



**REPUBLIC OF KENYA
MINISTRY OF PUBLIC SERVICE, PERFORMANCE AND
DELIVERY MANAGEMENT
STATE DEPARTMENT FOR PUBLIC SERVICE**

TENDER DOCUMENT

FOR

LEASING OF OFFICE SPACE IN NAIROBI

TENDER NO. MPSP&DM/SDPS/OT/02/2023-2024

TELPOSTA TOWERS 2ND FLOOR

P.O. BOX 30050-00100

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NAIROBI, KENYA.

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Date Issued: 14TH NOVEMBER 2023

CLOSING DATE: 30TH NOVEMBER 2023 AT 11.00 AM

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SECTION I: INVITATION TO TENDER

TENDER REF. NO. MPSP&DM/SDPS/OT/02/2023-2024

DATE: 14th November 2023

TENDER NAME: LEASING OF OFFICE SPACE IN NAIROBI

- 1.1 State Department for Public Service invites sealed tenders from qualified candidates for Leasing of Office Space in Nairobi. The area of interest is Nairobi Central Business District (CBD), Upper Hill and Community areas.
- 1.2 A complete set of Tender Document(s) can be downloaded free of charge from the State Department For Public Service website www.psyg.go.ke and the public procurement information portal -tenders.go.ke
- 1.3 Completed Tender document plus one copy should be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at State Department for Public Service, Telposta Towers 2nd floor so as to be received on or before **30th November October 2023 at 11.00 am.**
- 1.4 Prices quoted should be net inclusive of all taxes and delivery and must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.
- 1.5 Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend at Telposta Towers, 2nd floor, HRD Boardroom.

Head, Supply Chain Management Services
For: Principal Secretary
State Department for Public Service

SECTION II – INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to eligible tenderers as described in the Appendix to Instructions to Tenderers. Successful tenderers shall provide Lease of Office Space in Nairobi as specified in the tender document.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under the Act.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2 This tender document is free of charge.

2.3 Contents of Tender Document

- 2.3.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to tenderers
 - a) Invitation to Tender
 - b) Instructions to Tenderers
 - c) General Conditions of Contract
 - d) Special Conditions of Contract
 - e) Schedule of requirements
 - f) Technical Specifications
 - g) Tender Form and Price Schedules
 - h) Tender Security Form
 - i) Contract Form
 - j) Performance Security Form
 - k) Bank Guarantee for Advance Payment Form
 - l) Confidential Business Questionnaire Form

m) Declaration form

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

2.4 Clarification of Tender Documents

2.4.1 A prospective tenderer making inquiries of the tender documents may notify the Procuring entity in writing, email or by post at the entity's address indicated in the invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than three (3) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

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

2.5 Amendment of Tender Documents

2.5.1 At any time prior to the deadline for submission of tender, the procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

2.5.2 All prospective tenderers that have obtained the tender documents will be notified of the amendment in writing, email or by post and will be binding on them.

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

2.6 Language of Tender

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

2.7 Documents Comprising the Tender

2.7.1 The tender prepared by the tenderers shall comprise the following components:

- a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
- b) Documentary evidence established in accordance with paragraph 2.1.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- c) Tender security furnished in accordance with paragraph 2.12

2.8 Tender Form

2.8.1 The tenderer shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the brief description of the building and date of construction, class of the building and any other useful information for this tender.

2.9 Tender Prices

2.9.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices where applicable and total tender price of the office space it proposes to lease under the contract.

2.9.2 Prices indicated on the Price Schedule shall be inclusive of all taxes and profits.

2.9.3 Prices quoted by the tender shall remain fixed during the Tender's performance of the contract. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22 unless otherwise agreed by the parties.

2.10 Tender Currencies

2.10.1 Prices shall be quoted in Kenya shillings.

2.11 Tenderers Eligibility and Qualifications

2.11.1 Pursuant to paragraph 2.1.1 and 2.1.2 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.11.2 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 that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 Tender Security

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

2.12.2 The tender security shall be in the amount not exceeding 2 percent of the annual tender price.

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7.

2.12.4 The tender security shall be denominated in Kenya Shillings and shall be in the form of any of the following;

- a) Cash
- b) A bank guarantee from a reputable bank
- c) Such insurance guarantee approved by the Insurance Regulatory Authority
- d) Letter of credit.

2.12.5 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22

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

2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.28 and furnishing the performance security, pursuant to paragraph 2.29

2.12.8 The tender security may be forfeited:

- a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
- b) in the case of a successful tenderer, if the tenderer fails:
 - i. to sign the contract in accordance with paragraph 2.27.1 or
 - ii. to furnish performance security in accordance with paragraph 2.28
- c) If the tenderer rejects correction of an arithmetic error in the tender.

2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for 120 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.20. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

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

2.14 Format and Signing of Tender

- 2.14.1 The Tenderer shall submit two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.
- 2.14.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

- 2.15.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.
- 2.15.2 The inner and outer envelopes shall:
- a) Be addressed to the Procuring entity at the address given on the Invitation to Tender:
**The Principal Secretary
State Department for Public Service
Telposta Towers, 2nd Floor.
P. O. Box 30050 - 00100,
NAIROBI.**
 - b) Bear the tender number and name in the Invitation to Tender and the words “DO NOT OPEN BEFORE **30th November 2023 at 11.00 am.**”
- 2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.
- 2.15.4 If the outer envelope is not sealed and marked as required by paragraph, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.16 Deadline for Submission of Tenders

- 2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than **30th November 2023 at 11.00 am.**
- 2.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates

previously subject to the deadline will therefore be subject to the deadline as extended.

2.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the Appendix.

2.17 Modification and Withdrawal of Tenders

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

2.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.8

2.18 Opening of Tenders

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **30th November 2023 at 11.00 am** and in the following location: **Telposta Towers, 2nd Floor, HRD Boardroom.**

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

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

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

2.19 Clarification of Tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

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

2.20 Preliminary Examination and Responsiveness

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

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

2.20.3 The Procuring entity may waive any minor informality or nonconformity 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.

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

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

2.21 Conversion to Single Currency

No conversion to single currency is expected since all tenders will be in Kenya Shillings.

2.22 Evaluation and Comparison of Tenders

2.22.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

- a. Operational plan proposed in the tender
- b. Deviations in payment schedule from that specified in the Special Conditions of Contract

2.22.3 Pursuant to paragraph 2.22.2. The following evaluation methods will be applied.

a) Operational Plan

- i. The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.

b) Deviation in payment schedule

- ii. Tenderers shall state their tender price for the payment on schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.4 No margin of preference and reservations shall be allowed in this tender.

2.22.5 The evaluation committee shall evaluate the tenders within 30 days from the date of opening the tender.

2.23 Contacting the Procuring Entity

2.23.1 Subject to paragraph 2.19 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

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

2.24 Post-Qualification

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

2.24.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2 as well as such other information as the Procuring entity deems necessary and appropriate.

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

2.25 Award Criteria

2.25.1 The Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the most responsive tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.25.2 To qualify for contract award, the tenderer shall:

- a) Have the necessary qualifications, capability, experience, services, equipment and facilities to provide what is being procured.
- b) Have legal capacity to enter into a contract for procurement.
- c) Have not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- d) Have not been debarred from participating in public procurement.

2.26 Procuring Entity's Right to Accept or Reject any or all Tenders

2.26.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

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

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

2.27 Notification of Award

2.27.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

2.27.2 The notification of award will constitute the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to

clause 2.29. Simultaneously the unsuccessful tenderers shall be notified that their tenders have been unsuccessful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12.

2.28 Signing of Contract

2.28.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

2.28.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.28.3 The contract will be definitive upon its signature by the two parties.

2.28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.29 Performance Security

2.29.1 The successful tenderer shall furnish the performance security in accordance with the Appendix to instructions to tenders, in a form acceptable to the Procuring entity.

2.29.2 Failure by the successful tenderer to comply with the requirement of paragraph 2.28 or paragraph 2.29.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the second most responsive tender or may call for new tenders.

2.30 Corrupt or Fraudulent Practices

2.30.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has and will not be involved in corrupt or fraudulent practices.

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

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

APPENDIX TO INSTRUCTIONS TO TENDERERS

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

EVALUATION CRITERIA:

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	The invitation is an Open National Tender
2.22.1	<p><u>EVALUATION AND COMPARISON OF TENDERS:</u></p> <p>The tenders will be evaluated in four stages as follows:</p> <p><u>A) STAGE ONE: MANDATORY REQUIREMENTS</u></p> <ol style="list-style-type: none">1. Submit a Copy of Certificate of Incorporation or Registration for the Bidder (the company submitting the tender) or copy of National ID/Letter of administration where the tenderer is individual landlord.2. Submit a Copy of Valid Tax Compliance Certificate from KRA for the Bidder (the company submitting the tender).3. Proof of ownership of the premises i.e. Copies of Title Documents/Lease in company / corporate name or individual name.4. Proof of relationship between the principal (building owners) and agent (estate agent) i.e. valid signed agreement document for agency (for estate agent).5. Copy of Certificate of Registration with Estate Agents Registration Board (for estate agents only).6. Copy of valid practicing license as real estate agents with the relevant body for at least two (2) Directors/Top Management (for estate agents).7. Provide organization chart for the bidder's organization (for estate agents only).

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
INSTRUCTIONS TO TENDERERS REFERENCE	<p>8. Provide Curriculum Vitae for at least two (2) Directors/Top Management of the Company (for estate agents only).</p> <p>9. Provide evidence of Building Occupation Permit/certificate from County Government of Nairobi.</p> <p>10. Declaration stating that the bidder has NOT been debarred by Public Procurement Regulatory Authority (PPRA).</p> <p>11. Submit a Signed Declaration statement that the bidder will not be involved in corrupt or fraudulent practices.</p> <p>12. Duly, filled, signed and stamped Confidential Business Questionnaire.</p> <p>13. Submit audited accounts for the last three 3 years (2022, 2021 and 2020)</p> <p>14. Presentation of the entire tender document in a logical manner indicating table of content and page numbers of the entire tender document is a MUST. N/B: ALL THE ABOVE MUST BE MET TO QUALIFY FOR THE 2ND STAGE.</p> <p>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS.</p>

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p style="text-align: center;"><u>B) STAGE TWO: TECHNICAL EVALUATION</u></p> <ol style="list-style-type: none"> 1. Candidates that will have passed Technical Evaluation (i.e. those that offered items which are compliant with the desired technical specifications) will have their financial proposals evaluated. 2. The pass mark for technical specifications shall be 80%- see specification schedule provided on page 37, Section VI. <p style="text-align: center;"><u>C) STAGE THREE: FINANCIAL EVALUATION</u></p> <ol style="list-style-type: none"> a. The bidder with the most responsive proposal (both technical and financial proposals) will be recommended for the award of the contract. b. Minimum of 60 days credit period is required after occupation of the premises. c. In case of discrepancy between unit price and total, the unit price shall prevail. d. If there is a tie on the most responsive tender price between two firms, the firm with the highest technical points will be recommended for award. <p style="text-align: center;"><u>D) STAGE FOUR: DUE DILIGENCE</u></p> <p>Due diligence will only be done to the successful bidder i.e. most responsive bidder and thereafter recommendation will be made for further possible award.</p> <p>NB: Evaluation Committee will set out the due diligence criteria to be used for the most responsive bidder to ascertain the accuracy of the information given in the tender documents, capacity and capability of the tenderers and confirm whether the documents submitted conform to the contract specification/tender proposal.</p>
2.16.1	Tenders must be submitted on or before the closing date, not later than 30th November 2023 at 11.00 am
2.18.1	The Procuring Entity will open all tenders in the presence of tenderer's representatives, who choose to attend on 30th November 2023 at 11.00 am

SECTION III - GENERAL CONDITIONS OF CONTRACT

3. Definitions

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

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

3.2 Contract Documents

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

3.3 Fraud and Corruption

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

3.3.2 The Procuring Entity requires the Lessor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.4 Interpretation

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

3.5 Entire Agreement

The Contract constitutes the entire agreement between the Procuring Entity and the Lessor and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

3.6 Amendment

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

3.7 Non-waiver

a Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

b Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

3.8 Severability

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

3.9 Language

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

3.10 Joint Venture, Consortium or Association

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

3.11 Eligibility

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

3.12 Notices

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

3.13 Governing Law

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

- a) as a matter of law or official regulations, Kenya prohibits commercial relations

- with that country; or
- b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of Lease Items from that country or any payments to any country, person, or entity in that country.

3.14 Settlement of Disputes

- 3.14.1 The Procuring Entity and the Lessor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 3.14.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, neither the Procuring Entity or the Lessor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Lease Items under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.
- 3.14.3 Notwithstanding any reference to arbitration herein,
- a the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b the Procuring Entity shall pay the Lessor any monies due the Lessor.

3.15 Inspections and Audit by the Procuring Entity

- 3.15.1 The Lessor shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease Items in such form and details as will clearly identify relevant time changes and costs.
- 3.15.2 Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Lessor shall permit and shall cause its subcontractors and sub consultants to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Lessor's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, inter alia, that acts intended

to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

3.16 Scope of Lease Supply

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

3.17 Delivery and Documents

Delivery of the equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

3.18 Lessor's Responsibilities

The Lessor shall supply the Lease Items and Related Services included in the Scope of Supply in accordance with GCC Clause12, and the Delivery and Completion Schedule, as per GCC Clause 13.

3.19 Contract Price

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

3.20 Terms of Payment

3.20.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessor under this Contract shall be those in which the Tender price is expressed.

3.20.2 The Procuring Entity shall pay to Lessor the advance payment stated in the SCC upon or before taking possession of the property. Thereafter, the Procuring Entity shall pay the Lessor the sum of stated in the SCC on or before the day of each month as stated in the SCC until the expiration of this lease.

3.20.3 If the Procuring Entity fails to pay all amounts due within the number of days specified in the SCC of their due dates, then the Lessor may terminate the contract under this lease and take back possession and control of the Lease Item(s). In the event of termination for non-payment, the Procuring Entity shall remain liable for the balance due under this lease.

3.21 Taxes and Duties

The Lessor shall be responsible for paying all taxes levied in Kenya.

3.22 Performance Security

3.22.1 If required as specified in the SCC, the Lessor shall, within twenty-eight (28) days

of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.

3.22.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Lessor's failure to complete its obligations under the Contract.

3.22.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another form at acceptable to the Procuring Entity.

3.22.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Lessor not later than twenty-eight (28) days following the date of Completion of the Lessor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

3.23 Copyright

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

3.24 Confidential Information

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

3.24.2 The Procuring Entity shall not use such documents, data, and other information received from the Lessor for any purposes unrelated to the contract. Similarly, the Lessor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.

3.24.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- a the Procuring Entity or the Lessor need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in the **SCC**;
- b now or hereafter enters the public domain through no fault of that party;
- c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- d otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

3.24.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Supply or any part thereof.

3.24.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

3.25 Subcontracting

3.25.1 The Lessor shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessor from any of its obligations, duties, responsibilities, or liability under the Contract.

3.25.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

3.26 Specifications and Standards

Technical Specifications and Drawings

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

of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

3.27 *Packing and Documents*

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

3.28 *Insurance*

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

3.29 *Transportation and Incidental Services*

3.29.1 The Lessor may be required to provide any or all of the following services, including additional services, if any, specified **in SCC**:

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

3.29.2 Prices charged by the Lessor for incidental services, if not included in the Contract Price for the Lease Items, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services.

3.30 *Inspections and Tests*

3.30.1 The Lessor shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Lease Items and Related Services as are specified in the **SCC**.

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

representative, nor the issue of any report pursuant to GCC Sub- Clause 26.6, shall release the Lessor from any warranties or other obligations under the Contract.

3.31 *Liquidated Damages*

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

3.32 *Patent Indemnity*

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

- a The installation of the Lease Items by the Lessor or the use of the Lease Items in the country where the Site is located; and
- b the sale in any country of the products produced by the Lease Items.

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

3.32.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Lessor a notice thereof, and the Lessor may at its own expense and in the Procuring Entity's name conduct such proceedings or

claim and any negotiations for the settlement of any such proceedings or claim.

3.32.3 If the Lessor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.

3.32.4 The Procuring Entity shall, at the Lessor's request, afford all available assistance to the Lessor in conducting such proceedings or claim, and shall be reimbursed by the Lessor for all reasonable expenses incurred in so doing.

3.32.5 The Procuring Entity shall indemnify and hold harmless the Lessor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Lessor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

3.33 *Limitation of Liability*

Except in cases of criminal negligence or willful misconduct,

- a The Lessor 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 Lessor to pay liquidated damages to the Procuring Entity, and
- b The aggregate liability of the Lessor 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 Lessor to indemnify the Procuring Entity with respect to patent infringement.

3.34 *Change in Laws and Regulations*

Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the

Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Lessor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

3.35 Force Majeure

- 3.35.1 The Lessor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 3.35.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Lessor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessor. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 3.35.3 If a Force Majeure situation arises, the Lessor 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 Lessor 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.

3.36 Change Orders and Contract Amendments

- 3.37.1 The Procuring Entity may at any time order the Lessor through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- a drawings, designs, or specifications, where Lease Items to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
 - b the method of shipment or packing;
 - c the place of delivery; and
 - d the Related Services to be provided by the Lessor.
- 3.37.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Lessor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the

Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Lessor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Lessor's receipt of the Procuring Entity's change order.

3.37.3 Prices to be charged by the Lessor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services.

3.38 Value Engineering:

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

- a the proposed change(s), and a description of the difference to the existing contract requirements;
- b a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
- c a description of any effect(s) of the change on performance/functionality.

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

- a accelerates the delivery period; or
- b reduces the Contract Price or the life cycle costs to the Procuring Entity; or
- c improves the quality, efficiency or sustainability of the Lease Items; or
- d yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

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

- a a reduction of the Contract Price; the amount to be paid to the Lessor shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or
- b an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
- c to (d) above, the amount to be paid to the Lessor shall be the full increase in the Contract Price.

3.38.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

3.39 Extensions of Time

3.39.1 If at any time during performance of the Contract, the Lessor or its subcontractors should encounter conditions impeding timely delivery of the Lease Items or completion of Related Services pursuant to GCC Clause 13, the Lessor shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessor's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Lessor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract

3.39.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Lessor in the performance of its Delivery and Completion obligations shall render the Lessor liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

3.40 Termination

3.40.1 Termination for Default

- a The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessor, may terminate the Contract in whole or in part:
 - i. if the Lessor fails to deliver any or all of the Lease Items within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;
 - ii. if the Lessor fails to perform any other obligation under the Contract; or
 - iii. if the Lessor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Lease Items or Related Services similar to those undelivered or not performed, and the Lessor shall be liable to the Procuring Entity for any additional costs for such similar Lease Items or Related Services. However, the Lessor shall continue performance of the Contract to the extent not terminated.

3.40.2 Termination for Insolvency.

The Procuring Entity may at any time terminate the Contract by giving notice to the Lessor if the Lessor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Lessor, provided that such

termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity

3.40.3 Termination for Convenience.

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

3.41 Assignment

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

3.42 Import Restrictions

Notwithstanding any obligation under the Contract to complete all import formalities, any import restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/Lease Items, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Lease Items, systems or services, and which substantially impede the Lessor from meeting its obligations under the Contract, shall release the Lessor from the obligation to provide deliveries or services, always provided, however, that the Lessor can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the import of the products/Lease Items, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Clause 3.40.3.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

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

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 3.1 (h)	The Procuring Entity is: <i>State Department for Public Service</i> The Final Destination(s) is/are: <i>Telposta Towers 2nd Floor Nairobi</i>
GCC 3.12	For notices , the Procuring Entity's address shall be: Attention: <i>The Principal Secretary</i> Postal address: P O Box 30050 – 00100 Nairobi. Physical Address: Harambee Avenue, Harambee House, 5 th Floor. Telephone: <i>020 - 2252299</i> Electronic mail address: <i>info@psyg.go.ke</i>
GCC 3.14	The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows: In the case of a dispute between the Procuring Entity and a Lessor, the dispute shall be referred to arbitration in accordance with the laws of Kenya.
GCC 3.17	The State Department for Public Service will move immediately to the premises on signing the lease agreement and upon receipt of the official order. Office space must conform to the specifications in the tender. The lease agreement will ensue duly signed by the authorized STATE DEPARTMENT FOR PUBLIC SERVICE Officer
GCC 3.19	The prices charged for the Lease Items supplied and the related Services performed shall be adjustable. If prices are adjustable, the adjustment shall be guided by the State Department of Housing and Urban Development through the director of valuations.
GCC 3.20.2	The Lessor may terminate the contract if the Procuring Entity fails to pay all amounts due within 120 days.
GCC 3.20.2	The advance payment shall be NOT APPLICABLE
GCC 3.22.1	A Performance Security shall be required. <i>The amount of the Performance Security shall be 5% of the contract price.</i>
GCC 3.22.2	The Performance Security shall be in the form of a Performance Bond.
GCC 3.22.4	Discharge of the Performance Security shall take place as in sub clause GCC 22.4.
GCC 3.27	The packing, marking and documentation within and outside the packages shall be: <i>Not Applicable</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 3.28	The insurance coverage shall be as specified in the Incoterms.
GCC 3.29	Responsibility for transportation of the Lease Items shall be arranged by the lessor.
GCC 3.29	Incidental services to be provided are: Not Applicable
GCC 3.30.1	The inspections and tests shall be on need basis.
GCC 3.30.2	The Inspections and tests shall be conducted at the leased premises.
GCC 3.31	The liquidated damage shall be: Not applicable.
GCC 3.31	The maximum amount of liquidated damages shall be: Not applicable.
GCC 3.38	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Lessor shall be: Not applicable.
GCC 3.20	Payment GCC. 3.12.1 Quarterly payments of the contract sum shall be made to the tenderer in full within thirty (30) days after receipt of the invoice.
GCC 3.19	<p>Prices GCC 3.13.1</p> <ul style="list-style-type: none"> a) Prices must remain firm and fixed b) Prices must remain valid for 120 days after closing of tender c) Prices quoted must be inclusive of all Government taxes. d) Prices quoted must be as per the tender document.

I/we hereby certify that I/we have read the special conditions of contract (Section IV), confirm that I/we have understood and I/we shall abide by them.

Tenderers Name..... Date.....

Signature..... Official Rubber Stamp.....

SECTION V- TECHNICAL SPECIFICATIONS OF LEASING OF OFFICE SPACE IN NAIROBI

S/NO.	DESCRIPTION	ATTRIBUTES
1.	Location	<ul style="list-style-type: none"> ▪ The area of interest is Nairobi Central Business District (CBD), Upper Hill and Community area. ▪ Easily accessible through public transport ▪ Neighborhood environment should be conducive for office environment.
2.	Building Requirements	<ol style="list-style-type: none"> a) Lettable area of 75,000-80,000 square feet. b) The available space should be in consecutive floors preferably in higher floors. c) Available floors must guarantee exclusive tenancy. d) Ready for occupation immediately after signing the lease agreement. e) Approximately 150 No. parking bays (Specify parking allocation criteria) f) Separate washrooms for either gender per floor and or wing. g) Kitchenette h) Separate gate entrance and exit. i) Connected to Mains electricity. j) Power backup generator capable of adequately supporting the building electrical and building services systems (atleast 500 KVA). k) Atleast four (4) high speed lifts/elevators with a capacity of approximately 10 pax each that can serve all floors. l) Connected to Mains water supply and sewer and or borehole and adequate reservoir of approximately 30,000 litres. m) Provision for structure cabling, ducts and PABX. n) CCTV Surveillance System and 24 hr security (Both internally and externally) o) Connected to multiple internet (Fiber) service providers.
3.	Lease Agreement Requirements	Attach a tentative letter of offer/Head of terms.

**SECTION VI - SCHEDULE OF REQUIREMENTS /EVALUATION
CRITERIA OF LEASING OF OFFICE SPACE IN
NAIROBI**

S/NO.	ITEM DESCRIPTION	MARKS	SCORE
1.	Location	20	
	i. Easily accessible through public transport	5	
	ii. The area of interest is Nairobi Central Business District (10 mks), Upper hill (5 mks) and Community Area (7 mks)	10	
	iii. Neighborhood environment be conducive for office environment.	5	
2.	Building Requirements	80	
	a) Lettable area of square feet – 75,000-80,000 square feet.	20	
	b) The available space should be in consecutive floors preferably in higher floors.	15	
	c) Ready for occupation by the State Department for Public Service.	5	
	d) Approximately 150 No. parking bays.	10	
	e) Separate washrooms for either gender per floor and or wing.	3	
	f) Kitchenette	2	
	g) Separate gate entrance and exit	4	
	h) Connected to Mains electricity and Power backup generator capable of adequately supporting the building electrical and building services systems atleast 500 KVA.	3	
	i) Atleast four (4) high speed lifts/elevators with a capacity of approximately 10 pax each that can serve all floors.	3	
	j) Connected to Mains water supply and sewer and or borehole and adequate reservoir of approximately 30,000 litres.	4	
	k) Connected to multiple internet (Fiber) service providers.	3	
	l) CCTV Surveillance System and 24hr. security	3	
	m) Attach Letter of offer/Head of terms.	5	

NB:

To proceed to the financial evaluation stage the pass mark for technical specifications shall be 80%.

Name of the Building Location

Shortest period that the State Department for Public Service can occupy the Premise

Name of Authorized Official:.....

Signature:.....

Date:.....

SECTION VII – PRICE SCHEDULE

S/No.	Item Description	Unit of Issue	Qty	Unit Cost (Kshs.) Per Month	Total Cost (Kshs.) Per Month
1.	Office space	Sq. Ft.			
2.	Service Charge	Sq. Ft.			
3.	Parking Slots	No.			
TOTALS					

NB: - ALL PRICES QUOTED MUST BE INCLUSIVE OF ALL TAXES.

7.1 Award Criteria:

The lowest bidding price will be awarded the tender.

Signature of tenderer:

Date:

SECTION VIII - GENERAL OFFICE SPACE INFORMATION:

These specifications describe the basic requirements for office space. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues/brochures etc. for the office space.

The tenderers are requested to present information along with their offers as follows:

- i. Shortest possible occupancy period.
- ii. Information on fit out works manuals and fit out period.
- iii. Information on proper maintenance of the building.

SECTION IX - STANDARD DOCUMENTS

9.1 FORM OF TENDER

Date.....

Tender No.....

To:

.....

[name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. [insert numbers]. the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission (..... (insert equipment description) in conformity with the said tender documents for the sum of..... (total tender amount in words and figures) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).
4. We agree to abide by this Tender for a period of [number] days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.
6. We understand that you are not bound to accept the lowest or any tender that you may receive.

Dated this..... day of..... 20...

.....

[signature]

Duly authorized to sign tender for an on behalf of.....

.....

[in the capacity of]

9.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

	<p>Part 1 – General: Business Name Location of business premises. Plot No..... Street/Road Postal Address Tel No/Mobile. E mail..... Nature of Business..... Registration Certificate No.VAT Reg. No Maximum value of business which you can handle at any one time – Kshs. Name of your bankers Branch Bank Account</p>																																				
	<p>Part 2 (a) – Sole Proprietor Your name in full Age Nationality Country of origin No. of employees ID/Passport No. • Citizenship details</p>																																				
	<p>Part 2 (b) Partnership Given details of partners as follows: <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: 20%;">Citizenship Details</th> <th style="width: 10%;">Shares%</th> <th style="width: 15%;">ID/Passport No.</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td></td> <td colspan="5">• No. of employees</td> </tr> </tbody> </table> </p>		Name	Nationality	Citizenship Details	Shares%	ID/Passport No.	1.	2.	3.	4.		• No. of employees				
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1.																																
2.																																
3.																																
4.																																
	• No. of employees																																				
	<p>Part 2 (c) – Registered Company Private or Public State the nominal and issued capital of company- ➤ Nominal Kshs. ➤ Issued Kshs. Given details of all directors as follows; <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: 20%;">Citizenship Details</th> <th style="width: 10%;">Shares%</th> <th style="width: 15%;">ID/Passport No.</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td></td> <td colspan="5">• No. of employees</td> </tr> </tbody> </table> </p>		Name	Nationality	Citizenship Details	Shares%	ID/Passport No.	1.	2.	3.	4.		• No. of employees				
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1.																																
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3.																																
4.																																
	• No. of employees																																				
Date Signature of Candidate																																					

If a Kenyan Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration.

9.3 TENDER SECURITY FORM

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

THE CONDITIONS of this obligation are:

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

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

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

.....
[signature of the bank]

(Amend accordingly if provided by Insurance Company)

9.4 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

In the presence of.....

Signed, sealed, delivered by the
(for the tenderer)
In the presence of

9.5 PERFORMANCE SECURITY FORM

To

[name of Procuring entity]

WHEREAS [name of tenderer] (hereinafter called "the tenderer") has undertaken , in pursuance of Contract No.....

[reference number of the contract] dated..... 20.....to supply

[description of goods] (hereinafter called "the Contract").

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

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

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

This guarantee is valid until the..... day of 20.....

Signed and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)

9.6 BANK GUARANTEE FOR ADVANCE PAYMENT

To

[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

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

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

..... [amount of guarantee in figures and words]

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

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

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

9.7 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To:

RE: Tender No.

Tender Name

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

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

(FULL PARTICULARS)

SIGNED FOR ACCOUNTING OFFICER

9.8 FORM RB 1

REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....BETWEEN.....APPLICANT
AND.....RESPONDENT (Procuring Entity) Request for review of the decision of the.....
(Name of the Procuring Entity) ofdated 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 of20.....

SIGNED

BOARD SECRETARY

9.9 BENEFICIAL OWNERSHIP DISCLOSURE

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

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a

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

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

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

Details of beneficial ownership

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

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

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to*

deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.

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

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

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

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

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

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

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

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

Bidder Official Stamp

9.10 CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the _____

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a) prices;
 - b) methods, factors or formulas used to calculate prices;
 - c) the intention or decision to submit, or not to submit, a tender; or
 - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name

Title

Date

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

9.11 SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of..... (insert name of the Company) who is a Bidder in respect of **Tender No.** for (insert tender title/description) for (insert name of the Procuring entity)

and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (insert name of the Procuring entity) which is the procuring entity.

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

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

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

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

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

9.12 TENDERER'S JV MEMBERS INFORMATION FORM

[The tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the tenderer and for each member of a Joint Venture]].

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

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

Page _____ of _____ pages

1.	Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2.	Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3.	Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4.	Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5.	Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6.	Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7.	Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.1 <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.
8.	Included are the organizational chart and a list of Board of Directors,

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

TENDER GUARANTEE No.: _____

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

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

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

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

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

[Date]

[Signature of the Guarantor]

[Witness]

[Seal]

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

9.14 SELF-DECLARATION FORMS

FORM SD1

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

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

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

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

Bidder Official Stamp

9.15 DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity

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

If yes, provide details as follows.

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

- ii) Conflict of interest disclosure

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

	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

a) Certification

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

Full Name _____

Title or Designation _____ *ature* _____ *(Date)* _____

9.16 OWNER'S AUTHORIZATION

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

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

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

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

To: *[insert complete name of Procuring*

Entity] WHEREAS

We..... *[insert complete name of Manufacturer]*, who are official manufacturers of*[insert type of Lease Items manufactured]*, having factories at*[insert full address of Manufacturer's factories]*, do

hereby

authorize..... *[insert complete name of tenderer]* to submit a Tender the purpose of which is to

provide the following Lease Items, manufactured by us *[insert name and or brief description of the Lease Items]*, and to subsequently negotiate and sign the Contract.

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

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

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

Title: *[insert title]*

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