



REPUBLIC OF KENYA

**Ministry of Public Service, Youth and Gender
Affairs
State Department of Gender Affairs**

NATIONAL OPEN TENDER

For

**SUPPLY AND DELIVERY OF SANITARY TOWELS TO
PUBLIC PRIMARY SCHOOLS, PUBLIC SPECIAL
PRIMARY SCHOOLS AND PUBLIC SECONDARY
SCHOOLS (2018/2019- 2019-2020)**

**OT No: *MPSYGA/SDGA/NOT/01/2018/2019- 2019-
2020***

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Abbreviations and Acronyms

CDS	Contract Data Sheet
EACC	Ethics and Anti-Corruption Commission
GCC	General Conditions of Contract
ITF	Invitation for Tender
ITT	Instructions to Tenderers
TDS	Tender Data Sheet
OIT	Open International Tender
ONT	Open National Tender
PE	Procuring Entity
PIN	Personal Identification Number
PPARB	Public Procurement Administrative Review Board
PPDA 2015	Public Procurement and Asset Disposal Act, 2015
PPDR 2006	Public Procurement and Disposal Regulations, 2006
PPRA	Public Procurement Regulatory Authority
PPRB	Public Procurement Regulatory Board
RFQ	Request for Quotation
SOR	Statement of Requirements
SP	Service Provider
STD	Standard Tender Documents
TDS	Tender Data Sheet
VAT	Value Added Tax

SECTION I: INVITATION FOR TENDER



REPUBLIC OF KENYA

MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER AFFAIRS
STATE DEPARTMENT OF GENDER AFFAIRS

NATIONAL OPEN TENDER

Tender Number : MPSYGA/SDGA/NOT/01/2018/ 2019-2019/2020

Tender Name: SUPPLY AND DELIVERY OF SANITARY TOWELS TO PUBLIC PRIMARY SCHOOLS, SPECIAL PRIMARY AND PUBLIC SECONDARY SCHOOLS (2018/2019-2019/2020)

1. The overall goal of the State Department of Gender Affairs in the Ministry of Public Service Youth and Gender Affairs is to promote gender equality and empowerment of women and girls.

The greatest challenge for girls in education is absenteeism that is related to reproductive health issues. Girls are forced to be absent from school when they are not facilitated to manage their menstruation. Studies have shown that a girl in primary school losses 18 learning weeks out of 108 weeks in a year during her menstruations. Within 4 years of high school the same girl losses 156 learning days equivalent to almost 24 weeks of learning.

2. To address this challenge the State Department of Gender Affairs intends to purchase and distribute sanitary towels to deserving girls in Public Primary schools, Special Primary and public Secondary schools. In this regard, the State Department invites bids from reputable and competent firms for the supply and delivery of these materials as per the following Lots:

LOT	COUNTIES	RESERVATION
LOT1	Kiambu, Kirinyaga, Murang'a, Nyeri,	Youth, Women & Persons with Disabilities.
LOT 2	Machakos,Nairobi,Kajiado	Youth, Women & Persons with Disabilities.
LOT3	Embu, Makueni, Meru, Tharaka Nithi, Kitui	Youth, Women & Persons with Disabilities.
LOT 4	Laikipia, Nyandarua,Baringo,Marsabit, Samburu,Isiolo	General
LOT 5	Mombasa, Lamu, Kilifi, Tana River, Garissa, Wajir, Mandera, Taita Taveta, Kwale	General
LOT 6	Kisii, Nyamira, Hamabay,Kisumu,Migori,Siaya	General
LOT 7	Turkana,Egeyo Marakwet,West Pokot,Trans Nzoia,Uasin Gishu	General
LOT 8	Busia,Vihiga,Kakamega,Bungoma	General
LOT 9	Nakuru,Narok, Bomet,Nandi,Kericho	General

- **Bidders are allowed to bid for Lots as categorised.**
 - **Youth, Women & Persons with Disabilities are exclusively allocated Lot 1,2 and 3 pursuant to Section 157 (1) of PP&D Act 2015 ‘participation of candidates in preference and reservations’**
 - **15% Margin of Preference will be given to manufacturers where proof of 30% local input is provided.**
 - **The price quoted must be inclusive of all taxes, levies and transport cost to the respective schools per county.**
3. Interested eligible bidders may **download the complete set of bidding documents from the website <http://www.psyg.go.ke> or <http://supplier.treasury.go.ke/site/tenders.go/index.php/>. And obtain further information with regard to this tender from the office of the **Head of Supply Chain Management Services, State Department of Gender Affairs, Fourth (4th) floor Telposta Towers.****
4. Tender submission will only be in **bound hard copies. NO SPIRAL BINDING WILL BE ACCEPTED.** One original and one copy. Both the original and a copy of the Tender must be submitted in ONE plain sealed envelope and clearly marked with the specific tender number and tender description, and be addressed to:

**Principal Secretary,
State Department of Gender Affairs**
Telposta Towers Koinange Street,
4th Floor
P.O. Box 29966-00100, Nairobi
Tel +254 020 221 6500

NAIROBI – KENYA

5. Or be deposited at the tender box located at the reception area of fourth (4th) floor Telposta Towers, Kenyatta Avenue on or before Monday 10th September, 2018 at 10.00 AM (Local Time) and must be accompanied by a bid security of Kenya Shillings One Million (Kshs.1, 000, 000.00) only for General Bidders or duly filled Tender Securing Declaration Form for Youth, Women and Persons with Disability.
6. This procurement shall be undertaken in accordance with the provisions of the Public Procurement and Asset Disposal Act, 2015 and Public Procurement and Disposal Regulations (PPDR) 2006.
7. Tenders shall be opened in the presence of bidders’ representatives who choose to attend at 10.30 AM (Local Time) on Monday 3rd September, 2018 at the:-

State Department of Gender Affairs
Telposta Towers, Koinange Street
4th floor Boardroom
P.O. Box 29966-00100, Nairobi
Tel +254 020 221 6500
NAIROBI – KENYA

Head, Supply Chain Management Services
For: PRINCIPAL SECRETARY

SECTION II: INSTRUCTION TO TENDERERS (ITT)

A. Introduction

- 1. Scope of Tender**
- 1.1 The Procuring Entity indicated in Clause 1 of the **TDS** invites Tenders for the provision of Goods as specified in Clause 1 of the **TDS** and Section VII - Technical Specification. The successful Tenderer will be expected to supply the goods within the period stated in Clause 1 of the **TDS** from the start date specified in Clause 1 of the **TDS**.
- 1.2 The successful Tenderer will be expected to complete the supply of the goods by the required completion date specified in Clause 1 of the **TDS**.
- 2. Source of Funds**
- 2.1 The Procuring Entity has set aside sufficient funds for the operations of the Procuring Entity named in Clause 1 of the **TDS** during the Financial Year indicated in Clause 2 of the **TDS**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the supply of goods as described in Clause 2 of the **TDS**.
- 3. Eligible Tenderers**
- 3.1 A Tenderer may be a person, private entity, Government-owned entity, subject to ITT sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium or association. In the case of a joint venture, consortium or association, unless otherwise specified in Clause 3 of the **TDS**, all parties shall be jointly and severally liable.
- 3.2 The invitation for Tenders is open to all suppliers as defined in the PP&ADA, 2015 and the Public Procurement and Disposal Regulations, 2006 except where limited to a preferred or reserved target group as specified in Clause 3 of the **TDS**.
- 3.3 Local Tenderers shall satisfy all relevant licensing and/or registration requirements with the appropriate statutory bodies in Kenya as specified in Clause 3 of the **TDS**. Foreign Tenderers who are selected as having submitted the lowest evaluated Tender shall register with the appropriate statutory body and shall be required to submit evidence of registration as an approved provider in Kenya before signing the Contract.
- 3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if he/she seeks or has a direct or indirect pecuniary interest with another Tenderer or has a direct or indirect pecuniary interest with a person that would conflict with that person's duties with respect to the procurement. Conflicts of interest would arise where Tenderers:
- a) Are 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 goods to be purchased under this Invitation for Tenders;
 - b) Have controlling shareholders in common;
 - c) Receive or have received any direct or indirect subsidy from any of them;
 - d) Have the same legal representative for purposes of this Tender;
 - e) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process;
 - f) Submit more than one Tender in this Tendering process, except as an alternative Tender as provided for under Clause 6.

- g) Have the same sub-contractors in more than one Tender, or as Tenderers and subcontractors simultaneously; or
 - h) Participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the Tender.
- 3.5 Tenderers shall not be eligible to submit a Tender if they have been debarred under Section 55 of the Act.
- 3.6 Tenderers shall provide such evidence and information of their continued eligibility satisfactory to the Procuring Entity, as specified in Clause 3 of the **TDS**.
- 3.7 Where the value of goods being procured do not exceed Kshs. 50 Million the tender shall be reserved for citizen contractors and foreign contractors need not apply except where so specified in Clause 3 of the **TDS**.
- 3.8 Tender shall be deemed to be reserved for contractors registered in Kenya except where so specified in Clause 3 of the TDS if the type of goods being procured are:-
- a) motor vehicles, plant and equipment which are assembled in Kenya;
 - b) furniture, textile, foodstuffs and other goods made in Kenya; or
 - c) Goods manufactured, mined, extracted or grown in Kenya.
- 4. Eligible Goods and Related Services**
- 4.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such goods and services. For purpose of this Tender, ineligible countries, if any, are listed in Clause 4 of the **TDS**.
- 4.2 For the purposes of this Clause, the term “goods” includes commodities, raw materials, machinery, equipment and industrial plants, and “related services” includes services such as insurance, installation, training and initial maintenance.
- 4.3 For purposes of this Clause, “origin” means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, process, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
- 4.4 The nationality of the firm that produces, assembles, distributes, or sells the goods and services shall not determine their origin.
- 4.5 To establish the eligibility of the supplies and the related services, Tenderers shall fill the country of origin declarations included in the price schedule for goods and related services.
- 4.6 If so required in Clause 4 of the **TDS**, the Tenderer shall demonstrate that it has been duly authorized by the manufacturer/patent-holder of the goods to supply in Kenya, the goods indicated in its Tender in the format of the Manufacturer/Patent-Holder’s Authorization Form provided.
- 5. One Tender per Tenderer**
- 5.1 A firm shall submit only one Tender in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture. However, this does not prevent a Tenderer from submitting an Alternative Tender as provided for under Clause 6.2.
- 5.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.

- 5.3 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or incases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.
6. **Alternative Tenders by Tenderers**
- 6.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, including the basic Tenderer’s technical design as indicated in the specifications and Schedule of Requirements. Alternatives will not be considered, unless specifically allowed for in Clause 5 of the **TDS**. If so allowed, sub-Clause 6.2 shall prevail.
- 6.2 If so allowed in Clause 5 of the **TDS**, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.
7. **Cost of Tendering**
- 7.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

B. Tender documents

8. **Content of Tender documents**
- 8.1 The goods required, Tendering procedures, and contract terms are prescribed in the Tender documents. In addition to the Invitation for Tenders, the Tender documents which should be read in conjunction with any addenda issued in accordance with ITT clause 10.2 include:
- Section I - Invitation for Tenders
 Section II - Instructions to Tenderers (ITT)
 Section III - Tender Data Sheet (TDS)
 Section IV - General Conditions of Contract (GCC)
 Section V - Contract Data Sheet (CDS)
 Section VI - Schedule of Requirements
 Section VII - Technical Specifications
 Section VIII - Tender Forms:-
 a) Form of Tender
 b) Price schedule for Goods and Related Services
 c) Confidential Business Questionnaire
 d) Manufacturer’s/Patent Holder’s Authorization Form
- Section - IX Tender Security and Declaration Forms:-
 a) Tender-Securing Declaration
 b) Tender Security/Bid Bond Form
 c) Integrity Declaration Form
 d) Form of Non-Debarment Statement
- Section X Administrative Review Form
 Form RB 1
- Section XI Contract Forms:-
 a) Letter of Acceptance

- b) Form of Contract Agreement
- c) Performance Bond/Security Form
- d) Bank Guarantee for Advance Payments

8.2 The number of copies to be completed and returned with the Tender is specified in Clause 7 of the **TDS**.

8.3 The Procuring Entity is not responsible for the completeness of the Tender documents and their addenda, if they were not appropriately obtained directly from the Procuring Entity.

8.4 The Tenderer is expected to examine all instructions, forms, terms and specifications in the Tender documents. Failure to furnish all information required by the Tender documents or to submit a Tender substantially responsive to the Tender documents in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

9. Clarifications

9.1 A prospective Tenderer requiring any clarification of the Tendering documents may notify the Procuring Entity in writing, including e-mail or facsimile, sent to the Procuring Entity's address indicated in Clause 8 of the **TDS** prior to the tender submission deadline.

9.2 The Procuring Entity will within the period stated in Clause 8 of the **TDS** respond in writing to any request for clarification provided that such request is received no later than the period indicated in the **TDS** prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

9.3 Copies of the Procuring Entity's response will be forwarded to all Purchasers of the Tender documents, including a description of the inquiry, but without identifying its source.

9.4 Should the Procuring Entity deem it necessary to amend the Tender documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

10. Amendment of Tender documents

10.1 Before the deadline for submission of Tenders, the Procuring Entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the Tender document by issuing addenda.

10.2 Any addendum issued shall be part of the Tender document pursuant to sub-Clause 8.1 and shall be communicated in writing to all who have obtained the Tender documents directly from the Procuring Entity. Prospective Tenderers shall acknowledge receipt of each addendum in writing by post, electronic mail, telex or facsimile to the Procuring Entity.

10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity, shall extend the deadline for the submission of Tenders as necessary, where the time remaining is less than one third of the time allowed for preparation of tenders.

C. Preparation of Tenders

11. Language of Tender

11.1 The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in English unless another language is specified in Clause 9 of the **TDS**.

11.2 Supporting documents and printed literature furnished by the Tenderer may be in

another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in Clause 9 of the **TDS**, in which case, for purposes of interpretation of the Tender, the translation shall govern.

12. Documents Constituting the Tender

- 12.1 The Tender prepared by the Tenderer shall constitute the following components:
- a) Form of Tender and a Price Schedule completed in accordance with ITT Clauses 15, 16, and 17;
 - b) Documentary evidence established in accordance with ITT Clause 14 that the Tenderer is eligible to Tender and is qualified to perform the contract if its Tender is accepted;
 - c) Documentary evidence established in accordance with ITT sub-Clause 14.3(a) that the Tender has been authorized by the manufacturer/patent holder to supply the goods into Kenya, where required and where the supplier is not the manufacturer/patent holder of those goods;
 - d) Documentary evidence established in accordance with ITT Clause 13 that the goods and ancillary services to be supplied by the Tenderer are eligible goods and services and conform to the Tender documents;
 - e) Tender securing declaration or Tender security furnished in accordance with ITT Clause 19;
 - f) Written Power of Attorney authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT Clause 21.2; and
 - g) Any other document required in Clause 10 of the **TDS**.

13. Documents Establishing Eligibility of Goods and Related Services and Conformity to Tender documents

- 13.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its Tender, documents establishing the eligibility and conformity to the Tender documents of all goods and related services which the Tenderer proposes to supply under the contract.
- 13.2 In the case of imports the documentary evidence of the eligibility of the goods and related services shall consist of a statement in the Price Schedule of the country of origin of the goods and related services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 13.3 The documentary evidence of conformity of the goods and related services to the Tender documents may be in the form of literature, drawings, and data as specified in Clause 10 of the **TDS**, and shall consist of:
- a) a detailed description of the essential technical and performance characteristics of the Goods;
 - b) an item-by-item commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the Goods and Services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications; and
 - c) Any other specific documentation requirement as stated in Clause 10 of the **TDS**.
- 13.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of goods, spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in Clause 11 of the **TDS** following commencement of the use of the goods by the Procuring Entity.
- 13.5 For purposes of the commentary to be furnished pursuant to sub-Clause 13.3(c)

above, the Tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procuring Entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its Tender, provided that it demonstrates to the Procuring Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

13.6 The required documents and other accompanying documents must be typewritten in English or as stated in clause 11.1 above. In case any other language than English is used the pertinent translation into English shall be attached to the original version.

14. Documents
Establishing
Eligibility and
Qualification
of the
Tenderer

14.1 Pursuant to ITT Clause 13.1, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.

14.2 The documentary evidence of the Tenderer's eligibility to Tender shall establish to the Procuring Entity's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible country as defined under ITT Clause 4.

14.3 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:

- a) that, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods' Manufacturer/Patent-holder to supply the goods in Kenya ;
- b) The Tenderer has the financial, technical, and production capability necessary to perform the Contract, meets the qualification and has a successful performance history in accordance with criteria specified in Clause 12 of the **TDS**. If a pre-qualification process has been undertaken for the Contract, the Tenderer shall, as part of its Tender, update any information submitted with its pre-qualification;
- c) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped and able to carry out the Supplier's maintenance, repair, and spare parts stocking obligations prescribed in the General Conditions of Contract and/or Technical Specifications; and
- d) That the Tenderer meets the qualification criteria listed in Clause 12 of the **TDS**.

14.4 When Tendering for more than one Contract under the lots, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being applied for in regard to:-

- a) Average annual turnover;
- b) Particular experience including key production rates;
- c) Financial means, etc;
- d) Personnel capabilities; and
- e) Equipment capabilities.

In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.

15. Form of

15.1 The Tenderer shall fill the Form of Tender furnished in the Tender

- Tender** documents.
- 15.2 The Tender Form must be completed without any alterations to its format and no substitute shall be accepted.
16. **Tender Prices and discounts**
- 16.1 The Tender prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified in the tender documents.
- 16.2 Unless otherwise indicated in Clause 12 of the **TDS**, all items in the Schedule of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, the Tender will be rejected as being substantially non-responsive. Items not listed in the Price Schedule shall be assumed to be not included in the Tender and the Tender will be rejected as being substantially non-responsive.
- 16.3 The Tender price to be quoted in the Tender Form in accordance with sub-Clause 16.1 shall be the total price of the Tender.
- 16.4 The Tenderer shall quote any unconditional discounts and the methodology for their application in the Tender Form in accordance with sub-Clause 16.9.
- 16.5 The Tenderer shall indicate on the appropriate Price Schedule the unit prices (where applicable) and total Tender price of the goods it proposes to supply under the contract
- 16.6 Prices indicated on the Price Schedule shall be entered separately in the following manner:
- a) For goods offered from within Kenya :
- i) The price of the goods quoted shall include all duties and other applicable taxes payable; and
- ii) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, if specified in Clause 12 of the **TDS**;
- b) For goods offered from abroad:
- i) The price of the goods shall be quoted using the INCOTERM specified in Clause 12 of the **TDS**; and
- ii) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods from the port of entry to their final destination, if specified in Clause 12 of the **TDS**.
- 16.7 Prices proposed on the Price Schedule for goods and related services shall be disaggregated. This disaggregation shall be 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:-
- a) **For Goods:-**
- i) The price of the Goods, quoted DDP or other INCOTERMS as specified in Clause 13 of the **TDS**;
- ii) All customs duties, value added tax, and other taxes applicable on the goods or on the components and raw materials used in their manufacture or assembly, if the contract is awarded to the Tenderer; and
- b) **For Related Services**
- i) The price of the related services,

- ii) All customs duties, value added tax, and other taxes applicable in Kenya, paid or payable, on the related services, if the contract is awarded to the Tenderer; and
 - iii) The total price for the item.
- 16.8 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account, unless otherwise specified in Clause 13 of the **TDS**. A Tender submitted with an adjustable price quotation will be treated as non-responsive and shall be rejected, pursuant to ITT Clause 28. If, however, in accordance with Clause 13 of the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the contract, a Tender submitted with a fixed price tender will not be rejected, but there will be no price adjustment in any resulting contract.
- 16.9 If so indicated in the Invitation for Tenders and Instructions to Tenderers, that Tenders are being invited for individual contracts (Lots) or for any combination of contracts (packages), Tenderers wishing to offer any price reduction for the award of more than one contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual contracts within a package.
- 17. **Tender Currencies**
 - 17.1 Prices shall be quoted in the following currencies:
 - a) For goods and services that the Tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings, unless otherwise specified in Clause 14 of the **TDS**.
 - b) For goods and related services that the Tenderer will supply from outside Kenya, or for imported parts or components of goods and related services originating outside Kenya, the Tender prices shall be quoted in the currency stated in Clause 14 of the **TDS**.
 - 17.2
 - a) For purposes of evaluating Tenders, the PE shall fix exchange rates for the nominated foreign currency by foreign or international Tenderers from eligible countries.
 - b) In fixing the exchange rates for the nominated currencies indicated in Clause 14 of the **TDS**, the PE shall use ruling mean rate obtained from the Central Bank of Kenya (Website: www.centralbank.go.ke for more information) on the date of the Tender opening.
 - c) The fixed exchange rate, which shall be indicated in Clause 14 of the **TDS** by the PE, is for purposes of evaluation of tenders **ONLY**.
 - d) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the proportions mentioned in sub-Clause 17.1 above shall be the selling rates for similar transactions established by the Central Bank of Kenya prevailing on the date specified in Clause 14 of the **TDS** or, if no date is specified, the date 28 days prior to the latest deadline for submission of Tenders.
 - e) These exchange rates shall be adjusted for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of sub-Clause 30.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.
- 18. **Tender Validity Period**
 - 18.1 Tenders shall remain valid for the period specified in Clause 15 of the **TDS** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
 - 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity shall request that the Tenderers consent to an extension of

the period of validity of their Tenders. The request and the Tenderers responses shall be made through electronic mail and facsimile and/or confirmed in writing. The Tender security provided under ITT Clause 19A.1 shall also be extended as appropriate.

A Tenderer may refuse the request without forfeiting its Tender security or causing to be executed its Tender securing declaration. A Tenderer agreeing to the request will not be required nor permitted to modify its Tender, but will be required to extend the validity of its Tender security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.

19. Tender Securing Declaration

- 19.1 The Tenderer shall fill and submit the Tender Securing Declaration as specified in Clause 16 of the **TDS** in the format provided in Section IX.
- 19.2 The Tender securing declaration is required to protect the Procuring Entity against any of the risks set out in Clause 19.5 which would warrant the security's forfeiture.
- 19.3 The Tender Securing Declaration shall be in accordance with the Form of the Tender Securing Declaration included in Section IX.
- 19.4 Any Tender not accompanied by a Declaration in accordance with sub-Clauses 19.1 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.
- 19.5 A Tenderer shall be liable to debarment from participating in public procurement:
 - a) If the Tenderer withdraws its Tender, except as provided in sub-Clauses 18.2; or
 - b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
 - i) Sign the contract, or
 - ii) Furnish the required performance security.

20. Tender Security

- 20.1 In addition, pursuant to ITT Clause 12, if specified in Clause 17 of the **TDS**, the Tenderer shall furnish as part of its Tender a Tender Security in original form and in the amount and currency specified in the **TDS**.
- 20.2 The Tender security shall be denominated in the currency of the Tender and shall be in one of the following forms as specified in Clause 17 of the **TDS**:
 - a) cash
 - b) a bank guarantee;
 - c) an insurance company guarantee issued by an insurance firm approved by the PPRA; or
 - d) an irrevocable letter of credit.
- 20.3 Any tender security must be valid for a period of at least 30 (thirty) days after the expiry of the tender validity period.
- 20.4 The Tender security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 20.7 are invoked.
- 20.5 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible as but not later than the expiration of the period of Tender validity prescribed by the Procuring Entity pursuant to ITT Clause 18.

- 20.6 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract pursuant to ITT Clause 40, and furnishing the performance security, pursuant to ITT Clause 41.
- 20.7 The Tender security shall be forfeited if a Tenderer:
- a) Withdraws its Tender during the period of Tender validity specified in sub-Clause 18.1 except as provided for in sub-Clause 18.2; or
 - b) Does not accept the correction of errors pursuant to ITT Clause 32; or
 - c) In the case of a successful Tenderer, if the Tenderer fails:
 - i) To sign the contract in accordance with ITT Clause 40; **or**
 - ii) To furnish performance security in accordance with ITT Clause 41.
21. **Format and Signing of Tender**
- 21.1 The Tenderer shall prepare an original and the number of copies of the Tender indicated in Clause 18 of the **TDS**, clearly marking each "ORIGINAL" and "COPY," as appropriate. In the event of any discrepancy between them, the original shall prevail.
- 21.2 The original and the copies of the Tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation 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, except for un-amended printed literature, shall be initialed by the person or persons signing the Tender.
- 21.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person or persons signing the Tender.

D. Submission of Tenders

22. **Sealing and Marking of Tenders**
- 22.1 Submission shall be through the IFMIS portal number, indicated in the advertisement and one hard copy in plain sealed envelope and clearly marked the specific tender number and tender description. The envelope shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 22.2 The inner and outer envelopes shall:
- a) Be addressed to the Procuring Entity at the address given in Clause 19 of the **TDS**; and
 - b) Bear the tender name indicated in Clause 19 of the **TDS**, the Invitation for Tenders (ITT) title and number indicated in Clause 19 of the **TDS**, and a statement: "DO NOT OPEN BEFORE," to be completed with the time and the date specified in sub-Clause 22.1.
- 22.3 In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared "late" pursuant to ITT Clause 23 and for matching purpose under ITT Clause 24.
- 22.4 If all envelopes are not sealed and marked as required by sub-Clause 21.2, the Procuring Entity will assume no responsibility for the misplacement or premature opening of Tender.
23. **Deadline for Submission of Tenders**
- 23.1 Tenders shall be received by the Procuring Entity at the address specified under sub-Clause 21.2 no later than the date and time specified in Clause 19 of the **TDS**.

- 23.2 The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tender documents in accordance with ITT Clause 10, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 23.3 The extension of the deadline for submission of Tenders shall not be made later than the period specified in Clause 19 of the **TDS** before the expiry of the original deadline.
- 24. Late Tenders**
- 24.1 The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders.
- 24.2 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.
- 25. Modification, Substitution and Withdrawal of Tenders**
- 25.1 A Tenderer may modify, substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, substitution or withdrawal of the Tender, is received by the Procuring Entity prior to the deadline for submission of Tenders.
- 25.2 The Tenderer's modification, substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 21 and 22 with the outer and inner envelopes additionally marked "**MODIFICATION**" "**SUBSTITUTION**" or "**WITHDRAWAL**" as appropriate. The notice may also be sent by electronic mail or facsimile but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 25.3 Tenders may only be modified by withdrawal of one or more pages of the original Tender and submission of replacement pages of the Tender in accordance with sub-Clause 25.1. Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders. Each modified page must be marked "**MODIFIED**" with the date of modification.
- 25.4 Tenderers may only offer discounts to or otherwise modify the prices of their Tenders by substituting Tender modifications in accordance with this Clause or included in the original Tender submission.
- 25.5 No Tender may be withdrawn, replaced 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. Withdrawal of a Tender during this interval shall result in the Tenderer's forfeiture of its Tender security or execution of the Tender Securing Declaration, pursuant to the ITT sub-Clause 19.5 or 20.7.

E. Opening and Evaluation of Tenders

- 26. Opening of Tenders**
- 26.1 The Procuring Entity will open all Tenders including modifications, substitutions or withdrawal notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend, and other parties with a legitimate interest in the Tender proceedings at the place, on the date and at the time, specified in Clause 21 of the **TDS**. The Tenderers' representatives present shall sign a register as proof of their attendance.

- 26.2 Where it is stated in the **TDS** that technical and financial proposals shall be submitted in separate envelopes, only the technical envelope will be opened at the initial opening of Tenders. The financial envelope will be opened following technical evaluation and only in respect of those offers that pass the technical evaluation.

Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 25 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 of the person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. Subsequently, all envelopes marked “**MODIFICATION**” shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked “**SUBSTITUTION**” shall be opened and the submissions therein read out in appropriate detail.

- 26.3 All other envelopes shall be opened one at a time. The Tenderers’ names, the tender prices except where numerous items are quoted separately, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, Tender Securing Declaration and such other details as the Tender Opening Committee may consider appropriate, will be announced by the Secretary of the Tender Opening Committee at the opening. If technical evaluation precedes the opening of financial offers, no prices will be read out at the opening of the technical offers.

- 26.4 Tenders or modifications that are not opened and not read out at the Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.

- 26.5 Tenderers are advised to send in a representative with knowledge of the content of the Tender who may verify where necessary the information read out from the submitted documents.

- 26.6 No Tender will be disqualified at Tender opening except for late Tenders which shall be rejected and returned unopened to the Tenderer, pursuant to ITT Clause 24.

- 26.7 The Secretary of the Tender Opening Committee shall prepare minutes of the tender opening. The record of the Tender opening attendees shall be in the Tender Opening Register and shall include, as a minimum: the name of the Tenderer and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.

- 26.8 The Tenderers’ representatives who are present shall be requested to sign the record. The omission of a Tenderer’s representative’s signature on the record shall not invalidate the contents and affect the record.

- 26.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

27. Confidentiality

- 27.1 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.

- 27.2 Any effort by a Tenderer to influence the Procuring Entity processing of Tenders or award decisions may result in the rejection of its Tender.
- 28. Clarification of Tenders**
- 28.1 To assist in the examination, evaluation and comparison of Tenders and post-qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 28.2 The request for clarification and the response shall be in writing or by email, or facsimile but no change in the price or substance of the Tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered by the Evaluation Committee in the evaluation of the Tenders in accordance with ITT Clause 31.
- 28.3 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 Tender it should do so in writing.
- 29. Evaluation criteria**
- 29.1 The evaluation and comparison of tender shall be done using the procedures and criteria set out in TDS and no other criteria shall be used.
- 29.2 In evaluation of tenders the Procuring Entity shall systematically proceed in the following stages:-
- a) Preliminary evaluation;
 - b) Technical evaluation;
 - c) Financial evaluation; and
 - d) Post-qualification where specified in the TDS
- 30. Preliminary Examination of Tenders**
- 30.1 Prior to the detailed evaluation of tenders, the Procuring Entity, through its Evaluation Committee, shall first conduct a preliminary evaluation of tenders to determine whether:
- a) Each tender has been submitted in the required format;
 - b) Any tender security submitted is in the required form, amount and validity period;
 - c) The tender has been signed by the person lawfully authorized to do so;
 - d) The required number of copies of the tender have been submitted;
 - e) The tender is valid for the period required;
 - f) All required documents and information have been submitted; and
 - g) Any required samples have been submitted.
- The Procuring Entity's determination of a Tender's responsiveness will be based on the contents of the Tender itself in comparison with the documents required in the Tender.
- 30.2 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tendering documents, without material deviation that does not depart from the requirements set out in the tender documents. A material deviation is one that:-
- a) affects in any substantial way the scope, quality, or performance of the services;
 - b) limits in any substantial way, inconsistent with the tender documents, the Procuring Entity's rights or the Tenderers obligations under the Contract; or
 - c) if rectified, would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

- 30.3 The Procuring Entity will confirm that the documents and information specified under ITT Clauses 12, 13 and 14 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.
- 30.4 The Procuring Entity may waive any minor informality, non-conformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.
- 30.5 If a Tender is not substantially responsive, it will be rejected by the Procuring Entity and may not subsequently be made responsive by the Tenderer by correction of the non-conformity.

31. Technical Evaluation

- 31.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the General Conditions of Contract and the Contract Data Sheet have been accepted by the Tenderer without any material deviation. If there is found any material deviation from the General Conditions or Contract Data Sheet the tender shall be rejected
- 31.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted in accordance with ITT Clause 13, to confirm that all requirements specified in Section VI – Schedule of Requirements of the Tender documents and Section VII – Technical Specifications have been met without material deviation.
- 31.3 In evaluating the technical specifications and schedule of requirements, the Procuring Entity may apply a weighted scoring or “YES/NO” approach as specified in the TDS.
- 31.4 If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not technically responsive in accordance with this clause, it shall reject the tender.

32. Financial Evaluation

- 32.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:-
- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected;
 - b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.
- 32.2 The amount stated in the Tender will be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender security shall be forfeited or the Tender Securing Declaration may be executed in accordance with IIT sub-Clause 19.5 or 20.7.
- 32.3 To facilitate evaluation and comparison, the Procuring Entity will convert all Tender prices expressed in the various currencies in which they are payable to either:
- a) the Kenya Shilling at the selling exchange rate established for similar transactions by the Central Bank of Kenya as specified in IIT sub-clause 17.2

OR

- b) The currency widely used in international trade, such as U.S. dollars as specified in ITT sub-clause 17.1 at the specified rate of exchange.
- 32.4 The source of the exchange rate shall be the Central Bank of Kenya. The currency selected for converting Tender prices to a common base for the purpose of evaluation, along with the date of the exchange rate, are specified in Clause 23 of the **TDS**.
- 32.5 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive, pursuant to ITT Clause 30.
- 32.6 The Procuring Entity's evaluation of a Tender will include and take into account:-
- a) *all taxes*
 - b) *Inland transportation, Insurance and incidentals.*
 - c) *Delivery schedule.*
 - d) *Deviation in payment schedule.*
 - e) *Total cost of ownership:-*
 - i) *Cost of spare parts*
 - ii) *Spare parts and after sales service facilities in Kenya*
 - iii) *Operating and maintenance costs*
 - iv) *Performance and productivity of the equipment.*
 - v) *Specific additional criteria in the tender documents.*
- 33. Margin of Preference**
- 33.1 Margin of preference in the evaluated price of the tender shall be applied to candidates where applicable as follows:-
- a) 6% of the evaluated price of the tender, where percentage of shareholding of the Kenyan citizens is less than 20%;
 - b) 8% of the evaluated price of the tender, where the percentage of shareholding of Kenyan citizens is less than 51% but above 20%;
 - c) 10% of the evaluated price of the tender, where the percentage of shareholding of the Kenyan citizens is more than 51%.
 - d) 15% of the evaluated price of the tender where goods are manufactured mined, extracted or grown in Kenya.
- 34. Post-qualification of Tenderer**
- 34.1 If specified in Clause 22 of the **TDS** Post-qualification shall be undertaken by the Procuring Entity prior to award of the tender.
- 34.2 The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITT Clauses 13 and 14.
- 34.3 The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary/physical evidence of the Tenderer's qualifications submitted by the Tenderer, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tender documents shall not be used in the evaluation of the Tenderers' qualifications.
- 34.4 An affirmative determination/due diligence will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

F. Award of Contract

35. **Criteria of Award**
- 35.1 Subject to ITT Clauses 30 to 34, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:
- a) Eligible in accordance with the provisions of ITT Clause 3;
 - b) Is determined to be qualified to perform the Contract satisfactorily; and
 - c) Successful negotiations have been concluded, if any.
- 35.2 If, pursuant to ITT sub-Clause 14.4, this Contract is being let on a “slice and package” basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for award of more than one Contract.
36. **Procuring Entity’s Right to Accept any Tender, Reject all Tenders and to Terminate Procurement Proceedings.**
- 36.1 Notwithstanding ITT Clause 31, the Procuring Entity reserves the right to accept or reject any Tender, all tenders and to terminate all procurement proceedings at any time prior to notification of Contract award, without incurring any liability to the affected Tenderer(s)
- 36.2 Notice of the Termination of procurement proceedings shall promptly be given to all Tenderers.
- 36.3 The Procuring Entity shall upon request communicate to any Tenderer the grounds for its termination of the procurement proceedings within 14 days from the date of request.
37. **Procuring Entity’s Right to Pre-Contract Variation of Quantities**
- 37.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tender documents (schedule of requirements) provided this does not exceed the percentage indicated in clause 26 of the **TDS**, without any change in unit price or other terms and conditions of the Tender and Tender documents.
38. **Notification of Award**
- 38.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail, or facsimile and confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Tenderer in consideration of the supply of goods as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).
- 38.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security (if required) in accordance with ITT Clause 41 and signing of the contract in accordance with sub-Clause 40.2.
- 38.3 At the same time as the person submitting the successful tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender security or Tender securing declaration of the Tenderers if it was required in the procurement proceedings.
- 38.4 If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender was unsuccessful, it should address its request to the Accounting Officer who shall, within fourteen days after a request, provide written reasons as to why the tender was unsuccessful. However, failure to take this opportunity to

clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 44.

39. **Post Tender Concurrence**
- 39.1 Limited consultations may be undertaken with the successful Tenderer relating to the following areas:-
- a) minor alteration to the technical details of the statement of requirements;
 - b) minor amendment to the contract data sheet;
 - c) affirming payment schedule and arrangements;
 - d) finalising delivery schedule and arrangements; or
 - e) any other details that were not apparent or could not be finalised at the time of tendering.
- 39.2 Where limited consultations fail to realise concurrence necessary to result into an agreement, the Procuring Entity may invite the next ranked Tenderer for consultations. Where consultations are commenced with the next ranked Tenderer, the Procuring Entity shall not revisit failed consultations with other tenderers.
40. **Signing of Contract**
- 40.1 Promptly after notification, the Procuring Entity shall send the successful Tenderer the agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 40.2 Within the period specified in the notification of award but not less than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity. No contract is formed between the person submitting the successful tender and the procuring entity until the written contract is entered into and signed by all parties.
41. **Performance Security**
- 41.1 If so specified in the Contract Data Sheet the successful Tenderer shall within twenty one (21) days, but no earlier than fourteen (14) days, after receipt of the Letter of Acceptance (Notification of Award), deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in clause 27 of the **TDS and in clause 4 of the CDS**.
- 41.2 The Performance Security provided by the successful Tenderer shall either be in the form of a Bank Guarantee or Insurance Bond. The issuing bank must be reputable and registered in Kenya while the issuing Insurance Company must be one of those approved by PPRA to issue tender securities.
- 41.3 Failure of the successful Tenderer to comply with the requirement of sub-Clause 39.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender security, and reported for debarment by PPRA.
42. **Advance Payment**
- 42.1 If so provided for in the **TDS**, the Procuring Entity on exceptional circumstances may provide an Advance Payment on the Contract Price as stipulated in the General Conditions of Contract.
- 42.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section IX. For the purpose of receiving the Advance Payment, the Tenderer shall make an estimate of, and include in its Tender, the expenses that will be incurred in order to commence Delivery of Goods.
43. **Fraud and Corruption**
- 43.1 The Procuring Entity as well as Tenderers shall observe the highest standard of ethics during the procurement and execution of the resultant contract. In pursuance of this policy. For the purpose of this provision, the following

definitions are provided:-

“Corrupt practice” includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“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 and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the procuring entity of the benefits of free and open competition;

“Collusive practice” means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of a procuring entity (PE) prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the PE of the benefit of free and open competition;

“Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of either to influence improperly the actions of a PE;

“Obstructive practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation 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.

The Procuring Entity shall reject a proposal for award if it determines that the Tenderer recommended for award has engaged in any of the above practices in competing for the contract;

The Procuring Entity shall cancel the contract for goods and related services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the procuring entity and the Contractor.

G. Review of Procurement Decisions

44. **Right to Review** 44.1 A Tenderer who claims to have suffered or risks suffering loss or damage or injury as a result of breach of a duty imposed on the Procuring Entity by the PP&AD, 2015 or its attendant Regulations or this procurement proceeding may lodge an appeal at the Public Procurement Administrative Review Board. The following matters, however, shall not be subject to administrative review:
- a) The choice of procurement method;
 - b) A decision by the procuring entity to reject all tenders,
 - c) Where a contract is signed in accordance with Clause 39; and
 - d) Where an appeal is frivolous.
45. **Time Limit on Review** 45.1 The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by regulations within fourteen (14) days of the Tenderer/Tenderer becoming or should have become aware of the circumstances giving rise to the complaint or dispute.
46. **Submission of Applications for Review by the Public** 46.1 Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 (which may be downloaded from the PPRA website) at the following address:-

**Procurement
Administrative
Review Board**

The Secretary,
Public Procurement Administrative Review Board,
10th Floor, National Bank House
P.O. Box 58535-00200,
NAIROBI, Kenya.
Tel: +254 (0) 20 324 4000
Email: info@ppoa.go.ke
Website: www.ppoa.go.ke

- 46.2 The format for the application for administrative review shall include:
- a) Reasons for the complaint, including any alleged breach of the PPDA or its attendant Regulations;
 - b) An explanation of how the provisions of the aforementioned Act and Regulations in a) or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
 - c) Statements or other evidence supporting the complaint where available as the applicant (tenderer) considers necessary in support of its request;
 - d) Remedies sought; and
 - e) Any other information relevant to the complaint.

**47. Decision by
the Public
Procurement
Administrative
Review Board**

- 47.1 Upon completing a review the Review Board may do any one or more of the following —
- a) annul anything the procuring entity has done in the procurement proceedings, including annulling the procurement proceedings in their entirety;
 - b) give directions to the procuring entity with respect to anything to be done or redone in the procurement proceedings;
 - c) substitute the decision of the Review Board for any decision of the procuring entity in the procurement proceedings; or
 - d) Order the payment of costs as between parties to the review.

47.2 The decision of the Administrative Review Board shall be final unless the Tenderer institutes an appeal with High Court of Kenya.

**48. Judicial
Review**

- 48.1 A decision made by the Review Board shall, be final and binding on the parties unless judicial review thereof commences within fourteen days from the date of the Review Board's decision.

**49. Submission of
Complaints to
the Public
Procurement
Oversight
Authority**

- 49.1 A Tenderer who claims to have suffered or risks suffering loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity by the PP&AD, 2015 or PPDR, 2006 may lodge a complaint at the Public Procurement Regulatory Authority at any time within a tendering or contractual period at the following address:-

The Director General,
Public Procurement Regulatory Authority.
11th Floor National Bank Building,
Harambee Avenue ,
P.O. Box 58535-00200
NAIROBI, Kenya.
Tel: +254 (0) 20 324 4000
Fax: +254 (0) 20 2213105, 3244377, 3244277
email: info@ppoa.go.ke, complaints@ppoa.go.ke
Website: www.ppoa.go.ke

SECTION III: TENDER DATA SHEET

TENDER DATA SHEET

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

TDS Clause Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
		A. Introduction
1.	1.1	<p>Name of Procuring Entity: <i>Ministry of Public Service, Youth and Gender Affairs, State Department of Gender Affairs</i></p> <p>The subject of procurement is: <i>Supply and delivery of Sanitary Towels to Public Primary schools, Special Primary and public Secondary Schools (2018/2019- 2019/20120)</i></p> <p>Period for supply of goods: 2 years Expected commencement date for supply of Goods: October, 2018</p>
	1.2	Required completion date for supply of the Goods: 30th October, 2020
2.	2.1 & 2.2	<p>Financial year for the operations of the Procuring Entity: 2018/2019-2019/2020 financial years</p> <p>Name of Project <i>Supply and delivery of Sanitary Towels to Public Primary schools, Special Primary and public Secondary Schools (2018/2019-2019-2020)</i></p> <p>Name of financing institution: Government of Kenya (GOK) Name and identification number of the Contract: <i>Supply and delivery of Sanitary Towels to Public Primary schools, Special Primary and public Secondary schools (2018/2019- 2019-2020) – MPSYGA/SDGA/NOT/01/2018/2019-2019/2020</i></p>
3.	3.1	A joint Venture, consortium or an association is applicable. All parties shall be jointly and severally liable... “YES”
	3.2	Specify the target group for preference or reservations <ul style="list-style-type: none"> • Youth, Women and Persons with disability. • 15% Local manufacturers that provide 30% input to the total cost of production.
	3.3	Specify the statutory bodies and documents. <ol style="list-style-type: none"> 1. Local Tenderers to provide; <ul style="list-style-type: none"> (i) Tax Compliance Certificate (ii) Certificate of Incorporation (iii) Dully filled Confidential Business Questionnaire form (iv) AGPO certificate for Youth, Women and PWD. 2. In addition to the above, Local Manufacturers to provide; <ul style="list-style-type: none"> (i) Certificate of registration (ii) Certified Cost accounting for manufacturing.
	3.6	Specify the evidence and information required. <ul style="list-style-type: none"> • Valid Certificates of section 3.3 of TDS above.
	3.7	Non-citizen contractors allowed to participate in the Tender: “NO”

4.	4.1	Ineligible country(s) is or are – those debarred by a UN resolution
	4.6	Manufacturers’ Authorization Required- YES Patent-Holder’s Authorization Required- N/A
5.	6.1	Alternative Tenders to the requirements of the Tender documents shall not be permitted.

B. Tender documents

6.	8.2	Number of copies to be submitted Tender submission will only be in bound hard copies. NO SPIRAL BINDING WILL BE ACCEPTED. One original and one copy. Both the original and a copy of the Tender must be submitted in ONE plain sealed envelope and clearly marked with the specific tender number and tender description, be deposited at the tender box located at the reception area of fourth (4 th) floor Telposta Towers, Koinange street on or before 10.00 AM (Local Time) on Monday 3 rd September, 2018
7.	9.1	The address for clarification of Tender documents is Attention: The Head, Supply Chain Management, State Department of Gender Affairs 4th floor, Telposta Towers P.O Box 29966-00100 NAIROBI- KENYA Telephone: +254 020 221 6500
	9.2	Period to respond to request for clarification – Seven (7) Days Period prior to deadline for submission of Tenders for the Tenderers to request clarifications - Ten (10) days.

C. Preparation of Tenders

8.	11.1	The Language of all correspondence and documents related to the Tender is: English
9.	12.1 (g)	In addition to the documents stated in ITT Clause 12, the following documents must be included with the Tender. a) <i>Quality Standard Certificate from KEBS</i> b) <i>Documentary Evidence of local manufacturer (KAM Certificate) applying for 15% margin of preference.</i> c) <i>Provide a comprehensive work Programme and proof of ability to distribute the sanitary towels to all the sub-counties schools within the region defined</i>
10.	13.3 (c)	The information required from Tenderers in ITT Clause 13.3 is modified as follows: <ul style="list-style-type: none">• Manufacturers brochure’s showing specifications of the product being manufactured
	13.4	Bidder to demonstrate that spare parts shall be available locally – N/A

11.	14.3 (b)		Factor	2.0 Financial Requirement
			Sub-Factor	Requirement
		i.	Historical Financial Performance	Submission of audited balance sheets for the last three [3] years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability. Youth, Women and PWD are exempted from this condition.
		ii.	Average Annual Turnover	Minimum average annual turnover of 50 million Kenya Shillings per lot calculated as total certified payments received for contracts in progress or completed, within the last Three (3) years . Youth, Women and People with Disability are exempted from this condition.
		iii.	Financial Resources	The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: Youth, Women and PWD are exempted from this condition.
		iv.	Evidence of distribution capacity	Proof of capacity which may include a minimum of five (5No), 5 tonne vehicles owned/leased/hired by the company (ies). A proof of ownership, leasing or hired.
v.	Experience	Experience as Supplier, in at least three (3) contracts of similar magnitude for General Bidders. Provide detailed references of the contracts cited. Youth, Women and PWD are exempted from this condition.		
12.	16.2	N/A		
	16.6	<i>Prices Quoted should include all taxes, levies and transport cost to the respective schools per county.</i>		
13.	17.1	a) For goods and related services originating in Kenya the currency of the Tender shall be <i>Kenya Shillings</i> ; b) For goods and related services originating outside of Kenya , the Tenderer shall express its Tender in KES		
	17.2	For the purpose of evaluation only, the rate of exchange to be used will be 1 currency = number Kshs (to 2 decimal places) . The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: Kenya Shillings The source of exchange rate shall be The Central Bank of Kenya selling rate. The date for the exchange rate shall be: The bid closing day Monday 3rd September, 2018.		
14.	18.1	The Tender validity period shall be 120 days .		
15.	19.1	A Tender Securing Declaration form shall be filled by the Tenderer. Yes – All Bidders		
16.	20.1	Tender security required - YES. Only for General category. The Bidder shall furnish a bid security in the amount of KES 1,000,000.00 (One Million Kenya Shillings)-		
	20.2	Specify the form of tender security. The bid security shall be from a reputable financial institution and in the format provided.		
17.	21.1	Number of copies to be submitted; • Same as section 8.2 of this TDS.		

D. Submission of Tenders

18.	22.2	(a) Tender shall be submitted to <i>The Principal Secretary, State Department of Gender Affairs Telposta Towers, Koinange Street, 4th floor P.O. Box 29966-00100, Nairobi NAIROBI- KENYA</i> The deadline for bid submission is: Date: Monday 3rd September, 2018 Time:10.00am local time
		(b) Tender name: - <i>Supply and delivery of Sanitary Towels to Public Primary schools, Special Primary and public Secondary Schools (2018/2019-2019/2020)</i> . The identification number of the bidding process is: <i>MPSYGA/SDGA/NOT/01/2018/2019 - 2019/2020</i>
19.	23.1	The deadline for Tender submission is a) Day Monday b) Date 3rd September,2018 c) Time 10.00am local time
	23.3	Extension of the deadline for submission of Tenders shall not be made later than seven (7) days

Opening and Evaluation of Tenders

20.	26.1	The Tender opening shall take place at: <i>State Department of Gender Affairs Telposta Towers, Koinange Street, 4th floor Boardroom P.O. Box 29966-00100, Nairobi Tel +254 020 221 6500 NAIROBI – KENYA</i> Date 3rd September, 2018 Time 10.30am local time												
21.	29.1	Evaluation Criteria The Tender will be evaluated in four stages: a) Preliminary Evaluation b) Technical Evaluation c) Financial Evaluation d) Post- qualification a) Preliminary Evaluation Preliminary Evaluation will be guided by the provisions set out in Section 47 (1) of the PPDA Regulations, 2006 . In addition, the following mandatory requirements shall be evaluated. At this stage a YES and NO criteria of evaluation will be used. Tenderers are required to submit copies of the following MANDATORY DOCUMENTS which will be used during Preliminary Examination to determine responsiveness: <table border="1"> <thead> <tr> <th></th> <th>Criteria</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Copy of certificate of Registration/Incorporation</td> <td>Yes</td> <td>No</td> </tr> <tr> <td>2</td> <td>Copy of Valid Tax Compliance certificate</td> <td>Yes</td> <td>No</td> </tr> </tbody> </table>		Criteria			1	Copy of certificate of Registration/Incorporation	Yes	No	2	Copy of Valid Tax Compliance certificate	Yes	No
	Criteria													
1	Copy of certificate of Registration/Incorporation	Yes	No											
2	Copy of Valid Tax Compliance certificate	Yes	No											

3	Valid AGPO Certificate for Youth, Women and Persons with Disability	Yes	No
4	Duly filled Price Schedule in the format provided in the Tender Document	Yes	No
5	Duly filled Form of Tender in the format provided in the Tender Document	Yes	No
6	Tender Security of Kshs. 1,000,000 valid for an additional thirty (30) days after the expiry of the tender validity period OR Duly filled Tender Securing Declaration Form for Youth, Women and Persons with Disability.	Yes	No
7	Duly filled Confidential Business Questionnaire in format provided in the Tender Document.	Yes	No
8	Proof of experience in contracts of similar nature and magnitude. Youth, Women and Persons with Disability – N/A	Yes	No
9	Audited accounts for the last 3 years. Youth, Women and Persons with Disability – N/A	Yes	No
10	Proof of average annual turnover of Ksh. 50 million. Youth, Women and Persons with Disability – N/A		
11	A letter from the Banker confirming credit position - All Bidders	Yes	No
12	Evidence of distribution capacity of the product- Proof of ownership or capacity to hire/lease a minimum of two (2 no.), 5 tonne vehicles - All Bidders	Yes	No
13	Kenya Bureau of Standards (KEBS) Certification - All Bidders	Yes	No
14	Manufacturers Authorization Certificate to sell the product - All Bidders	Yes	No
15	All pages numbered	Yes	No
16	All alterations countersigned and stamped	Yes	No

AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM FURTHER EVALUATION.

(b) Technical Evaluation

The technical evaluation shall adopt **YES/ No Approach**

Where the **YES/NO** approach is adopted a tender shall be deemed to be technically responsive where it meets all the requirements

All Bidders will be required to meet ALL the Technical specifications enlisted under Schedule of requirements.

	CRITERIA	MEETS REQUIREMENTS AS PER KEBS STANDARD EAS 96:2008	
		YES	NO
1	Material		
a	Absorbent Filler		
b	Covering		
c	Protective barrier		
2	Workmanship and finishing		
a	Absorbent filler		
b	Securing mechanism		
c	Protective barrier		

			d	Freedom from defects		
			e	Odour		
			f	Texture		
			g	Quality Requirements		
			h	Microbiological requirement		
			4	Packaging		
			a	Package		
			b	Bales or shippers		
			5	Marking		
			a	Packages		
			b	Bales		
		<p>AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM FURTHER EVALUATION.</p> <p>(c) Financial Evaluation</p> <p>Tender Award will be made to a minimum of seven (7) bidders who are lowest responsive evaluated bidder in each lot.</p> <p>(d) Post- qualification</p> <p>Prior to award of successful tender the Procuring Entity shall conduct post-qualification and due diligence of the successful tenderers in reference of the documents submitted.</p>				
22.	29.2(d)	<p>Prior to award of successful tender the Procuring Entity shall conduct post-qualification and due diligence of the successful tender in reference of the documents submitted.</p> <ul style="list-style-type: none"> • As per section 29.1 (d) shown above 				
23.	31.3	<p>The technical evaluation shall adopt <i>YES/ No Approach</i> Where the <i>YES/NO</i> approach is adopted a tender shall be deemed to be technically responsive where it meets all the requirements</p>				
24.	32.4	<p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: <i>Kenya Shillings</i> The source of exchange rate shall be <i>The Central Bank of Kenya selling rate.</i> The date for the exchange rate shall be: The bid closing day Monday 3rd September, 2018</p>				
	33	<p>15% of the evaluated price of the tender where the supplier is a local manufacturers that provide 30% input to the total cost of production</p>				
25.	34.1	<p>Post- qualification will <i>“BE UNDERTAKEN”</i> As per section 29.1 (d) shown above</p>				

E. Contract Award

26.	35.2	A minimum of seven (7) bidders will awarded in each lot.
27.	41.1	A Performance Security <i>shall</i> be required. The amount shall be: 10% of the Contract Value from a reputable financial institution.
28.	42.1	The Advance Payment shall be limited to –N/A

SECTION IV: GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract

1. Definitions
- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- (a) "CDS" means the Contract Data Sheet applying to the named contract by which the GCC may be amended or supplemented.
 - (b) "Completion" means the fulfilment of the delivery of goods and related services by the Supplier in accordance with the terms and conditions set forth in the contract
 - (c) "Contract Price" means the price payable to the Supplier as specified under the Contract, subject to such additions and adjustment here to or deduction there from as may be made pursuant to the contract for the full and proper performance of its contractual obligations.
 - (d) "Contract" means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - (e) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes, inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation.
 - (f) "Day" means calendar day.
 - (g) "Delivery" means the transfer of the goods from the supplier of equipment, machinery, and /or other materials which the Supplier is required to supply to the Procuring Entity under Contract.
 - (h) "Effective Date" means the date on which this Contract becomes effective pursuant to Clause 1 of the CDS
 - (i) "Eligible Country" means the countries and territories eligible for participation in procurements financed by the specified institution.
 - (j) "End User" means the unit(s) where the goods will be used, as named in Clause 1 of the **CDS**.
 - (k) "Force Majeure" means an event or situation beyond the control of the parties and not involving the parties' fault or negligence and not foreseeable, is unavoidable, and is not due to negligence or lack of care on the part of the parties. Such events may include, but are not restricted to, wars or revolutions, fires, floods, epidemics, quarantine, restrictions, acts of terrorism, piracy and freight embargoes.
 - (l) "fraudulent practice" includes 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, and includes collusive practises amongst bidders prior to or after bid submission designed to establish bid prices at artificial non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
 - (m) "GCC" means the General Conditions of Contract contained in this section.
 - (n) "Origin" means the place where the Goods were mined, grown, or produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new produce results that is substantially different in basic characteristics or in purpose or utility from its components.
 - (o) "Procuring Entity" means the entity purchasing the Goods and related service, as named in Clause 1 of **the CDS**.
 - (p) "Project Site" where applicable, means the place or places named in Clause 1 of **the CDS**.
 - (q) "Related Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, initial

maintenance and other such obligations of the Supplier covered under the Contract.

(r) "Supplier" means the individual, private or public entity or a combination of the above whose Tender to perform the contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the supplier.

2. **Application** 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.
3. **Governing Language** 3.1 The Contract and all correspondence and documents relating to the contract exchanged by the Supplier and the Procuring Entity shall be written in English, unless another language is **specified in Clause 2 of the CDS**. The version of the Contract written in the specified language shall govern its interpretation.
4. **Applicable Law and Interpretation** 4.1 The contract shall be governed and interpreted in accordance with the laws of Kenya, unless otherwise **specified in Clause 3 of the CDS**.
5. **Country of Origin and Nationality of Supplier** 5.1 The origin of Goods and Services means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, process, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
- The nationality of the firm that produces, assembles, distributes, or sells the goods and services shall not determine their origin.
6. **Standards** 6.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to Kenya. Such standards shall be the latest issued by the concerned institution.
7. **Use of Contract Documents and Information; Inspection and Audit** 7.1 The Supplier shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 7.2 The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in GCC Clause 7.1 except for purposes of performing the Contract.
- 7.3 Any document, other than the Contract itself, enumerated in GCC Clause 7.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity .
- 7.4 The Supplier shall allow the Government of Kenya and/or donor agencies involved in financing the project to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Government of Kenya and/or the appropriate donor agencies, if so required.
8. **Patent and** 8.1 Where the Procuring Entity suffers any loss or damage due to infringement of

- Copy Rights** patent, trademark, or industrial design rights occasioned by the Supplier arising from use of the Goods or any part thereof in Kenya, the Supplier shall indemnify the Procuring Entity against all third-party claims.
- 9. Performance Security**
- 9.1 Within twenty-one (21) days of receipt of the notification of Contract award, the successful Tenderer shall furnish to the Procuring Entity the performance security in the amount **specified in Clause 4 of the CDS**.
- 9.2 The proceeds of the performance security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 9.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring Entity and shall be in one of the following forms:
- (a) a bank guarantee,
 - (b) a banker's cheque/cash.
 - (c) an irrevocable letter of credit, or
 - (d) an insurance bond issued by a reputable insurance company approved by PPRA.
- 9.4 The performance security will be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless otherwise **specified in Clause 4 of the CDS**.
- 10. Inspections and Test**
- 10.1 The Procuring Entity or its representative shall have the right to inspect and /or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 10.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the Goods' final destination as specified in Clause 5 of **the CDS** and the Technical Specifications shall specify what inspections and tests shall be carried out. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 10.3 Should any inspected or tested Goods fail to conform to the Specifications, the Procuring Entity may reject the Goods, and the Supplier shall replace the rejected Goods to meet specification requirements free of cost to the Procuring Entity.
- 10.4 The Procuring Entity's right to inspect, test and, where necessary, reject Goods after the Goods' arrival in the Procuring Entity's country shall in no way be limited by reason of the Goods having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the Goods' shipment from the country of origin.
- 10.5 Nothing in GCC Clause 10 shall in any way release the supplier from any warranty or other obligations under this Contract.
- 11. Packing**
- 11.1 The supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the

Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.

11.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in Clause 6 of the CDS**, and in any subsequent instructions ordered by the Procuring Entity.

12. Delivery and Documents

12.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of insurance and transportation shall be as provided by the INCOTERM and/or other documents to be furnished by the Supplier as are **specified in Clause 7 of the CDS**.

12.2 For purposes of the Contract, “DDP”, “CIP”, “CIF”, “FCA”, “FOB”, “EXW” and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce.

13 Incidental Services

13.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in Clause 8 of the CDS**:

- (a) Performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) Training of the Procuring Entity’s personnel, at the Supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

14. Spare Parts

14.1 Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods. Other spare parts and components shall be supplied as promptly as possible and in any event within the period specified in the Clause 9 of **the CDS**.

Such spare parts as the Procuring Entity may select to purchase from the Supplier, provided that this selection shall not relieve the Supplier of any warranty obligations under the Contract; and In the event of termination of production of the spare parts:

- i) Advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
- ii) Following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have

no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity, specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the prevailing conditions .

- 15.2 This warranty shall remain valid for a period specified in Clause 10 of **the CDS** after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for a period specified in Clause 10 of **the CDS** after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless **specified otherwise in Clause 10 of the CDS.**
- 15.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period **specified in Clause 10 of the CDS** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the named port or place of entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period **specified in Clause 10 of the CDS**, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

16. Payment

- 16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in Clause 11 of the CDS.**
- 16.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 12, and upon fulfilment of other obligations stipulated in the Contract.
- 16.3 After delivery and acceptance of the Goods, payments shall be made promptly by the Procuring Entity, within thirty (30) days after submission of a valid invoice or claim by the Supplier, or such other period as **specified in Clause 11 of the CDS.**
- 16.4 If the Procuring Entity makes a late payment, the Supplier shall be paid interest on the late payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing Central Bank rate or as **specified in Clause 11 of the CDS.**
- 16.5 The currency or currencies in which payment is made to the Supplier under this Contract shall be **specified in Clause 11 of the CDS.**

17. Prices and Variations

- 17.1 The contract price shall be as specified in the Contract Agreement.
- 17.2 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender. Any price variation must be based on the prevailing consumer price index of the Kenya National Bureau of Statistics or the Central Bank of Kenya inflation rate.

18. Quantity Variation

- 18.1 If the Procuring Entity at any time wishes to make changes within the general scope of the Contract may request the Supplier to provide a quotation on the effect of the

change on the time and the cost of the contract on the basis of the contract price.

18.2 Any quotation for additional cost or time by the Supplier for adjustment under this clause must be presented within fourteen (14) days from the date of the Supplier's receipt of the Procuring Entity's request for change order.

18.3 If the Procuring Entity accepts the Supplier's quotation he will issue a formal Change Order in writing. The Supplier will not be eligible to claim reimbursement for any change to the contract unless he is in receipt of such formal written instruction.

18.4 All variations must collectively not exceed 15% of the original contract quantity for goods and/or incidental services.

19. **Contract Amendments** 19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

20. **Assignment** 20.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, obligations under this Contract, except with the prior written consent of the other party.

21. **Subcontracts** 21.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under this contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any liability or obligation under the contract.

21.2 Subcontracts must comply with the provision of GCC.

22. **Delays in the Supplier's Performance** 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in the Schedule of Requirements.

22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.

22.3 Except as provided under GCC Clause 24, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of liquidated damages.

23. **Liquidated Damages** 23.1 Subject to GCC Clause 27, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in** Clause 12 of **the CDS** of the delivered price of the delayed Goods 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** Clause 12 of **the CDS**. Once the maximum is reached, the Procuring Entity may consider

termination of the Contract pursuant to GCC Clause 24.

- 24. Termination for Default**
- 24.1 The Procuring Entity or the Supplier, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the concerned party may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 24.2 Fundamental breaches of Contract shall include, but shall not be limited to the following:
- (a) The Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 22; or
 - (b) The Supplier fails to perform any other obligation(s) under the Contract;
 - (c) The supplier has abandoned or repudiated the contract.
 - (d) The Procuring Entity or the Supplier is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (e) The Procuring Entity gives Notice that goods delivered with a defect is a fundamental breach of Contract and the Supplier fails to correct it within a reasonable period of time determined by the Procuring Entity ; and
 - (f) The supplier, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 24.3 If the Procuring Entity terminates the Contract pursuant to GCC Clause 24.2 (f) above the amount of Liquidated Damages specified in Clause 13 of the **CDS** shall immediately become due from the Supplier to the Procuring Entity.
- 25. Termination for Insolvency**
- 25.1 The Procuring Entity may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.
- 26. Force Majeure**
- 26.1 Notwithstanding the provisions of GCC Clauses 24 and 25, the Supplier 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.
- 26.2 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier 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.
- 27. Disputes**
- 27.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- If the dispute is not solved by mutual consultation, either party may refer the matter to an Arbitrator.
- 28. Procedure for Disputes**
- 28.1 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the Clause 14 of **the CDS**.

29. **Limitation of Liability** 29.1 Except in cases of criminal negligence or wilful conduct, and in the case of infringement pursuant to GCC Clause 8,
- The supplier shall not be liable to the Procuring Entity , 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 Supplier to pay liquidated damages to the Procuring Entity ; and
- The aggregate liability of the Supplier to the Procuring Entity , 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 Supplier to indemnify the Procuring Entity with respect to patent infringement.
30. **Notices** 30.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by facsimile or e-mail and confirmed in writing through registered mail to address **specified in Clause 15 of the CDS**.
- 30.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
31. **Taxes and Duties** 31.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed inside and outside the Republic of Kenya.
- 31.2 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Republic of Kenya, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**SECTION V - CONTRACT DATA SHEET
(SPECIFIC CONDITIONS OF CONTRACT)**

Contract Data Sheet

The following Contract Data shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses.

CDS Clause Number	GCC Clause Number	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
Definitions (GCC Clause 1)		
1.	1.1(h)	The effective date of the contract is ; Date of signing the contract by both parties
	1.1(j)	The End user is: State Department of Gender Affairs. - Public Primary schools, special Primary and Public Secondary schools in Kenya.
	1.1(o)	The Procuring Entity is: State Department of Gender Affairs.
	1.1(p)	The Project site: Public Primary schools, special schools (Primary and Secondary) in Kenya.
Governing Language (GCC Clause 3)		
2.	3.1	The Governing Language if not English shall be: Not Applicable
Applicable Law (GCC Clause 4)		
3.	4.1	The Applicable Law shall be: Laws of the Republic of Kenya
Performance Security (GCC Clause 9)		
4.	9.1	A Performance Security <i>shall</i> be required. If a Performance Security is required, the amount shall be: 10% of the Contract Value from a reputable financial institution.
	9.4	After delivery and acceptance of the Goods, the performance security shall be discharged in <i>not later than 30 days following the date of completion.</i>
Inspections and Tests (GCC Clause 10)		
5.	10.2	Inspection and tests prior to shipment of Goods and at final acceptance are as follows: Quality inspection shall be carried out prior to distribution of Goods by the manufacturer(s) /supplier's at his/her own expense and responsibility in terms of the items specified in the specifications. The supplier shall submit the inspection certificate issued by him / herself which should be attached with the certificate(s) of the manufacturer(s) to the Procuring Entity in order to ensure that the goods are manufactured in compliance with the technical specification, schedule of requirement and conforms to the KEBS standards
Packing (GCC Clause 11)		
6.	11.2	<i>The Goods shall be packed properly in accordance with standard packing</i>

		<i>and as specified by the Procuring Entity in the Technical Specification.</i>
	Delivery and Documents (GCC Clause 12)	
7.	12.1	<p><i>Upon delivery of the Goods, the Supplier shall avail the following documents to the Procuring Entity:</i></p> <ul style="list-style-type: none"> <i>i) One original and three copies of the Supplier's waybill showing Goods' description, quantity, media of transport and time of delivery (Original and duplicate to accompany claims for payment, triplicate to be left with the respective school heads and the quadruplicate to be retained by the supplier)</i> <i>ii) Delivery note</i> <i>iii) Inspection certificate issued by the Kenya Bureau of Standards, and the Supplier's factory inspection report.</i>
	Incidental Services (GCC Clause 13)	
8.	13.1	Incidental services to be provided are: <i>Not Applicable</i>
	Spare Parts (GCC Clause 14)	
9.	14.1	The bidder shall demonstrate that spare parts shall be available locally: Not Applicable
	Warranty (GCC Clause 15)	
10.	15.2	The Sanitary Towels should have a minimum of two year before expiry from the date of receipt at the sub-counties.
	15.4 & 15.5	The period for correction of defects in the warranty period is: 30 days
	Payment (GCC Clause 16)	
11.	16.1	The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:
		<p>Method-</p> <ul style="list-style-type: none"> • Through EFT to the suppliers Account to be provided in the contract <p>Conditions:</p> <ul style="list-style-type: none"> • Payment will be made upon confirmed delivery. • The Supplier may request part payment for the completed delivery but in all cases should not be below 30% of the contract price. • As a minimum the following documents shall form part of the payment claims <ul style="list-style-type: none"> ▪ Certified (signed and stamped) copies of waybills/ Deliveries by the receiving School Heads. ▪ Original Invoice ▪ Inspection and Acceptance certificate signed by the specific school boards of management.

	16.3	Period for payment following a valid invoice: 30 days.
	16.4	Rate to be used for paying the Supplier's interest on the late payment made by Procuring Entity shall be the Central Bank of Kenya commercial bank lending rate.
	16.5	The payment currency to the supplier under this contract shall be the currency of bid. Kenya Shillings
Liquidated Damages (GCC Clause 23)		
12.	23.1	Applicable rate: 0.02 per cent per day of undelivered materials/good's value. Maximum deduction: is equal to the performance security.
13.	24.3	In the event of corrupt or fraudulent practice or any breach of the Integrity Declaration, the Supplier shall be liable to pay to the Procuring Entity 100% of the Contract Price.
Procedure for Disputes (GCC Clause 28).		
14.	28.1	Arbitration institution shall be In the case of a dispute between the Purchaser and the Supplier, , the dispute shall be referred to adjudication or arbitration in accordance with the provisions of the Arbitration Act 1995 Cap 49 Laws of the Republic of Kenya.
Notices (GCC Clause 30)		
15.	30.1	Procuring Entity's address for notice purposes: Principal Secretary, State Department of Gender Affairs Telposta Towers Koinange Street, 4 th floor P.O. Box 29966-00100, Nairobi Tel +254 020 221 6500 NAIROBI – KENYA

SECTION VI: SCHEDULE OF REQUIREMENTS

SCHEDULE OF REQUIREMENTS

The following table reflects the Ministry's region of delivery which covers the schools which will benefit from the sanitary towels for the financial years 2018/2019-2019/2020

SUPPLY AND DELIVERY OF SANITARY TOWELS TO PRIMARY SCHOOLS 2018/2019-2019-2020	
County	Sub-County
Baringo	BARINGO CENTRAL
	BARINGO NORTH
	EAST POKOT
	KOIBATEK
	MARIGAT
	MOGOTIO
Bomet	BOMET
	BOMET EAST
	CHEPALUNGU
	KONOIN
	SOTIK
Bungoma	BUMULA
	BUNGOMA CENTRAL
	BUNGOMA EAST
	BUNGOMA NORTH
	BUNGOMA SOUTH
	BUNGOMA WEST
	CHEPTAIS
	KIMILILI
	MT ELGON
	WEBUYE WEST
Busia	BUNYALA
	BUSIA
	BUTULA
	NAMBALE
	SAMIA
	TESO NORTH
	TESO SOUTH
Elgeyo Marakwet	KEIYO
	KEIYO SOUTH
	MARAKWET EAST
	MARAKWET WEST
Embu	EMBU EAST
	EMBU NORTH
	EMBU WEST
	MBEERE NORTH
	MBEERE SOUTH
Garissa	BALAMBALA

	DADAAB
	FAFI
	GARISSA
	HULUGHO
	IJARA
	LAGDERA
Homa Bay	HOMA BAY
	MBITA
	NDHIWA
	RACHUONYO NORTH
	RACHUONYO SOUTH
	SUBA
Isiolo	GARBATULA
	ISIOLO
	MERTI
Kajiado	ISINYA
	KAJIADO CENTRAL
	KAJIADO NORTH
	KAJIADO WEST
	LOITOKITOK
	MASHUURU
Kakamega	BUTERE
	KAKAMEGA CENTRAL
	KAKAMEGA EAST
	KAKAMEGA NORTH
	KAKAMEGA SOUTH
	KHWISERO
	LIKUYANI
	LUGARI
	MATETE
	MATUNGU
	MUMIAS
	NAVAKHOLO
Kericho	BELGUT
	BURETI
	KERICHO
	KIPKELION
	LONDIANI
	SIGOWEI / SOIN
Kiambu	GATUNDU NORTH
	GATUNDU SOUTH
	GITHUNGURI
	JUJA
	KABETE
	KIAMBU
	KIKUYU

	LARI
	LIMURU
	RUIRU
	THIKA EAST
	THIKA WEST
Kilifi	BAHARI (KILIFI)
	GANZE
	KALOLENI
	KILIFI SOUTH
	MAGARINI
	MALINDI
	RABAI
Kirinyaga	KIRINYAGA CENTRAL
	KIRINYAGA EAST
	KIRINYAGA WEST
	MWEA EAST
	MWEA WEST
Kisii	GUCHA
	GUCHA SOUTH
	KENYENYA
	KISII CENTRAL
	KISII SOUTH
	MARANI
	MASABA SOUTH
	NYAMACHE
	SAMETA
Kisumu	KISUMU CENTRAL
	KISUMU EAST
	KISUMU WEST
	MUHORONI
	NYAKACH
	NYANDO
	SEME
Kitui	IKUTHA
	KATULANI
	KISASI
	KITUI CENTRAL
	KITUI WEST
	KYUSO
	LOWER YATTA
	MATINYANI
	MUMONI
	MUTITO
	MUTOMO
	MWINGI CENTRAL

	MWINGI EAST
	MWINGI WEST /MIGWANI
	NZAMBANI
	TSEIKURU
Kwale	KINANGO
	KWALE
	LUNGA LUNGA
	MSAMBWENI
Laikipia	LAIKIPIA CENTRAL
	LAIKIPIA EAST
	LAIKIPIA NORTH
	LAIKIPIA WEST
	NYAHURURU
Lamu	LAMU EAST
	LAMU WEST
Machakos	ATHI RIVER
	KANGUNDO
	KATHIANI
	MACHAKOS
	MASINGA
	MATUNGULU
	MWALA
	YATTA
Makueni	KATHONZWENI
	KIBWEZI
	KILUNGU
	MAKINDU
	MAKUENI
	MBOONI EAST
	MBOONI WEST
	MUKAA
	NZAU
Mandera	BANISA
	LAFEY
	MANDERA CENTRAL
	MANDERA EAST
	MANDERA NORTH
	MANDERA WEST
Marsabit	CHALBI
	HORR NORTH
	LOIYANGALANI
	MARSABIT
	MARSABIT SOUTH (LAISAMIS)
	MOYALE
	SOLOLO

Meru	BUURI
	IGEMBE CENTRAL
	IGEMBE NORTH
	IGEMBE SOUTH
	IMENTI NORTH
	IMENTI SOUTH
	MERU CENTRAL
	TIGANIA EAST
	TIGANIA WEST
Migori	AWENDO
	KURIA EAST
	KURIA WEST
	MIGORI
	NYATIKE
	RONGO
	URIRI
Mombasa	CHANGAMWE
	JOMVU
	KISAUNI
	LIKONI
	MVITA (MOMBASA)
	NYALI
Murang'a	GATANGA
	KAHURO
	KANDARA
	KANGEMA
	KIGUMO
	MATHIOYA
	MURANG'A EAST
	MURANG'A SOUTH
Nairobi	DAGORETTI
	EMBAKASI
	KAMUKUNJI
	KASARANI
	KIBRA
	MAKADARA
	MATHARE
	NJIRU
	STAREHE
	WESTLANDS
Nakuru	GILGIL
	KURESOI
	KURESOI NORTH
	MOLO
	NAIVASHA
	NAKURU

	NAKURU NORTH
	NAKURU WEST
	NJORO
	RONGAI
	SUBUKIA
Nandi	CHESUMEI
	NANDI CENTRAL
	NANDI EAST
	NANDI NORTH
	NANDI SOUTH
	TINDERET
Narok	NAROK EAST
	NAROK NORTH
	NAROK SOUTH
	NAROK WEST
	TRANS MARA EAST
	TRANS MARA WEST
Nyamira	BORABU
	MANGA
	MASABA NORTH
	NYAMIRA NORTH
	NYAMIRA SOUTH
Nyandarua	KINANGOP
	KIPIPIRI
	MIRANGINE
	NYANDARUA CENTRAL
	NYANDARUA NORTH
	NYANDARUA SOUTH
	NYANDARUA WEST
Nyeri	KIENI EAST
	KIENI WEST
	MATHIRA EAST
	MATHIRA WEST
	MUKURWE-INI
	NYERI CENTRAL
	NYERI SOUTH
	TETU
Samburu	SAMBURU CENTRAL
	SAMBURU EAST
	SAMBURU NORTH
Siaya	BONDO
	GEM
	RARIEDA
	SIAYA
	UGENYA
	UGUNJA

Taita Taveta	MWATATE
	TAVETA
	VOI
	WUNDANYI (TAITA)
Tana River	BURA (TANA NORTH)
	TANA DELTA
	TANA RIVER
Tharaka-Nithi	MAARA
	MERU SOUTH
	THARAKA NORTH
	THARAKA SOUTH
Trans Nzoia	ENDEBES
	KIMININI
	KWANZA
	TRANS NZOIA EAST
	TRANS NZOIA WEST
Turkana	KIBISH
	LOIMA
	TURKANA CENTRAL
	TURKANA EAST
	TURKANA NORTH
	TURKANA SOUTH
	TURKANA WEST
Uasin Gishu	ELDORET EAST
	ELDORET WEST
	KESSES
	MOIBEN
	SOY
	WARENG
Vihiga	EMUHAYA
	HAMISI
	SABATIA
	VIHIGA
Wajir	BUNA
	ELDAS
	HABASWEIN
	TARBAJ
	WAJIR EAST
	WAJIR NORTH
	WAJIR SOUTH
	WAJIR WEST
West Pokot	KIPKOMO
	POKOT CENTRAL
	POKOT NORTH
	POKOT SOUTH
	WEST POKOT

TECHNICAL SPECIFICATIONS

The specifications will follow EAS 96:2008, East African Standard Specification for Sanitary Towels:

The Sanitary Towels shall be ultra-thin type meeting the Specification below:

a. Materials

i) Absorbent Filler

When visually examined, the absorbent filler shall be white or light in colour and shall be free from any water soluble coloring matter when inspected and tested. It shall not contain extraneous materials, which are not designed to enhance performance

ii) Covering

The absorbent filler covering shall be made of good quality fabric with sufficient porosity to permit the assembled towel to meet absorbency requirements.

iii) Protective barrier

The protective barrier shall be water resistant (no wetting of outer surface and no water penetration) when inspected and tested.

b) Workmanship and finishing

i) Absorbent filler

The absorbent filler shall be continuous and neatly cut to the required size. It shall be free from hard lumps. It shall be completely covered and free from wrinkles that are not a design feature.

ii) Securing mechanism

The following shall be used:

Adhesive strips or patch and wings with adhesive, which shall be of sufficient length in such a manner as to form folds around the panty/brief for securing the sanitary towel when in use.

iii) Protective barrier

The sanitary towels shall have a protective barrier on one side, if not clear, they shall have an identifying mark or colour indicating clearly the side of the barrier.

iv) Freedom from defects

The sanitary towels when visually examined shall be free from defects, which affects the appearance and utility such as oil stains, dirt, soil particles and hard lumps.

v) Odour

The sanitary towels shall have no unpleasant odour either in dry state immediately after sampling from the packages or after wetting the sample with distilled water.

vi) Texture

The sanitary towels shall be smooth and soft when felt by hand

vii) Performance Requirements

Performance requirement for sanitary towels

Characteristics	Requirement	Test Method
Absorbency capacity	No leakage	Annex C of EAS 96
Absorbency rate (s) max	10	Annex D of EAS 96
pH Value	5.5 – 8.5	EAS 261, Method B ^{a)}
Moisture content of filler material (%) max.	8	Annex E of EAS 96
Fluorescence of filler materials	None	Annex G of EAS 96
Size (mm) min. (filler material only)	Width 40 Length 240	Measured by a ruler
a) In case a jelly forms, dilute with more distilled water before determining the pH.		

Refer- Source: EAS 96:2008, East African Standard Specification for Sanitary Towels:

(b) Microbiological requirements

(i) When packed in sterile conditions as declared by a manufacturer sanitary towels shall pass test for sterility when in accordance with EAS 217-1

(ii) When packed in non – sterile condition:

a) the total viable bacterial count shall not exceed 1000 per sanitary towels

b) When tested, they shall be free from enterobacteriaceae, staphylococcus aureus, and pseudomonas aeruginosa.

(c) Flushability

When declared to be flushable in water closets, sanitary towels shall be manufactured from disposable materials.

(d) Packaging

(i) **Package**

Sanitary towels shall be supplied in packages of suitable materials, which are sealed so as to protect them from moisture, soiling and contamination during storage and transportation.

(ii) Bales

The packages shall be supplied in bales made of suitable materials which are strong enough to hold the number of declared packages. The bale shall withstand pressure during transportation and stockpile during storage. It shall be properly sealed to prevent the package spilling.

(e) Marking

(i) Packages

The following information shall appear and indelibly on the outside of each package

- The manufacturer's name and/or registered trade mark;
- The words "Sanitary towels";
- Words "Sterile" if applicable;
- Words or symbol indicating whether flushable or not;
- Securing mechanism as per b (ii)
- Words "GOK MPSYGA FREE– NOT FOR SALE" (must be conspicuously displayed in large fonts so as to be seen from a distance, the font height shall be not less than 5mm)
- Number of sanitary towels in a package i.e. 8 Pieces per packet
- Country of manufacture;
- Batch identification number;
- Disposal instruction;
- Date of manufacture;
- Expiry date

(ii) Bale

The following information shall appear legibly and indelibly on the outside of each bale

- a) The manufacturer's name and/or registered trade mark;
- b) The words "Sanitary towels";
- c) Number of sanitary towels in a package

NB: The proposed mode of packaging shall be per School term within the specified county. The packaging list for each school will be provided on receipt of an order.

Inspection and test

The supplier(s) will be expected to show evidence of the sanitary towels having been inspected by the Kenya Bureau of Standards (KEBS). A test report issued must accompany the certificate of inspection issued must accompany the goods.

Insurance

The supplier(s) shall insure the goods until they are handed over to the identified recipients.

Payment

Payment of contract price on receipt of goods, after the date of acceptance certificate for the respective delivery issued by the purchaser and upon submission of the following at the State Department of Gender Affairs Headquarters:

- Waybill/Delivery notes duly signed by the sub county Head of Supply Chain Management Services
- Inspection and acceptance certificate duly signed by the sub county Inspection and Acceptance Committee
- Copies of inspection certificate from KEBS
- The supplier(s) invoice(s)
- Inspection and acceptance report duly signed by the above committee

Verification of Sanitary Towels

Goods will be verified at the supplier's Go-down within Kenya, where the Ministry's officials will verify the goods ready for dispatch to the respective district warehouses / distribution stores.

Delivery to Project Site

The sanitary towels shall be delivered to the locations according to lots as classified:

SECTION VIII: TENDER FORM

A. FORM OF TENDER

To: *[Name and address of the PE]*
Date: *[insert **date** (as day, month and year)]*
Tender No.: *[insert **number of Tendering process**]*
Item Description: *[insert description of Items]*

Sir/Madam,

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

We undertake, if our Tender is accepted, to deliver the Goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Tender documents.

We agree to abide by this Tender for the Tender validity period specified in Clause 18.1 of the TDS, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process.

Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any Tender you may receive.

We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this _____ day of _____ 20____.
(Name)

[signature]

[in the capacity of]

Duly authorized to sign Tender for and on behalf of _____

B. PRICE SCHEDULES FOR GOODS AND RELATED SERVICES

Date: _____

NCB No.: _____

Name of the Bidder: _____

1	2	3	4	5
<i>Lot No.</i>	<i>Regions</i>	<i>Country of origin and brand</i>	<i>Percent of national origin</i>	<i>Unit price per Packet of 8 Pieces inclusive of taxes, levies and transport cost</i>
1	Kiambu, Kirinyaga, Murang'a, Nyeri			
2	Machakos, Nairobi, Kajiado			
3	Embu, Makueni, Meru, Tharaka Nithi, Kitui			
4	Laikipia, Nyandarua, Baringo, Marsabit, Samburu, Isiolo			
5	Mombasa, Lamu, Kilifi, Tana River, Garissa, Wajir, Mandera, Taita Taveta, Kwale			
6	Kisii, Nyamira, Homabay, Kisumu, Migori, Siaya,			
7	Turkana, Elgeyo Marakwet, West Pokot, Trans Nzoia, Uasin gishu			
8	Busia, Vihiga, Kakamega, Bubgoma			
9	Nakuru, Narok, Bomet, Nandi, Kericho			

Name in the capacity of

Signature of Tenderers.....

Duly authorized to sign the Tender for and on behalf of

Dated on day of 20

C. CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business

You are advised that it is a serious offence to give false information on this form

	<p><i>Part 1 – General:</i></p> <p>Business Name</p> <p>Location of business premises.</p> <p>Plot No..... Street/Road</p> <p>Postal Address Tel No. Fax E mail</p> <p>Nature of Business</p> <p>Registration Certificate No.</p> <p>Maximum value of business which you can handle at any one time – KES.</p> <p>Name of your bankers Branch</p>																														
	<p><i>Part 2 (a) – Sole Proprietor</i></p> <p>Your name in full Age</p> <p>Nationality Country of origin</p> <p>*Citizenship details.....</p>																														
	<p><i>Part 2 (b) - Partnership</i></p> <p>Given details of partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 25%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 25%;">*Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	*Citizenship Details	Shares	1.	2.	3.	4.					
	Name	Nationality	*Citizenship Details	Shares																											
1.																											
2.																											
3.																											
4.																											
	<p><i>Part 2 (c) – Registered Company</i></p> <p>Private or Public</p> <p>State the nominal and issued capital of company-</p> <p>Nominal KES.</p> <p>Issued KES.</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 25%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 25%;">*Citizenship Details</th> <th style="width: 20%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	*Citizenship Details	Shares	1.	2.	3.	4.	5.
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1.																											
2.																											
3.																											
4.																											
5.																											
	<p><i>Part 2 (d) –Co-operative Society</i></p> <p>Given details of Central Management Committee Members as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 25%;">Name</th> <th style="width: 25%;">Nationality</th> <th style="width: 25%;">*Citizenship Details</th> <th style="width: 20%;">Designation</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	*Citizenship Details	Designation	1.	2.	3.	4.	5.
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1.																											
2.																											
3.																											
4.																											
5.																											

1.
2.
3.
4.
5.
6.

We, the undersigned declare that the information contained in and attached to this form is true and accurate as of the date of tender submission

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Tenderer: _____

Address: _____

Date Signature of Candidate

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

**D. MANUFACTURER’S/PATENT-HOLDER’S AUTHORIZATION
FORM**

To *[name of the Procuring entity]*

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

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

[signature for and on behalf of manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the Tenderer in its Tender.

**SECTION IX: TENDER SECURITY AND DECLARATION
FORMS**

A. TENDER SECURITY (BANK GUARANTEE)

Bank Letterhead

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

Sealed with the Common Seal of the said Bank/Insurance Company this _____ day of _____ 20 _____.

THE CONDITIONS of this obligation are:-

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

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

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

[signature of the authorized representative of the bank/insurance company]
Seal

B. TENDER-SECURING DECLARATION

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

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

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

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for tendering in any public procurement tenders with any public entity for the period of time determined by the Public Procurement Oversight Authority, if we are in breach of our obligation(s) under the tendering conditions, because we:
 - a) have withdrawn our tender during the period of tender validity specified in the Tender Data Sheet; or
 - b) having been notified of the acceptance of our Tender by the Procuring Entity during the period of tender validity fail or refuse to execute the contract; or fail or refuse to furnish the performance security, if so required.
3. We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon our receipt of your notification or regret of the tender award letter; or thirty-eight days after the expiration of our Tender, whichever is earlier.
4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and if the Joint Venture has not been legally constituted at the time of tendering, the Tender Securing Declaration shall be in the names of all envisaged partners as named in the letter of intent.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person signing the Tender Securing Declaration]*

Name: *[insert complete name of person signing the Tender Securing Declaration]*

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

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

C. INTEGRITY DECLARATION

I/We/Messrs.....of
Street/avenue, Building, P. O. Box.....Code, of (town),
(Nationality), Phone E-mail declare that Public Procurement is
based on a free and fair competitive tendering process which should not be open to abuse.

I/We declare
that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any
public officer, their relations or business associates, in connection with

Tender name:

Tender No.

For/or in the subsequent performance of the contract if I/We am/are successful.

Dated this day of 20.....

Authorized Signature.....Official Stamp

Name and Title of Signatory.....

D. NON-DEBARMENT STATEMENT FORM

I/We/Messrs..... of
Street/avenue, Building, P. O. Box.....Code, of (town),
(Nationality), Phone: E-mail declare that I/We /Messrs
..... are not debarred from participating in public
procurement by the Public Procurement Oversight Authority pursuant to section 115 of the
Public Procurement and Disposal Act, 2005.

Dated this day of 20.....

Authorized Signature.....Official Stamp

Name and Title of Signatory.....

**SECTION X: FORM OF APPLICATION TO PUBLIC
PROCUREMENT ADMINISTRATIVE
REVIEW BOARD**

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

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

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.
- etc

SIGNED (Applicant)

Dated on.....day of/...20...

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary

SECTION XI - CONTRACT FORMS

A. LETTER OF NOTIFICATION TO UNSUCCESSFUL BIDDERS

[to be printed on the Letterhead of the Procuring Entity]

[date]

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

Re: Letter of notification to Unsuccessful Bidders

This is to inform you in that your offer in relation to *[tender name and number]* has been determined to be unsuccessful upon evaluation. We intend to make a contract with *[name of successful tenderer]* for *[amount]*. Your tender security / tender securing declaration will be discharged.

Thank you for your participation in the tendering process.

Yours

(Name of Accounting Officer)
Accounting Officer/Head of Procuring Entity

B. LETTER OF ACCEPTANCE/NOTIFICATION OF AWARD

[to be printed on the Letterhead of the Procuring Entity]

[date]

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

Re: Letter of Acceptance/Notification of Award

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 Sheet] for the Contract Price of the equivalent of [amount in numbers and words] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us and it is our intention to proceed to make a written contract in accordance with the terms specified in the tender documents on the expiry of fourteen (14) days period from the date of this notification.

The contract shall be signed by the parties within 30 days from the date of this letter but not earlier than 14 days from the date of the letter.

Yours

(Name of Accounting Officer)
Accounting Officer/Head of Procuring Entity

Please return a copy of this letter duly signed

Authorized Signature and Seal: _____

Name and Title of Signatory: _____

Name of Tenderers: _____

FORM OF CONTRACT AGREEMENT

THIS AGREEMENT made the _____ day of _____ 20 _____ between
[*name of Procuring Entity*] of [*Country of Procuring Entity*] (hereinafter called “the
Procuring entity) of the one part and [*name of tenderer*] of [*city and
country of tenderer*] (hereinafter called “the tenderer”) of the other part;

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer)

In the presence of _____

C. BANK/INSURANCE PERFORMANCE GUARANTEE

To
[name of Procuring entity]

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

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

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

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

This guarantee is valid until the day of 20

Signed and seal of the Guarantors[name of Bank/Insurance Company]

[name, identification number of authorized officer from the Bank/Insurance Company]

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

In the presence of (name, identification number and signature of authorized officer from the contractor)

D. BANK/INSURANCE ADVANCE PAYMENT GUARANTEE

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Contract Data Sheet, which amends the General Conditions of Contract to provide for advance payment, [name and address of tenderer](hereinafter called "the tenderer") shall deposit with the Procuring entity a Bank/Insurance Company guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of [amount of guarantee in figures and words].

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

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

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

Yours truly,

Signed and seal of the Guarantors[name of Bank/Insurance Company]

[name, identification number of authorized officer from the Bank/Insurance Company]

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

In the presence of(name, identification number and signature of authorized officer from the contractor).

E. Bidder Information Sheet

Date: _____

NCB No.: _____

1. Bidder's Legal Name
2. In case of Joint Venture, Consortium or Association (), legal name of each partner:
3. Bidder's actual or intended Country of Constitution, Incorporation, <i>or Registration</i> :
4. Bidder's Year of Constitution, Incorporation, <i>or Registration</i> :
5. Bidder's Legal Address in Country of Constitution, Incorporation, <i>or Registration</i> :
6. Bidder's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: Articles of Incorporation or Registration of firm named in 1, above In case of <i>JVCA</i> , letter of intent to constitute a legally-enforceable <i>JVCA</i> , including a draft agreement, or <i>JVCA</i> agreement. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

F. Partner to JVCA Information Sheet

Date: _____
NCB No.: _____

1. Bidder's Legal Name:
2. JVCA Partner's legal name:
3. JVCA Partner's Country of Constitution, Incorporation, or Registration:
4. JVCA Partner's Year of constitution into a legally-enforceable JVCA::
5. JVCA Partner's Legal Address in Country of Constitution, Incorporation, or Registration:
6. JVCA Partner's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Constitution, Incorporation or <i>Registration</i> of firm named in 1, above. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law.

G. Current Contract Commitments
--

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

Name of contract	Purchaser, contact address/tel/fax	Value of outstanding supply (current Ksh /US\$ equivalent)	Estimated completion date	Average monthly invoicing over last six months (Ksh /US\$/month)
1.				
2.				
3.				
4.				
5.				
etc.				

H. Financial Situation Form

FIN – 3.1

Historical Financial Performance

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ ICB No.: _____

To be completed by the Bidder and, if JVCA, by each partner

Financial information in Ksh or US\$ equivalent	Historic information for previous _____ (____) years (Ksh or US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (C)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- (a) Must reflect the financial situation of the Bidder or partner to a JVCA, and not sister or parent companies;
- (b) Historic financial statements must be audited by a certified accountant;
- (c) Historic financial statements must be complete, including all notes to the financial statements;
- (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

I. Average Annual Turnover Form

Bidder's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

ICB No.: _____

Annual turnover data		
Year	Amount and Currency	Ksh or US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for supply in progress or completed, divided by the number of years specified in Evaluation Criteria.

J. Financial Resources Form

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

Source of financing	Amount Ksh or (US\$ equivalent)
1.	
2.	
3.	
4.	

K. Experience Form

Bidder's Legal Name: _____

Date: _____

JVCA Partner's Legal Name: _____

NCB No.: _____

Similar Contract Number: ___ of ___ required.	Information	
Contract Identification	_____	
Award date	_____	
Completion date	_____	
Role in Contract	_____	
Total contract amount	_____	US\$ _____
If partner in a JVCA, specify participation in total contract amount	_____ %	US\$ _____
Purchaser's Name:	_____	
Address:	_____ _____	
Telephone/fax number:	_____ _____	
E-mail:	_____	

Attach copies of contracts and local purchase orders.

Experience Form (cont.)

Bidder's Legal Name: _____

JVCA Partner's Legal Name: _____

Similar Contract No. ___ [insert specific number] of [total number of contracts] ___ required	Information
Description of the similarity	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Other Characteristics	_____

Attach copies of contracts, invoices and local purchase orders