert identification of official witness]*

For and on behalf of the Lessor Signed:*[insert signature of authorized representative(s) of the Lessor]*

in the capacity of*[insert title or other appropriate designation]*

in the presence of*[insert identification of official witness]*

FORM NO. 6 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ [insert name and Address of Procuring

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

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

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with (name of Procuring Entity) _____ (the Procuring Entity as 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 Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in words),¹ 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 the 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.

¹The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.

²Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procurement Entity should note that in the event of an Extension of this date for completion of the Contract, the Procurement 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.

FORM No. 7 - 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 _____ as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____ as Obligee (hereinafter 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 hereinafter 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 there under, the Surety may promptly remedy the default, or shall promptly:
 - 1) complete the Contract in accordance with its terms and conditions; or
 - 2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for 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. 8 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead]

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 letter head]*

1. We have been informed that _____ (hereinafter called "the Contractor") 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 _____ (in words _____) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in words _____)¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - (a) has used the advance payment for purposes other than the costs of mobilization in respect of the 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 Contract or on its account number at.....
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of ____, 2², 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 of the advance payment as specified in the Contract.

²Insert the expected expiration date of the Time for Completion. The Procurement Entity should note that in the event of an extension of the time for completion of the Contract, the Procurement 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.

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

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 pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. 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 lease 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 legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.: _____ [insert identification
no] Name of the Tender Title/Description: _____ [insert name of the
assignment] to: _____ [insert complete name of Procuring Entity]

In response to the requirement in 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

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly---	Directly.....	1.Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -- ---No--- 2.Is this right held directly or indirectly?: Direct.....	1.Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No--- - 2.Is this influence or control exercised
	National identity card number or Passport number		----- % of shares% of voting rights		
	Personal Identification Number (where applicable)		Indirectly-	Indirectly-----		
	Nationality		-----% of shares	----% of voting rights		
	Date of birth [dd/mm/yyyy]					
	Postal address					

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)	
	Residential address			Indirect.....	directly or indirectly?	
	Telephone number				Direct.....	
	Email address					
	Occupation or profession				Indirect..... ...	
2.	Full Name		Directly--- ----- % of shares	Directly.....% of voting rights	1.Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -- --No--- 2.Is this right held directly or indirectly?: Direct..... Indirect.....	
	National identity card number or Passport number		Indirectly- ----- % of shares	Indirectly----- ----% of voting rights		1.Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No-- --
	Personal Identification Number (where applicable)					2.Is this influence or control exercised directly or indirectly? Direct.....
	Nationality(ies)					Indirect.....
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
3.						
e.t.						

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
c					

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

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]*

Designation 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 this [insert date of signing] day of..... [Insert month], [insert year]

Bidder Official Stamp