



## **OPEN NATIONAL TENDER (ONT)**

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**Tender Document**

**For the**

**PROCUREMENT OF TABLET COMPUTERS**

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**Invitation for Tender (IFT) Number:**

**KEMSA/ONT14/2023-2024**

**Tender Closing date: 21<sup>st</sup> September, 2023**

**Time: -10.00 a.m. Local time**

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## INVITATION TO TENDER

PROCURING ENTITY: Kenya Medical Supplies Authority, 13 Commercial Street, Industrial Area, and P.O Box 47715-00100, Nairobi. Tel No: +254 719033000/ +254 726618520/1 Email: [procure@kemsa.co.ke](mailto:procure@kemsa.co.ke)

### TENDER NAME AND DESCRIPTION: KEMSA/ONT14/2023-2024

#### - Procurement of tablet computers

1. National Syndemic Diseases Control Council has set aside funds for use in the procurement of tablet computers for the National HIV data validation.
2. The Kenya Medical Supplies Authority (KEMSA), invites sealed tender(s) for procurement of tablet computers
3. Bidding will be conducted through the procedures specified in the Public Procurement and Asset Disposal Act (PPADA) 2015 and is open to all.
4. Qualified and Interested tenderers may obtain further information and inspect the tender documents during office hours on Monday to Friday 09.00hrs and 16.00hrs except on Public Holidays from Procurement office situated at:

**Kenya Medical Supplies Authority, 13  
Commercial Street, Industrial Area  
P.O Box 47715-00100, Nairobi  
Tel No: +254 719033000/ +254 726618520/1  
Email: [procure@kemsa.co.ke](mailto:procure@kemsa.co.ke)**

5. Tender documents may be viewed and downloaded free from the **website:** [www.kemsa.co.ke](http://www.kemsa.co.ke) or **PIIP Portal:** [tenders.go.ke](http://tenders.go.ke). Tender Documents obtained electronically will be free of charge. [www.kemsa.co.ke](http://www.kemsa.co.ke)
6. Tenderers must register their bid documents at the Procurement Office or via email at [procure@kemsa.co.ke](mailto:procure@kemsa.co.ke) (Refer to registration form in the tender document) to facilitate any further clarification or addendum.
7. Completed serialized/paginated Bidding documents shall be submitted accompanied with a signed declaration of the number of pages. The documents will be One original and a copy in plain sealed envelopes clearly marked on top with the Tender Number and Description and accompanied by a Bid Security of **KES 1,720,000.00** or equivalent in a freely convertible currency from Commercial Banks or Insurance Companies Approved by The Insurance Regulatory Authority (IRA) and listed by The Public Procurement Regulatory Authority and should be addressed to:

The Ag. Chief Executive Officer  
Kenya Medical Supplies Authority  
13 Commercial Street, Industrial  
Area P.O. Box 47715-00100  
Nairobi, Kenya.

8. The bid documents must be deposited in the **Tender Box No.1 marked GOK/World Bank** at the reception on the Ground floor KEMSA's Commercial Street Office in Nairobi on or before **21<sup>st</sup> September, 2023**.
9. Bulky tenders can be handed over to KEMSA Procurement Director's office for registration and safekeeping until the tender opening date.
10. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenderers will be publicly opened in the presence of the Tenderer's designated representatives and who choose to attend at the address below:  
**KEMSA's Tender Opening Hall**  
**Ground Floor KEMSA Commercial Street, Industrial**  
**Area Nairobi, Kenya**
11. Late bids, portion of bids, Electronic bids shall NOT be accepted for evaluation irrespective of circumstances.

Authorized by: **Ag. Chief Executive Officer**  
Date: **5<sup>th</sup> September, 2023**

## REGISTRATION FORM

**TENDER NO: KEMSA/ONT14/2023-2024 FOR PROCUREMENT OF TABLET COMPUTERS**

**NOTE:** Bidders are required to provide their contact details as shown below.

Name of the firm.....

Postal Address.....

Telephone Contacts.....

KRA PIN.....

Company email address.....

Contact Person.....

Once completed please submit this form to the email address below;

**[procure@kemsaco.ke](mailto:procure@kemsaco.ke)**

## **PART 1 - TENDERING PROCEDURES**

## SECTION I - INSTRUCTIONS TO TENDERERS

### A. GENERAL

#### 1. Scope of Tender

- 1.1 In connection with this Invitation to Tenderer (ITT), the Procuring Entity issues this tendering document for the supply of Goods as specified in Section V, Schedule of Requirements. The name, identification and number of items or lots (contracts) of this ITT are specified **in the TDS**.

#### 2. Definitions

- 2.1 Unless otherwise stated, throughout this tendering document definitions and interpretations shall be as prescribed in the Section VI, General Conditions of Contract.
- 2.2 Throughout this tendering document:
- a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, including if specified **in the TDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
  - b) If the context so requires, “singular” means “plural” and vice versa; and
  - c) “Day” mean scale day, unless otherwise specified as “Business Day.” A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.
  - d) Information System” shall carry the same meaning as “Information Technology”.

#### 3. Fraud and Corruption

- 3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed to this effect, Tenderer’s shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 3.3 Unfair Competitive Advantage-Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 3.4 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to



permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

#### **4 Eligible Tenderers**

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT4.6 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter in to such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers of the Procuring Entity, their spouse, child, parent, brother, sister, child, parent or brother, sister of a spouse their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - b Receives or has received any direct or indirect subsidy from another Tenderer; or
  - c has the same legal representative as another Tenderer; or
  - d has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
  - f or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - h has a close business or family relationship with a professional staff of the Procuring Entity who:
    - i are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such

Contract; or

- ii. would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a subcontractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A tenderer that has been debarred from participating in public procurement shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of time as the PPRA shall have determined. The list of debarred firms and individuals is available at **PPRA's website** [info@ppra.go.ke](mailto:info@ppra.go.ke) or [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish, in a manner acceptable to the Procuring Entity, that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not under supervision of the Procuring Entity.
- 4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.9 The Procuring Entity may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the TDS, but care must be taken to ensure such registration requirement does not discourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signing of the contract.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in "SECTION III - EVALUATION AND QUALIFICATION CRITERIA,".

- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 4.13 Tenderers shall be considered ineligible for procurement if they offer goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment.
- 4.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax compliance clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

## **5. Eligible Goods and Related Services**

- 5.1 The Information Systems to be supplied under the Contract may have their origin in any eligible country.
- 5.2 For the purposes of this tendering document, the term “Information System” means all:
- i. the required information technologies, including all information processing and communications-related hardware, software, supplies, and consumable items that the Supplier is required to supply and install under the Contract, plus all associated documentation, and all other materials and goods to be supplied, installed, integrated, and made operational; and
  - ii. the related software development, transportation, insurance, installation, customization, integration, commissioning, training, technical support, maintenance, repair, and other services necessary for proper operation of the Information System to be provided by the selected Tenderer and as specified in the Contract.
- 5.3 For purposes of ITT 5.1 above, “origin” means the place where the goods and services making the Information System are produced in or supplied from. An Information System is deemed to be produced in a certain country when, in the territory of that country, through software development, manufacturing, or substantial and major assembly or integration of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

- 5.4 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement under this Act.

## **B. CONTENTS OF TENDERING DOCUMENT**

### **6 Sections of Tendering Document**

#### **PART 1 - Tendering Procedures**

Section I - Instructions to Tenderers (ITT)

Section II - Tendering Data Sheet (TDS)

Section III - Evaluation and Qualification Criteria

Section IV - Tendering Forms

#### **PART 2 - Procuring Entity's Requirements**

Section V - Technical Requirements

#### **PART 3 - Contract**

Section VI - General Conditions of Contract

Section VII - Special Conditions of Contract

Section VIII - Contract Forms

- 6.1 The Invitation to Tender (ITT) notice issued by the Procuring Entity is not part of this tendering document.
- 6.2 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, or Addenda to the tendering document in accordance with ITT10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

### **7. Site Visit**

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

### **8. Pre-Tender Meeting and a pre- arranged pretender visit of the site of the works**

- 8.1 The Procuring Entity shall specify in the TDS if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the TDS if a pre-arranged pretender visit of the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the TDS before the meeting.

- 8.3 Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.
- 8.4 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works at the web page identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **9. Clarification of Tendering Document**

- 9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting and the pre-arranged pre-tender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Procuring Entity shall also promptly publish its response at the web page identified in the TDS. Should the clarification resulting changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

## **10. Amendment of Tendering Document**

- 10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.
- 10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.1
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 24.2. below.

## **C. PREPARATION OF TENDERS**

### **11. Cost of Tendering**

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



#### 4. Language of Tender

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

#### 5. Documents Comprising the Tender

- 5.1 The Tender shall comprise the following:
- a) **Form of Tender** prepared in accordance with ITT 14;
  - b) **Price Schedules:** completed in accordance with ITT 14 and ITT 16;
  - c) **Tender Security or Tender-Securing Declaration**, in accordance with ITT 22;
  - d) **Alternative Tender**, if permissible, in accordance with ITT 15;
  - e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 23.3;
  - f) **Eligibility of Information System:** documentary evidence established in accordance with ITT 16.1 that the Information System offered by the Tenderer in its Tender or in any alternative Tender, if permitted, are eligible;
  - g) **Tenderer's Eligibility:** documentary evidence in accordance with ITT 17 establishing the Tenderer's eligibility and qualifications to perform the contract if its Tender is accepted;
  - h) **Conformity:** documentary evidence in accordance with ITT 16, that the Goods and Related Services conform to the tendering document; and
  - i) **Subcontractors:** list of subcontractors, in accordance with ITT 18.4;
  - j) **Intellectual Property:** a list of: Intellectual Property as defined in GCC Clause 15;
    - i. All Software included in the Tender, assigning each item to one of the software categories defined in GCC Clause 1.1(C):
      - a. System, General Purpose, and Application Software; or
      - b. Standard and Custom Software;
    - ii. All Custom Materials, as defined in GCC Clause 1.1(c), included in the Tender;  
*All Materials not identified as Custom Materials shall be deemed Standard Materials, as defined in GCC Clause 1.1 (c); Re-assignments among the Software and Materials categories, if necessary, will be made during the implementation of the Contract according to GCC Clause 39 (Changes to the Information System); and*
  - k) Any other document required **in the TDS**.
- 5.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members indicating at least the parts of the Information System to be executed by the respective members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the information System to be executed by the respective members.
- 5.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender. The Tenderer shall serialize page so fall tender documents submitted.

## **6. Form of Tender and Price Schedules**

- 6.1 The Tenderer shall complete the Form of Tender, including the appropriate Price Schedules, using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

## **7. Alternative Tenders**

- 7.1 The TDS indicates whether alternative Tenders are allowed. If they are allowed, the TDS will also indicate whether they are permitted in accordance with ITT 13.3, or invited in accordance with ITT 13.2 and/or ITT 13.4.
- 7.2 When alternatives to the Time Schedule are explicitly invited, a statement to that effect will be included in the TDS, and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 7.3 Except as provided under ITT 15.4 below, Tenderers wishing to offer technical alternatives to the Procuring Entity's requirements as described in the tendering document must also provide: (i) a price at which they are prepared to offer an Information System meeting the Procuring Entity's requirements; and (ii) all information necessary for a complete evaluation of the alternatives by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed installation methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.
- 7.4 When Tenderers are invited in the TDS to submit alternative technical solutions for specified parts of the system, such parts shall be described in Section V, Procuring Entity's Requirements. Technical alternatives that comply with the performance and technical criteria specified for the Information System shall be considered by the Procuring Entity on their own merits, pursuant to ITT 35.

## **8. Documents Establishing the Eligibility of the Information System**

- 8.1 To establish the eligibility of the Information System in accordance with ITT 5, Tenderers shall complete the country-of-origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.

## **9. Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 9.1 To establish its eligibility and qualifications to perform the Contracting accordance with Section III, Evaluation and Qualification Criteria, the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tendering Forms.
- 9.2 In the event that pre-qualification of potential Tenderers has been undertaken as stated in the TDS, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information

updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.

- 9.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 9.4 The purpose of the information described in ITT 15.1 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 9.5 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control, any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 9.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 9.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 9.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - If the contract has been awarded to that tenderer, the contract award will be set aside,
  - the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.



- 9.9 If a tenderer submits information pursuant to these requirements that is in complete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## **10. Documents Establishing Conformity of the Information System**

- 10.1 Pursuant to ITT 11.1(h), the Tenderer shall furnish, as part of its Tender documents establishing the conformity to the tendering documents of the Information System that the Tenderer proposes to design, supply and install under the Contract.
- 10.2 The documentary evidence of conformity of the Information System to the tendering documents including:
- a) Preliminary Project Plan describing, among other things, the methods by which the Tenderer will carry out its overall management and coordination responsibilities if awarded the Contract, and the human and other resources the Tenderer proposes to use. The Preliminary Project Plan must also address any other topics **specified in the TDS**. In addition, the Preliminary Project Plan should state the Tenderer's assessment of what it expects the Procuring Entity and any other party involved in the implementation of the Information System to provide during implementation and how the Tenderer proposes to coordinate the activities of all involved parties;
  - b) Written confirmation that the Tenderer accepts responsibility for the successful integration and inter- operability of all components of the Information System as required by the tendering documents;
  - c) An item-by-item commentary on the Procuring Entity's Technical Requirements, demonstrating the substantial responsiveness of the Information System offered to those requirements. In demonstrating responsiveness, the Tenderer is encouraged to use the Technical Responsiveness Checklist (or Checklist Format) in the Sample Tendering Forms (Section IV). The commentary shall include explicit cross- references to the relevant pages in the supporting materials included in the tender. Whenever a discrepancy arises between the item-by-item commentary and any catalogs, technical specifications, or other preprinted materials submitted with the tender, the item-by-item commentary shall prevail;
  - d) Support material (e.g., product literature, white papers, narrative descriptions of technologies and/or technical approaches), as required and appropriate; and
  - e) Any separate and enforceable contract(s) for Recurrent Cost items which the TDS ITT 17.2 required Tenderers to tender.
- 10.3 Referencetobrandnamesormodelnumbersornationalorproprietarystandardsdesignatedby theProcuring Entity in the tendering documents are intended to be descriptive and not restrictive. Except where explicitly prohibited in the **TDS** for specific items or standards, the Tenderer may substitute alternative brand /model names or standards in its tender, provided that it demonstrates to the Procuring Entity's satisfaction that the use of the substitute(s) will result in the Information System being able to perform substantially equivalent to or better than that specified in the Technical Requirements.

- 10.4 For major items of the Information System as listed by the Procuring Entity in Section III, Evaluation and Qualification Criteria, which the Tenderer intends to purchase or subcontract, the Tenderer shall give details of the name and nationality of the proposed subcontractors, including manufacturers, for each of those items. In addition, the Tenderer shall include in its Tender information establishing compliance with the requirements specified by the Procuring Entity for these items. Quoted rates and prices will be deemed to apply to whichever subcontractor is appointed, and no adjustment of the rates and prices will be permitted.
- 10.5 The Tenderer shall be responsible for ensuring that any subcontractor proposed complies with the requirements of ITT 4, and that any goods or services to be provided by the subcontractor comply with the requirements of ITT 5 and ITT 16.1.

## **11. Tender Prices**

- 11.1 All Goods and Services identified in the Supply and Installation Cost Sub-Tables in System Inventory Tables in Section VII, and all other Goods and Services proposed by the Tenderer to fulfill the requirements of the Information System, must be priced separately and summarized in the corresponding cost tables in the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below.
- 11.2 **Unless otherwise specified in the TDS**, the Tenderer must also tender Recurrent Cost Items specified in the Technical Requirements, Recurrent Cost Sub-Table of the System Inventory Tables in Section VII (if any). These must be priced separately and summarized in the corresponding cost table in the Sample Tendering Forms (Section IV), in accordance with the instructions provided in the tables and in the manner specified below:
- a) **If specified in the TDS**, the Tenderer must also tender separate enforceable contracts for the Recurrent Cost Items not included in the main Contract;
  - b) prices for Recurrent Costs are all-inclusive of the costs of necessary Goods such as spare parts, software license renewals, labor, etc., needed for the continued and proper operation of the Information System and, if appropriate, of the Tenderer's own allowance for price increases;
  - c) prices for Recurrent Costs beyond the scope of warranty services to be incurred during the Warranty Period, defined in GCC Clause 29.4 and prices for Recurrent Costs to be incurred during the Post-Warranty Period, defined in SCC Clause 1.1. (e) (xiii), shall be quoted as Service prices on the Recurrent Cost Sub-Table in detail, and on the Recurrent Cost Summary Table in currency totals.
- 11.3 Unit prices must be quoted at a level of detail appropriate for calculation of any partial deliveries or partial payments under the contract, in accordance with the Implementation Schedule in Section VII), and with GCC and SCC Clause 12 – Terms of Payment. Tenderers may be required to provide a breakdown of any composite or lump-sum items included in the Cost Tables
- 11.4 The price of items that the Tenderer has left blank in the cost tables provided in the Sample Tender Forms (Section IV) shall be assumed to be included in the price of other items. Items omitted altogether from the cost tables shall be assumed to be omitted from the tender and, provided that the tender is substantially responsive, an adjustment to the tender price will be made during tender evaluation in accordance with ITT 31.3.

11.5 The prices for Goods components of the Information System are to be expressed and shall be defined and governed in accordance with the rules prescribed in the edition of incoterms **specified in the TDS**, as follows:

- a) Goods supplied from outside Kenya:  
**Unless otherwise specified in the TDS**, the prices shall be quoted on a CIP (named place of destination) basis, exclusive of all taxes, stamps, duties, levies, and fees imposed in Kenya. The named place of destination and special instructions for the contract of carriage are as specified in the SCC for GCC 1.1(e) (iii). In quoting the price, the Tenderer shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Tenderer may obtain insurance services from any eligible source country;
- b) Locally supplied Goods: Unit prices of Goods offered from within Kenya, shall be quoted on an EXW (ex- factory, ex works, ex ware house or off- the-shelf, as applicable) basis, including all customs duties, levies, fees, sales and other taxes incurred until delivery of the Goods, but excluding all VAT or sales and other taxes and duties/fees incurred for the Goods at the time of invoicing or sales transaction, if the Contract is awarded; and
- c) Inland transportation.

11.6 Unless otherwise stated in the TDS, inland transportation, insurance and related local costs incidental to the delivery of the Goods to the designated Project Sites must be quoted separately as a Service item in accordance with ITT 17.5, whether the Goods are to be supplied locally or from outside Kenya, except when these costs are already included in the price of the Goods, as is, e.g., the case, when ITT 17.5 (a) specifies CIP, and the named places of destination are the Project Sites.

11.7 The price of Services shall be separated into their local and foreign currency components and where appropriate, broken down into unit prices. Prices must include all taxes, duties, levies and fees whatsoever, except only VAT or other indirect taxes, or stamp duties, that may be assessed and/ or apply in Kenyan /to the price of the Services invoiced to the Procuring Entity, if the Contract is awarded.

11.8 Unless otherwise specified in the TDS, the prices must include all costs incidental to the performance of the Services, as incurred by the Supplier, such as travel, subsistence, office support, communications, translation, printing of materials, etc. Costs incidental to the delivery of the Services but incurred by the Procuring Entity or its staff, or by third parties, must be included in the price only to the extent such obligations are made explicit in these tendering documents (as, e.g., a requirement for the Tenderer to include the travel and subsistence costs of trainees).

11.9 Unless otherwise specified in the TDS, prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the Contract and not subject to increases on any account. Tenders submitted that are subject to price adjustment will be rejected.

## **12. Currencies of Tender and Payment**

12.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in the currency of Kenya the portion of the Tender price that corresponds to expenditures incurred in Kenya Shillings, unless otherwise specified **in the TDS**.

- 12.2 The Tenderer may express the Tender price in any currency. If the Tenderer wishes to be paid in a combination of amounts in different currencies; it may quote its price accordingly but shall use no more **than two foreign currencies in** addition to the currency of Kenya.
- 12.3 The rates of exchange to be used by the Tenderer shall be the selling exchange rate provided by the Central Bank of Kenya on the tender closing date.

### **13. Period of Validity of Tenders**

- 13.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 23.1. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 13.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20.1, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3

### **14. Tender Security**

- 14.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 14.2 A Tender-Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 14.3 If a Tender is specified pursuant to ITT 20.1, the Tender Security shall be a:
- i) cash;
  - ii) a bank guarantee;
  - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
  - iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.
  - v) Any other Form specified in the **TDS**.

If an unconditional guarantee is issued by a non-bank financial institution located outside Kenya, the issuing non-bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required.

- 14.4 In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms or in another substantially

similar format approved by the Procuring Entity prior to Tender submission. In neither case, the form must include the complete name of the Tenderer. The Tender Security shall be valid for thirty days (30) beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 19.2.

- 14.5 If a Tender Security or a Tender-Securing Declaration is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.
- 14.6 The Tender Security shall be returned/release as promptly as possible
- a) The procurement proceedings are terminated;
  - b) The procuring entity determines that none of the submitted tenders is responsive;
  - c) A bidder declines to extend the tender validity.
  - d) Once the successful Tenderer has signed the Contract and furnished the required Performance Security.
- 14.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
  - b) if the successful Tenderer fails to:
    - i. sign the Contract in accordance with ITT 44; or
    - ii. furnish a Performance Security in accordance with ITT 45.
- 14.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 14.9 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 11.2.
- 14.10 A tenderer shall not issue a tender security to guarantee itself.

## **15. Format and Signing of Tender**

- 15.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE" In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 15.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets or commercial or financially sensitive information.
- 15.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be



attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

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

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

#### **D. SUBMISSION AND OPENING OF TENDERS**

##### **16. Submission, Sealing and Marking of Tenders**

16.1 The Tenderer shall deliver the Tender in a single, sealed envelope (one-envelope Tendering process). Within the single envelope the Tenderer shall place the following separate, sealed envelopes:

- a) In an envelope marked "ORIGINAL", all documents comprising the Tender, as described in ITB 11; and
- b) in an envelope marked "COPIES", all required copies of the Tender; and
- c) if alternative Tenders are permitted in accordance with ITB 13, and if relevant:
  - i) in an envelope marked "ORIGINAL-ALTERNATIVE", the alternative Tender; and
  - ii) in the envelope marked "COPIES-ALTERNATIVE TENDER" all required copies of the alternative Tender.

16.2 The outer envelopes, shall:

- a) Be addressed to the Procuring Entity in accordance with ITT 23.1;
- b) Bear the specific identification of this Tendering process indicated in ITT 1.1; and
- c) bear a warning not to open before the time and date for Tender opening.

The inner envelopes shall bear the name and address (include email and telephone number) of the Tenderer and all the information above ITT 21.2 (a) to (c).

16.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

##### **17. Deadline for Submission of Tenders**

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

17.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **18. Late Tenders**

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

## **19. Withdrawal, Substitution, and Modification of Tenders**

- 19.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:
- a) prepared and submitted in accordance with ITT 21 and 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and
  - b) received by the Procuring Entity prior to the dead line prescribed for submission of Tenders, in accordance with ITT 23
- 19.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.
- 19.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## **20. Tender Opening**

- 20.1 Except as in the cases specified in ITT 24 and ITT 25.2, the Procuring Entity shall publicly open and read out in accordance with this ITT all Tenders received by the deadline at the date, time and place specified in the TDS in the presence of Tenderers' designated representatives and anyone who choose to attend. All Tenderers, or their representatives and any interested party may attend a public opening. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 23.1, shall be as specified in the TDS.
- 20.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 20.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

- 20.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 20.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per item or lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.
- 20.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the TDS.
- 20.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1)
- 20.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) The Tender Price, per lot (contract) if applicable, including any discounts;
  - c) any alternative Tenders; and
  - d) the presence or absence of a Tender Security or Tender Securing Declaration, if one was required.
  - e) Number of pages of each tender document submitted
- 20.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be issued to a tenderer upon request.

## **E. EVALUATION AND COMPARISON OF TENDERS**

### **21. Confidentiality**

- 21.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the Notification of Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.
- 21.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 21.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.



## **22. Clarification of Tenders**

- 22.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's Invitation to clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 32.
- 22.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's Invitation to clarification, its Tender may be rejected.

## **23. Deviations, Reservations, and Omissions**

- 23.1 During the evaluation of Tenders, the following definitions apply:
- a) "Deviation" is a departure from the requirements specified in the tendering document;
  - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
  - c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

## **24. Determination of Responsiveness**

- 24.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11
- 24.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- a) If accepted, would:
    - i. affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
    - ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
  - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 24.3 The Procuring Entity shall examine the technical aspects of the Tender in particular, to confirm that all requirements of Section V, Procuring Entity's Requirements have been met without any material deviation, reservation, or omission.
- 24.4 To be considered for Contract award, Tenderers must have submitted Tenders:
- a) for which detailed Tender evaluation using the same standards for compliance determination as listed in ITT 29 and ITT 30.3 confirms that the Tenders are commercially and technically responsive, and include the hardware, Software, related equipment, products, Materials, and other Goods and Services components of the Information System in substantially the full required quantities for the entire

Information System or, if allowed in the TDS ITT 35.8, the individual Subsystem, lot or slice Tender on; and are deemed by the Procuring Entity as commercially and technically responsive; and

- b) that offer Information Technologies that are proven to perform up to the standards promised in the tender by having successfully passed the performance, benchmark, and/or functionality tests the Procuring Entity may require, pursuant to ITT 39.3.

## **25. Non-conformities, Errors and Omissions**

- 25.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.
- 25.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 25.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS.

## **26. Correction of Arithmetical Errors**

- 26.1 The tender sum submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 26.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
  - a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
  - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive and
  - c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.

## **27. Conversion to Single Currency**

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

## **28. Margin of Preference and Reservations**

- 28.1 A margin of preference may be allowed on locally manufactured Health goods only when the contract is open to international tendering, where the tender is likely to attract foreign goods and where the contract exceeds the threshold specified in the Regulations.

- 28.2 A margin of preference shall not be allowed unless it is specified so in the TDS.
- 28.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations to specific groups as provided in ITT 34.4.
- 28.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case maybe), and who are appropriately registered as such by a competent authority, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Tender documents, the invitation to tender will be open to all interested tenderers.

## **29. Evaluation of Tenders**

- 29.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Best Evaluated Tender.
- 29.2 To evaluate a Tender, the Procuring Entity shall consider the following:
- a) Price adjustment due to discounts offered in accordance with ITT 14.4;
  - b) Price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3; and
  - c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
  - d) any additional evaluation factors specified in Section III, Evaluation and Qualification Criteria.

## **30. Preliminary Examination**

- 38.1 The Procuring Entity will examine the tenders, to determine whether they have been properly signed, whether required sureties have been furnished, whether any computational errors have been made, whether required sure ties have been furnished and are substantially complete (e.g., not missing key parts of the tender or silent on excessively large portions of the Technical Requirements). In the case where a pre-qualification process was undertaken for the Contract (s) for which these tendering documents have been issued, the Procuring Entity will ensure that each tender is from a pre-qualified Tenderer and, in the case of a Joint Venture, that partners and structure of the Joint Venture are unchanged from those in the pre-qualification.

## **31. Technical Evaluation**

- 39.1 The Procuring Entity will examine the information supplied by the Tenderers Pursuant to ITT 11 and ITT 16, and in response to other requirements in the Tendering document, considering the following factors:

- a) Overall completeness and compliance with the Technical Requirements; and deviations from the Technical Requirements;
- b) suitability of the Information System offered in relation to the conditions prevailing at the site; and the suitability of the implementation and other services proposed, as described in the Preliminary Project Plan included in the tender;
- c) achievement of specified performance criteria by the Information System;
- d) compliance with the time schedule called for by the Implementation Schedule and any alternative time schedules offered by Tenderers, as evidenced by a milestone schedule provided in the Preliminary Project Plan included in the tender;
- e) type, quantity, quality, and long-term availability of maintenance services and of any critical consumable items necessary for the operation of the Information System;
- f) any other relevant technical factors that the Procuring Entity deems necessary or prudent to take into consideration;
- g) any proposed deviations in the tender to the contractual and technical provisions stipulated in the tendering documents.

39.2 The Procuring Entity's evaluation of tenders will consider technical factors, in addition to cost factors. The Technical Evaluation will be conducted following the Criteria specified in Section III, Evaluation and Qualification Criteria, which permits a comprehensive assessment of the technical merits of each Tender. All tenders that fail to pass this evaluation will be considered non-responsive and will not be evaluated further.

39.3 Where alternative technical solutions have been allowed in accordance with ITT 13, and offered by the Tenderer, the Procuring Entity will make a similar evaluation of the alternatives. Where alternatives have not been allowed but have been offered, they shall be ignored.

39.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

## **40 Financial/ Economic Evaluation**

40.1 To evaluate a Tender, the Procuring Entity shall consider the following:

- a) price adjustment due to unconditional discounts offered in accordance with ITT 26.8; excluding provisional sums and contingencies, if any, but including Day work items, where priced competitively.
- b) Price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITT 33; and
- d) the evaluation factors indicated in Section III, Evaluation and Qualification Criteria.

If price adjustment is allowed in accordance with ITT 17.9, the estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

40.2 The Procuring Entity will evaluate and compare the Tenders that have been determined to be substantially responsive, pursuant to ITT 35.4. The evaluation will be performed assuming either that:

- a) The Contract will be awarded to the Lowest Evaluated Tender for the entire Information System; or
- b) if specified **in the TDS**, Contracts will be awarded to the Tenderers for each individual Subsystem, lot, or slice if so defined in the Technical Requirements whose Tenders result in the Lowest Evaluated Tender/ Tenders for the entire System.

In the latter case, discounts that are conditional on the award of more than one Subsystem, lot, or slice may be offered in Tenders. Such discounts will be considered in the evaluation of tenders as specified **in the TDS**.

#### **41 Comparison of Tenders**

41.1 The Procuring Entity shall compare all substantially responsive Tenders in accordance with ITT 35.6 to determine the lowest evaluated cost.

41.2 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 34.2 to determine the Tender that has the lowest evaluated cost.

#### **42 Abnormally Low Tenders and Abnormally High Tenders**

##### **Abnormally Low Tenders**

42.1 An Abnormally Low Tender is one where the Tender price in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns with the Procuring Entity as to the capability of the Tenderer to perform the Contract for the offered Tender price or that genuine competition between Tenderers is compromised.

42.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procuring Entity shall seek written clarification from the Tenderer, including a detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

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

##### **Abnormally High Tenders**

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



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

- (i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
- (ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, scope of work and conditions of contract, as the case may be.

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

### **43 Eligibility and Qualification of the Tenderer**

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

43.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 15.

43.3 Unless otherwise specified in the TDS, the Procuring Entity will NOT carry out tests at the time of post-qualification, to determine that the performance or functionality of the Information System offered meets those stated in the Technical Requirements. However, if so specified in the TDS the Procuring Entity may carry out such tests as detailed in the TDS.

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

43.5 The capabilities of the manufacturers and subcontractors proposed by the Tenderer that is determined to have offered the Best Evaluated Tender for identified major items of supply or services will also be evaluated for acceptability in accordance with Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a Form of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Tender will not be rejected, but the Tenderer will be required to substitute an acceptable manufacturer or subcontractor without any change to the Tender price. Prior to signing the Contract, the corresponding Appendix to the Contract Agreement shall be completed, listing the approved manufacturers or subcontractors for each item concerned.

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

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

44.1 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 Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

### **F. Award of Contract**

#### **45 Award Criteria**

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

#### **46 Procuring Entity's Right to Vary Quantities at Time of Award**

46.1 The Procuring Entity reserves the right at the time of Contract award to increase or decrease, by the percentage (s) for items as indicated in the TDS.

#### **47 Notice of Intention to enter into a Contract**

47.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter in to a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Stands till Period; and
- e) instructions on how to request a de briefing and/or submit a complaint during the stand still period;

#### **48 Standstill Period**

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

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

#### **49 Debriefing by the Procuring Entity**

49.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 40, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

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

#### **50 Letter of Award**

50.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 44.1, upon addressing a complaint that has been filed within the Standstill Period; the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **51 Signing of Contract**

51.1 Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

51.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

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

51.4 Notwithstanding ITT 47.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the Information System to be supplied, where such export restrictions arise from trade regulations from a country supplying those Information System, the Tenderer shall not be bound by its Tender, provided that the Tenderer can demonstrate that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Tenderer in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the Information System under the terms of the Contract.

#### **52 Performance Security**

52.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the TDS, in accordance with the General Conditions of Contract, using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.



52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

52.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

### **53 Publication of Procurement Contract**

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

- a) Name and address of the Procuring Entity;
- b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

### **54 Procurement Related Complaint**

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

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

## SECTION II - TENDER DATA SHEET (TDS)

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

Reference to ITT Clause	Particulars of appendix to instructions to tenders
<b>A. General</b>	
ITT 1.1	The reference number of the Invitation to Tenders (ITT) is: <b>KEMSA/ONT14/2023-2024 PROCUREMENT OF TABLET COMPUTERS</b>
	The Procuring Entity is: <b>Kenya Medical Supplies Authority (KEMSA)</b>
	The name of the ITT is: <b>KEMSA/ONT14/2023-2024 PROCUREMENT OF TABLET COMPUTERS</b>
ITT 2.1 (a)	<b>Electronic –Procurement System</b> The Procuring Entity website: <b>www.kemsa.co.ke</b> or <b>www.tenders.go.ke</b>  The electronic-procurement system shall be used to manage the following aspects of the Tendering process: <i>Issuing tendering documents, issuance of addenda, issuance of tender clarifications, publication of contract award notice.</i>
ITT 3.3	<i>Not Applicable</i>
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: 2
<b>B. Contents of Tendering Document</b>	
ITT 8.1	A pre-tender conference will <b>not be held</b>
ITT 9.1	For clarifications of tender purposes; The contact address is:  The Chief Executive Officer Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area P.O. Box: 47715-00100 Nairobi, Kenya Tel No: +254 719033000/ +254 726618520/1 E- mail <a href="mailto:procure@kemsa.co.ke">procure@kemsa.co.ke</a>
<b>C. Preparation of Tenders</b>	
ITT 13.1(k)	The Tenderer shall submit the following additional documents in its Tender: As detailed under section III
ITT 15.1	Alternative Tenders shall not be considered.
ITT 19.5	The Incoterms edition is: <b>incoterms 2020 edition.</b>
ITT 19.5 (a)	Place of destination: <b>DDP, named place of destination KEMSA Commercial Street warehouse</b>
ITT 19.6	Final Destination (Project Site): <b>DDP, named place of destination KEMSA Commercial Street warehouse</b>
ITT 19.9	The prices quoted by the Tenderer <i>shall not</i> be subject to adjustment during the performance of the Contract.
ITT 20.1	<i>The Tenderer is required to quote in Kenya Shillings the portion of the tender price that corresponds to expenditures incurred in that currency.</i>

ITT 21.1	The Tender validity period shall be <b>120 days</b> .
ITT 22.1	A Tender Security Shall NOT be required. A Tender-Securing Declaration shall be required
ITT 22.1	In addition to the original of the Tender, the number of copies is: 1 (One)
ITT 23.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <b>A written Power of Attorney</b>
<b>D. Submission and Opening of Tenders</b>	
ITT 25.1	For Tender submission purposes only, the Procuring Entity's address is:  The Chief Executive Officer Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area P.O. Box: 47715- 00100 Nairobi, Kenya Tel No: +254 719033000/ +254 726618520/1 E- mail: <a href="mailto:procure@kemsaco.ke">procure@kemsaco.ke</a>  The deadline for submission is: Date: <b>21<sup>st</sup> September 2023</b> Time: <b>10.00 a.m.</b>  Tenderers <b>shall not</b> have the option of submitting their tenders electronically.
ITT 28.1	Tender opening shall take place at:  The Tender Opening/conference Hall Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area P.O. Box: 47715-00100 Nairobi, Kenya Date: <b>21<sup>st</sup> September 2023</b> Time: <b>10.00 a.m.</b>
ITT 28.6	The Form of Tender and priced Schedule of requirements shall be initialed by <b>Members of the Tender Opening Committee and the Secretary.</b>
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 35.1	The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: <b>[Kenya Shillings]</b>  The source of exchange rate shall be: <b>Central Bank in Kenya.</b>  The date for the exchange rate shall be: <b>Date of tender closing/ Opening</b>
ITT 36.2	A margin of domestic preference <b>shall not apply</b>
36.4	The invitation to tender is open to all eligible bidders.
<b>F. PROCUREMENT RELATED COMPLIANT</b>	

ITT 54.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: <b>Board Secretary</b></p> <p>Title/position: <b>Board Secretary</b></p> <p>Procuring Entity: <b>Public Procurement Administrative Board</b></p> <p>Email address: <b><a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a></b>.</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Tender Documents; and</li> <li>2. the Procuring Entity's decision to award the contract.</li> </ol>
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## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provision

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

- a) For construction turn over or financial data required for each Year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single Contract-Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity

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

### 2. Evaluation and contract award Criteria

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

### 3. Preliminary examination for Determination of Responsiveness

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

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

### 4. Tender Evaluation (ITT 34)

4.1 To evaluate Items or Lots that include at least the percentages of items per lot and quantity per item as specified in ITT 14.6, if applicable. Tender evaluation of such tenders will be carried out as per the following procedures. The average price (or highest price as specified in TDS 30.3) of an item quoted by substantially responsive Tenders will be added to the Tender price of those who did not quote for that item and the equivalent total cost of the tender so determined will be used for Tender comparison, evaluation, and award.

a) In addition to the criteria listed in ITT 34.2(a)–(c) the additional evaluation factors as per ITT 34.2 (d) is specified as follows:

b) **Delivery schedule.** (As specified in the TDS)

*The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VII, Schedule of Requirements. No credit will be given to deliveries before the earliest date, and Tenders offering delivery after the final date shall be treated as non-responsive. Within this acceptable period, an adjustment of [insert the adjustment factor], will be added, for evaluation purposes only, to the Tender price of Tenders offering deliveries later than the “Earliest Delivery Date” specified in Section VII, Schedule of Requirements*

c) **Deviation in payment schedule.** [insert tone of the following]

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

**Or**

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

d) **Specific additional criteria**

*[Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in TDS34.6][If specific **sustainable procurement technical requirements** have been specified in Section VII- Specification, **either** state that (i) those requirements will be evaluated on a pass/fail (compliance basis) **or** otherwise (ii)in addition to evaluating those requirements on a pass s/fail (compliance basis), if applicable, specify the monetary adjustments to be applied to Tender Prices for comparison purposes on account of Tenders that exceed the specified minimum sustainable procurement technical requirements.]not applicable*

## **5. Multiple Contracts (ITT 34.4)**

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

### **OPTION 1**

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

## **OPTION 2 ( Not Applicable)**

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

### **6. Alternative Tenders (ITT13.1) Not Applicable**

6.1 An alternative if permitted under ITT 13, will be evaluated as follows: The Procuring Entity shall consider Tenders offered for alternatives as specified in Part II Section II, Schedule of Requirements. Only the technical alternatives, if any, of the Tenderer with the Lowest Evaluated Tender conforming to the basic technical shall be considered by the Procuring Entity. Not applicable. Alternative Tenders are not permitted.

### **7. Margin of Preference – Not Applicable For This Tender**

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

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

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

- i) Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).
- ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).

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

### **8. Post qualification and Contract award (ITT 37), more specifically, -**



## TO BE SPECIFIED UNDER SPECIFIC EVALUATION CRITERIA

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of prequalification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
  - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means sufficient to meet the cash flow of Kenya Shillings \_\_\_\_\_.
  - ii) Minimum average annual turnover of Kenya Shillings \_\_\_\_\_ [insert amount], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last \_\_\_\_\_ [insert of year] years.
  - iii) At least \_\_\_\_\_ (insert number) of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings \_\_\_\_\_ equivalent.
  - iv) Other conditions depending on their seriousness.

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

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

b) **Pending Litigation**

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

c) **Litigation History**

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



## SPECIFIC EVALUATION CRITERIA

### A. PRELIMINARY EXAMINATION

#### Requirements

1. Tender documents must be paginated/serialized. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1, 2, 3..... n where n is the last page). The numbering **MUST** be sequential. All pages whether blank, back to back including dividers, bid security and price schedules **MUST** be paginated/serialized with **indelible ink. (Mandatory)**.
2. Provide a copy of Certificate of Incorporation/Registration **(Mandatory)**.
3. Provide a copy of valid and current Tax Compliance Certificate **(Mandatory)**.
4. Tender security of **Kes. 1,720,000.00** from a local commercial bank or PPRA recognized insurance company and valid for **150** days from the date of tender opening **(Mandatory)**.
5. Tender form (on a letterhead showing the tenderers complete name and business address) duly **completed and signed**. *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer or authorized representative (attach power of attorney where applicable) (Mandatory).*
  - i. *Tenderer's Eligibility-Confidential Business Questionnaire (Mandatory).*
  - ii. *Certificate of Independent Tender Determination (Mandatory).*
  - iii. *Self-Declaration of the Tenderer :*
    - a) Duly completed and signed self-Declaration that the person/ Tenderer is not debarred in the matter of the PPADA 2015 **(Mandatory)**.
    - b) Duly completed and signed self-Declaration that the person/ Tenderer will not engage in any corrupt/ fraudulent practice **(Mandatory)**.
    - c) Duly completed and signed declaration and commitment to the code of ethics **(Mandatory)**.

**NOTE:** Failure to comply with Mandatory requirements will lead to disqualification. Only bidders who are successful at this stage will proceed to the next stage of evaluation.

### B. TECHNICAL EVALUATION- DOCUMENTS

Bidders are required to submit the following documents:

1. Provide a valid Manufacturers Authorization or a Distributors Agreement which **MUST** be on a manufacturer's letterhead and addressed to KEMSA that is both tender and item specific and signed by an authorized signatory.

2. Current and valid manufacturing Certificate of Quality issued by an independent recognized body to the manufacturer of the product. The certificate must be item specific.
3. The bidder must provide evidence of similar work done i.e (Contracts, Purchase Orders and Reference letters).
4. The bidder must provide evidence of average annual turnover in the last three (3) years (**2022, 2021, and 2020**). (Provide certified audited accounts for the past immediate three (3) years).

**EVALUATION WILL BE ON MET OR NOT MET BASIS.**

### **C. PRODUCT EVALUATION**

The product evaluation will be done on the brochure submitted by the Bidders and will involve the following:

- A manufacture's catalogue or its section showing the requested specifications and the following parameters: product mark of quality, name of manufacturer, country of origin. The catalogue must have manufacturer's detail.

These parameters must be highlighted with a bright marker on the catalogue

- A signed and stamped check list of product compliance with the specifications.
- Evaluation of the product labeling criteria based on technical specifications spelt out in this tender document.
- Tenderers will be required to submit in addition to manufacturers catalogue a compliance sheet for the tablet computer. The tenderer must indicate on the compliance sheet whether the tablet computer offered comply with each item of the technical specifications in the tender document.
- The tenderer shall be required to commit in writing and present supporting data for compliance with items in the tender technical specifications, which are not supported by original manufacturers brochure.
- In case of conflict between information/data presented in the original manufacturers brochure and the tenders compliance sheet the information/data in the original manufacturers brochure shall prevail.

The evaluation will be on a "Yes/No" basis;

**NOTE:** Only bidders who are successful at this stage will proceed to the next stage of evaluation. The award criteria would be for a complete lot

### **D. FINANCIAL EVALUATION**

Bidders who are successful at preceding stages of evaluation will have their prices compared and award recommended to the lowest evaluated responsive bid.

#### **E. PAST PERFORMANCE**

A supplier performance measurement tool with detailed performance indicators has been developed and will be used to measure the performance of contracted suppliers. Suppliers who will have had unsatisfactory past performance on specific items of less than 71% shall not be recommended for award of similar items in subsequent tenders.

#### **PERFORMANCE INDICATORS**

The performance of suppliers, contractors, service providers and consultants are monitored at contract level to ensure the terms and conditions of the contract are met. The extent of performance monitoring applied shall be determined by the level of risk and the nature of the items. Good monitoring of suppliers anticipates, identifies and facilitates correction of shortcomings before the relationship with the supplier is adversely affected and before compromising value for money.

##### **1. Time**

The time indicator measures the duration in days for the supplier to deliver or complete the task as specified in the contract. The required data to be captured from the source documents into the performance tool shall include: Item code, item description, contract number, purchase order number, supplier name, contract signing date, contract effective date, contractual delivery date, earliest delivery date, extended delivery date, actual delivery date, supplier offered delivery date, and latest delivery date. For each item, the earliest delivery date and the latest delivery date are derived from the issued tender document. The supplier offered delivery date is derived from the bid.

**Contract Delivery Period:** The number of calendar days from the date of signing the contract to the date the delivery is required per the contract. If a contract is extended, the additional days are confirmed through addendum (letter) to the contract and the duration added to the Contract Delivery Period. In call-off orders under framework contracts, Contract Delivery Period is the number of calendar days from the date of call-off order to the required delivery date.

**Actual Delivery Period:** The number of calendar days from the contract effective date to the actual delivery date. Where call off orders apply, the Actual Delivery Period is the number of calendar days from the date of call-off order to actual delivery date. For staggered deliveries under definite quantity contracts, actual delivery period is the number of calendar days from date of notification of the required quantity.

**Delivery on Time:** Delivery of goods on or within the Contract Delivery Period

yields a Delivery on Time indicator score of 100%. Delivery within 2 weeks after Contract Delivery Period still yields a Time indicator score of 100%. Delivery made thereafter yields a time Indicator score of zero (0).

Failure to fully deliver within 8 weeks from lapse of Contract Delivery Period will result in contract termination.

## 2. Quantity

The supplier is required to deliver the ordered quantity of the product in full. Contractors should deliver the product per the required specifications.

Sometimes, due to practical reasons, a supplier may be requested in writing to deliver a portion of the order. In that event, the measurement will be done after substantial completion of contracted quantity. The quantity indicator measures Delivery in Full, which is the difference between the quantity of the product in the purchase order or contract and the quantity that is certified received.

**Delivery in Full:** The indicator is measured by the percentage of the ordered quantity which is actually certified received. Example: If the purchase order quantity was 200,000 units. Of this, the quantity received was 190,000 units. The indicator of Delivery in Full is computed as  $(190,000/200,000) * 100 = 95\%$ . The target performance score for Delivery in Full indicator is 100%.

The required data are order quantity, delivered quantity, and deferred quantity.

## 3. Cost

The historical unit prices for each item are captured in the ERP system. The Award Price arise from recommendations for award and signed supplier contract. The Final Price is the award price plus the price variation that is approved at contract implementation; excluding those from the application of a price adjustment formula if provided for in the signed contract.

The Price Ratio is defined as  $[Award\ Price \times 100 / Final\ Price]$ ; which should be 100% where the Final Price is equal to the Award Price. Where the Final Price is higher than the Award Price, the performance score is prorated. Example: if the Final Price is KES2,700, Award Price is KES2,400, then the Price Ratio is  $[2,400 * 100 / 2700 = 89\%]$ . The data to be captured in the ERP system include the following: Item Code, Item Description, Contract Number, Order Number, Supplier Name, Plan Price, Award Price, Price Variation, Final Price.

## 4. Quality

The contract provides the technical specifications. At the delivery point, the products are inspected and tested to ensure they comply with the quality specifications.

Products that do not comply with Quality Specifications will be rejected. However, an assessment shall be made to check if there is suitable product packaging. Percentage of damaged cartons acceptable is 0.5%. Above this %, the damaged cartons will be rejected.

## 5. Ratings and Scores

The supplier contract performance scores provide a structured way of rating suppliers with an aim of identifying areas of improvement and a basis for future engagement depending on historical performance. The scorecard will be used to measure, rate and rank suppliers with the aim of ensuring suppliers consistently meet and surpass their contractual obligations. Table 3 summarizes the ratings and scores.

Table 1. Ratings and scores measurement system

Rating	Range	Performance Description
1	0-30	Falls far below expectations: Performance jeopardized the achievement of contract requirements, despite contract administrative interventions.
2	31-50	Missed expectations: There are a number of performance issues that required KEMSA to provide additional contract administrative interventions to ensure that contract requirements are met.
3	51-70	Does not fully meet expectations: There are performance issues but supplier has somehow met contract requirements.
4	71-80	Mostly meets expectations: There are minor performance issues but the supplier has largely met the contract requirements
5	81-100	Exceeds Expectations: Supplier has demonstrated a performance level in measurable within contract requirements

## 6. Performance Index

The Performance Index combines the indices for (1) time, (2) quantity, (3) cost and (4) quality. Each of the four performance indicators is scored out of 100%. The parameters are then weighted using a predefined matrix and the overall Supplier Performance Index is the sum of the weighted scores.

Table 2. Supplier Performance Index (Example)

#	Indicator	Score (%)	Weight	Weighted Score
---	-----------	-----------	--------	----------------

1	Time	100	0.5	50.00
2	Quantity	95	0.3	28.50
3	Cost	89	0.1	8.90
4	Quality	83	0.1	8.30
	Supplier Performance Index			95.70

**6. Performance Decision**

A supplier with a Performance Index Score of less than 71% shall not be eligible for award of contracts by KEMSA for a period of ONE YEAR from the date of notification of the performance score.

This information shall form part of the Post Contract Qualification Criteria in the subsequent tender document and evaluation stated as follows:

“Non-performance of a contract did not occur as a result of supplier default since 1 January [insert year] or the bidder has a Performance Score of less than 71% as measured using the KEMSA Supplier Performance Measurement Tool as notified to the supplier or service provider in writing prior to this tender notice.”

The Procurement Directorate shall debrief the supplier and prepare minutes to record the debriefing, which shall form part of the permanent records.

## SECTION IV – TENDERING FORMS

### FORM OF TENDER

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

#### INSTRUCTIONS TO TENDERERS

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

#### Date of this Tender submission

#### Invitation to Tender No.:

#### Alternative No.:

To: Kenya Medical Supplies Authority

- a) **No reservation:** We have examined and have no reservations to the tendering document, including Add and issued in accordance with Instructions to Tenderers (ITT 8);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) We have not been suspended nor declared in eligible by the Procuring Entity based on execution of a Tender- Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 4.8;
- d) **Conformity:** We offer to supply in conformity with the tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements for the following Goods:
- e) **Tender Price:** The total price of our Tender, is: excluding any discounts offered in item(f) below is: *[Insert one of the options below as appropriate]*

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

or

**Option 2**, in case of multiple lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the*



respective currencies]; and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];*

- f) **Discounts:** The discounts offered and the methodology for their application are:
- i) The discounts offered are: *[Specify in detail each discount offered.]*
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts];*
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended if applicable) from the date fixed or the Tender submission deadline specified in TDS 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture partner or as a sub-contractor, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 13;
- j) **Suspension and Debarment:** We, along with any of our sub-contractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.7];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount


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

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand and that you are not bound to accept the lowest evaluated cost Tender, the Lowest Evaluated Tender or any other Tender that you may receive; and
- n) **Fraud and Corruption:** We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- o) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- p) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from (specify website) during the procurement process and the execution of any resulting contract.
- q) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
  - a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict to interest.
  - b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
  - c) Self-Declaration of the Tenderer-to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as in formed in “**Appendix 1-Fraud and Corruption**” attached to the Form of Tender. **Name of the Tenderer:** *\*[insert complete name of the Tenderer]*

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

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

*signing the Tender]* **Signature of the person named above:** *[insert signature*

*of person whose name and capacity are shown above]* **Date signed** *[insert date of*

*signing]* **day of** *[insert month], [insert year]*

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

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

## TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

#### a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of Procuring Entity	
2	Reference number of the tender	
3	Date and time of tender opening	
4	Name of the tenderer	
5	Full address and contact details of the tenderer	Country: City: Location: Building: Floor: Postal address: Name and email of contact person:
6	Current trade license registration number and expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email and telephone number</i> ) of registering body/agency	
8	Description of nature of business	
9	Maximum value of business which the tenderer handles	
10	State if tenders company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email and telephone number</i> ) of state which stock exchange	

## General and Specific Details

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

Name in full \_\_\_\_\_ Age \_\_\_\_\_

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

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

	NAME OF PARTNERS	NATIONALITY	CITIZENSHIP	% SHARES OWNED
1				
2				
3				
4				

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

i) Private or public Company \_\_\_\_\_

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

Nominal Kenya Shillings (Equivalent) .....

Issued Kenya Shillings (Equivalent) .....

iii) Give details of Directors as follows.

	NAME OF DIRECTOR	NATIONALITY	CITIZENSHIP	% SHARES OWNED
1				
2				
3				
4				

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

i) Are there any person/persons in.....(Name of Procuring Entity) who has/ have an interest or relationship in this firm? Yes/No..... If yes, provide details as follows.

	NAME OF PERSON	DESIGNATION IN THE PROCURING ENTITY	INTEREST OR RELATIONSHIP WITH TENDERER
1			
2			
3			
4			

ii) **Conflict of interest disclosure**

	TYPE OF CONFLICT	DISCLOSURE YES OR NO	IF YES PROVIDE DETAILS OF THE RELATIONSHIP WITH TENDERER
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer		
3	Tenderer has the same legal representative as another tenderer		
4	Tenderer has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the tender of another Tenderer or influence the decisions of the Procuring Entity regarding this tendering process		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that the subject of the tender		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in the tender document		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the contract and/or the tender evaluation process of such contract		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such contract		

9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the contract		
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**f) Certification**

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

Full Name \_\_\_\_\_ Title or Designation \_\_\_\_\_

\_\_\_\_\_

(Signature)

(Date)



## 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\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

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

## SELF- DECLARATION FORMS

### FORM SD1

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

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

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

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

## FORM SD2

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

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

1. THAT I am the Chief Executive / Managing Director /Principal Officer/Director of.....(*insert name of the Company*) who is a Bidder in respect of **Tender No.**.....for..... (*insert tender title /description*) for..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, it's servants and/or agents/sub-contractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder 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 and my responsibilities under the Code.

I do here by 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.....Email.....

Name of the Firm/Company.....

Date.....

*(Company Seal/ Rubber Stamp where applicable)*

Witness Name

.....

Sign.....

Date.....

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

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

### 2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below high light Kenya's policy of no tolerance for such practices and behavior:
- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  - 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be –
    - a) disqualified from entering into a contract for a procure mentor asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
    - a) Shall not take part in the procurement proceedings;
    - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

- c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in sub section (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
  - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) "obstructive practice" is:
    - Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya in to allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices



amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers(applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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

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

## TENDERER INFORMATION FORM

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

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

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

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. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert tenderer's actual or intended country year of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's address in country of registration: <i>[insert tenderer's legal address in country of</i>
6. Tenderer's authorized representative information: Name:  Address:  Telephone/Fax numbers:  Email Address
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of incorporation (or equivalent documents of constitution or association) and/or documents of registration of the legal entity named above, in accordance with ITT 4.4 <input type="checkbox"/> In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.7 documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law</li><li>• Establishing that the tenderer is not under the supervision of the procuring entity</li></ul> Included are the organizational chart and a list of Board of Directors

**FORM ELI - 1.1 (continued)**

**Tenderer Information Form**

Date: *[insert day, month, year]*

ITT No. and title: *[insert ITT number and title]*

Page *[insert page number]* of *[insert total number]* pages

1.Tenderer's name:			
2.Street Address:	Postal code:	City:	Country:
3.P.O.Box and Mailing Address			
4.Telephone number:			
5.Fax number:			
6.E-Mail address:			
7.Website:			
8.Contact name:			
9. Contact Title:			
10. Type of Business: If other, specify:			
11. Nature of business			
12.Year established			
13. Dates, numbers and expiration dates of current licenses and permits:			
14. Current health authority registration information:			

15. Proof of product and facility registrations with Kenya regulatory authority and international agencies (e.g. WHO certification scheme, GMP)
16. Name of government agency (ies) responsible for inspecting and licensing of facilities in the country of origin of the raw materials and or processing of the goods:  Date of last inspection:
17. Quality Assurance Certification: <i>(please include a copy of your latest certificate)</i>
18. Production capacity: [insert peak and average production capacity over the last three years in units/day or units/month etc.]
19. List of names and addresses of sources of raw materials and what products they will be used in:
20. Proof of raw material product and facility registrations with Kenya regulatory authority and international agencies (e.g. WHO certification scheme, GMP)
21. Raw materials tested prior to use:
22. Presence and characteristics of in-house quality control laboratory:
23. Names and addresses of external quality control laboratories used:
24. Are all finished products tested and released by quality control prior to release for sale:  Yes___ No_____, if not, why?
26. List control tests done during production? If so list.
27. Procedures for dealing with rejected batches:
28. Lists tests conducted after production and prior to release of product on market:
29. List products recalls linked to defects during the last 36 months. Include reason and date of recall:
30. Are technical documents available in <b>English or Kiswahili</b> : Yes, or No

## TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

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

*alternative]* Page\_\_\_\_of\_\_\_\_\_pages

1. Tenderer's name: <i>[insert tenderer's legal name]</i>
2. Tenderer's JV member's name: <i>[insert JV member's legal name]</i>
3. Tenderer's JV member's country of registration: <i>[insert JV member's country of registration]</i>
4. Tenderer's JV member's year of registration: <i>[insert JV member's year of registration]</i>
5. Tenderer's JV member's legal address in country of registration: <i>[insert JV member's legal address in country of registration]</i>
6. Tenderer's JV member's authorized representative information: Name:  Address:  Telephone/Fax numbers:  Email Address
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i>  <input type="checkbox"/> Articles of incorporation (or equivalent documents of constitution or association) and/or documents of registration of the legal entity named above, in accordance with ITT 4.4 <input type="checkbox"/> Tax obligations for Kenyan tenderer's, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.13 <input type="checkbox"/> In case of state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law and not under the supervision of the Procuring Entity, in accordance with ITT 4.7 Included are the organizational chart and a list of Board of Directors

**FORM FIN – 3.1****FINANCIAL SITUATION AND PERFORMANCE**

*[The following table shall be filled in for the Tenderer and for each member of a Joint Venture]*

Tenderer's Name: *[insert full*

*name]* Date: *[insert day, month,*

*year]*

Joint Venture Member Name: *[insert full*

*name]* ITT No. and title: *[insert ITT number*

*and title]*

Page *[insert page number]* of *[insert total number]* pages

Type of Financial information in (currency)	Historic information for previous _ <i>[insert number]</i> years, <i>[insert in words]</i> (amount in currency, currency, exchange rate, USD equivalent)				
	Year 1	Year 2	Year 3		
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

### 3. FINANCIAL DOCUMENTS

The Tenderer and its parties shall provide copies of financial statements for the last [3] years pursuant Section III, Qualifications Criteria and Requirements, Sub-factor 3.1. The financial statements shall:

- a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
  - b) Be independently audited or certified in accordance with local legislation.
  - c) Be complete, including all notes to the financial statements.
  - d) Correspond to accounting periods already completed and audited.
- ☐ Attached are copies of financial statements for the last [3] years required above; and complying with the requirements

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<sup>4</sup>*If the most recent set of financial statements is for a period earlier than 12 months from the date of tendering, the reason for this should be justified.*



## FORM FIN - 3.2

### AVERAGE ANNUAL TURNOVER (ANNUAL SALES VALUE)

*[The following table shall be filled in for the Tenderer and for each member of a Joint Venture]*

Tenderer's Name: *[insert full*

*name]* Date: *[insert day, month,*

*year]*

Joint Venture Member Name: *[insert full*

*name]* ITT No. and title: *[insert ITT number*

*and title]*

Page *[insert page number]* of *[insert total number]* pages

Annual turn over data			
Year	Amount Currency	Exchange rate	USD equivalent
<i>[indicate calendar year]</i>	<i>[insert amount and indicate currency]</i>		

Average Annual Turnover *	

\* Total USD equivalent for all years divided by the total number of years.

**FORM CON-1**  
**CURRENT CONTRACT COMMITMENTS / CONTRACTS IN PROGRESS FORM**

1. Name of Contract(s)
2. Procuring Entity Contact Information <i>[insert address, telephone, fax, e-mail address]</i>
3. Value of outstanding contracts <i>[current US\$ equivalent]</i>
4. Estimated delivery date
5. Average monthly invoices over the last six months (US\$/mon.)

## FORM - EXP - 1 - EXPERIENCE

Contracts over..... <i>[insert amount]</i> during the last three years:				
Procuring Entity	Value	Year	Goods/Services Supplied	Country of Destination

**FORM - PER 1****HISTORICAL CONTRACT NON-PERFORMANCE, AND PENDING LITIGATION AND LITIGATION HISTORY**

*[The following table shall be filled in for the Tenderer and for each member of a Joint Venture]*

Tenderer's Name: .....*[insert full*

*name]* Date: .....*[insert day, month, year]*

Joint Venture Member Name: ..... *[insert*

*full name]* ITT No. and title: .....*[insert ITT number and title]*

Page..... *[insert page number]* of .....*[insert total number]* pages.

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

<i>[insert year]</i>	<i>[insert amount]</i>	<p>Contract Identification: [indicate complete contract name, number, and any other identification]</p> <p>Name of Procuring Entity: <i>[insert full name]</i></p> <p>Address of Procuring Entity: <i>[insert street/city/country]</i></p> <p>Matter in dispute: <i>[indicate main issues in dispute]</i></p> <p>Party who initiated the dispute: <i>[indicate “Procuring Entity” or “Supplier”]</i></p> <p>Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i></p>	<i>[insert amount]</i>
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☐ No consistent history of court/arbitral award decisions in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.4.

☐ Consistent history of court/arbitral award decisions in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.4 as indicated below.

Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), USD Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	<p>Contract Identification: [indicate complete contract name, number, and any other identification]</p> <p>Name of Procuring Entity: <i>[insert full name]</i></p> <p>Address of Procuring Entity: <i>[insert street/city/country]</i></p> <p>Matter in dispute: <i>[indicate main issues in dispute]</i></p> <p>Party who initiated the dispute: <i>[indicate “Procuring Entity” or “Supplier”]</i></p> <p>Court/ arbitral award decision: <i>[Indicate if the award decision was against the Tenderer or any member of a</i></p>	<i>[insert amount]</i>

## PRICE SCHEDULE FOR TABLET COMPUTERS

		<b>Procurement of tablet computers</b>						<b>KENYA MEDICAL SUPPLIES AUTHORITY</b> P. O. BOX 47715, 00100, NAIROBI TEL: 254-20-3922000 FAX: 254 20 3922400 E-MAIL: <a href="mailto:info@kemsas.co.ke">info@kemsas.co.ke</a>
		<b>TENDER REGISTRATION NO KEMSA/ONT14/2023-2024</b>						
		<b>For official use only</b>						
		<b>Date of Tender Notice: 5<sup>th</sup> September,2023</b>						
		<b>Closing date: 21<sup>st</sup> September, 2023</b>						
		<b>Time: 10:00AM</b>						
<b>NAME OF FIRM QUOTING:</b>								
<b>Address:</b>								
<b>Phone, fax, e-mail:</b>								<b>Single Bids are allowed</b>
<b>Item</b>	<b>Item Description</b>	<b>Unit of Measure</b>	<b>Qty</b>	<b>Unit Price KEMSA Delivered</b>	<b>Total Price VAT inclusive</b>	<b>Delivery period</b>	<b>Remarks</b>	
1	Tablet computers	Pieces	2,157					
	<b>Name</b>							
	<b>Signature</b>							
	<b>Date</b>							
	<b>Currency</b>							

## FORM OF TENDER SECURITY (OPTION 1-DEMAND BANK GUARANTEE)

Beneficiary: \_\_\_\_\_

Request for Tenders No: \_\_\_\_\_

Date: \_\_\_\_\_

TENDER GUARANTEE No.: \_\_\_\_\_

Guarantor: \_\_\_\_\_

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

\_\_\_\_\_  
[signature(s)]

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



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

TENDER GUARANTEE No.: \_\_\_\_\_

1. Whereas ..... [*Name of the tenderer*] (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.***

## TENDER - SECURING DECLARATION FORM

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

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

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

To: .....[insert complete name of Purchaser]

I/We, the undersigned, declare that:

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

Signed.....

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

Name.....

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

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

Seal or stamp

## MANUFACTURER'S AUTHORIZATION

[The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This Form of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. 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 tendering 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 goods 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 Goods, manufactured by us [insert name and or brief description of the Goods], and to subsequently negotiate and sign the Contract.

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

Signed: .....[insert signature(s) of authorized representative(s) of the Manufacturer]

Name: .....[insert complete name(s) of authorized representative(s) of the Manufacturer]

Title: .....[insert title]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]

# **PART 2 – SUPPLY REQUIREMENTS**

## **SECTION V - SCHEDULE OF REQUIREMENTS**

### **CONTENTS**

Notes for Preparing the Schedule of Requirements

1. List of Goods and Delivery Schedule
2. Technical Specifications
3. Inspections and Tests

## List of Goods and Delivery Schedule

Line Item No.	Description of Goods	Physical unit	Qty	Final (Project Site) Destination as specified in BDS	Pre-delivery sample to be submitted at KEMSA for & inspection	Delivery Date :	
						Latest Delivery Date (After Pre-delivery sample approval)	Bidder's offered Delivery date [to be provided by the bidder]
1.	Tablet computers	Piece	2,157				

## TECHNICAL SPECIFICATIONS FOR TABLET COMPUTERS

TABLET		
NO	FEATURE	DETAILS
1	Form Factor	Tablet
2	OS	Android 11 and above
3	Processor	<b>CPU Speed</b> : 1.8GHz , 1.6 GHz <b>CPU Type</b> : Octa-core (2*2.3GHz)
4	Display	<b>Size</b> :25.54cm(10.1’’) <b>Resolution</b> : 1920*1200 (WUXGA) <b>Technology</b> :TFT LCD <b>Color Depth</b> : 16M
5	Camera	<b>Rear Camera- Resolution</b> : 8.0MP <b>Front Camera – Resolution</b> : 5.0 MP <b>Video Recording Resolution</b> : FHD(1920*1080)@30fps
6	Memory	<b>RAM _Size (GB)</b> : 3OR MORE <b>ROM Size (GB)</b> :64 <b>External Memory Support</b> :Micro SD (Up to 512GB)
7	Network	4G-5G
8	Connectivity	<b>USB Version</b> : Type C <b>Location Technology</b> : GPS, Glonass, Beidou <b>Earjack</b> :3.5mm Stereo <b>Wi -fi</b> :802.11 a/b/g/n/ac 2.4G+5GHz VHT80 <b>Bluetooth Version</b> : Bluetooth v5.0,5.2(LE up to 2Mbps)
9	Battery	<b>Battery Capacity</b> (mAh, Typical):6150
10	Warranty	1-year
11	Accessories	Cover

N/B

Bidders MUST submit product brochures containing details and Images of the tablet computer.

## PART 3 – CONTRACT

### SECTION VI - GENERAL CONDITIONS OF CONTRACT

#### 1. CONTRACT AND INTERPRETATION

##### a) Contract Elements

- i. “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein. The Contract Agreement and the Contract Documents shall constitute the Contract, and the term “the Contract” shall in all such documents be construed accordingly.
- ii. “Contract Documents” means the documents specified in Article 1.1 (Contract Documents) of the Contract Agreement (including any amendments to these Documents).
- iii. “Contract Agreement” means the agreement entered into between the Procuring Entity and the Supplier using the form of Contract Agreement contained in the Sample Contractual Forms Section of the tender documents and any modifications to this form agreed to by the Procuring Entity and the Supplier. The date of the Contract Agreement shall be recorded in the signed form.
- iv. “GCC” means the General Conditions of Contract.
- v. “SCC” means the Special Conditions of Contract.
- vi. “Technical Requirements” means the Technical Requirements in Section VII of the tendering documents.
- vii. “Implementation Schedule” means the Implementation Schedule in Section VII of the tendering documents.
- viii. “Contract Price” means the price or prices defined in Article 2 (Contract Price and Terms of Payment) of the Contract Agreement.
- ix. “Procurement Regulations” refers to the Regulations issued under the Public Procurement and Asset Disposal Act (2015).
- x. “tendering documents” refers to the collection of documents issued by the Procuring Entity to instruct and inform potential suppliers of the processes for tendering, selection of the winning tender, and Contract formation, as well as the contractual conditions governing the relationship between the Procuring Entity and the Supplier. The General and Special Conditions of Contract, the Technical Requirements, and all other documents included in the tendering documents reflect the Procurement Regulations that the Procuring Entity is obligated to follow during procurement and administration of this Contract.

##### b) Entities

- i) “Procuring Entity” means the entity purchasing the Information System, as **specified in the SCC**.
- ii) “Project Manager” means the person **named as such in the SCC** or otherwise appointed by the Procuring Entity in the manner provided in GCC Clause 18.1 (Project Manager) to perform the duties delegated by the Procuring Entity.
- iii) “Supplier” means the firm or Joint Venture whose tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.



- iv) "Supplier's Representative" means any person nominated by the Supplier and named as such in the Contract Agreement or otherwise approved by the Procuring Entity in the manner provided in GCC Clause 18.2 (Supplier's Representative) to perform the duties delegated by the Supplier.
- v) "Subcontractor" means any firm to whom any of the obligations of the Supplier, including preparation of any design or supply of any Information Technologies or other Goods or Services, is sub contracted directly or indirectly by the Supplier.
- vi) "Adjudicator" means the person named in Appendix 2 of the Contract Agreement, appointed by agreement between the Procuring Entity and the Supplier to make a decision on or to settle any Dispute between the Procuring Entity and the Supplier referred to him or her by the parties, pursuant to GCC Clause 43.1 (Adjudication).

**c) Scope**

- i. "Information System," also called "the System," means all the Information Technologies, Materials, and other Goods to be supplied, installed, integrated, and made operational (exclusive of the Supplier's Equipment), together with the Services to be carried out by the Supplier under the Contract.
- ii. "Subsystem" means any subset of the System identified as such in the Contract that may be supplied, installed, tested, and commissioned individually before Commissioning of the entire System.
- iii. "Information Technologies" means all information processing and communications-related hardware, Software, supplies, and consumable items that the Supplier is required to supply and install under the Contract.
- iv. "Goods" means all equipment, machinery, furnishings, Materials, and other tangible items that the Supplier is required to supply or supply and install under the Contract, including, without limitation, the Information Technologies and Materials, but excluding the Supplier's Equipment.
- v. "Services" means all technical, logistical, management, and any other Services to be provided by the Supplier under the Contract to supply, install, customize, integrate, and make operational the System. Such Services may include, but are not restricted to, activity management and quality assurance, design, development, customization, documentation, transportation, insurance, inspection, expediting, site preparation, installation, integration, training, data migration, Pre- commissioning, Commissioning, maintenance, and technical support.
- vi. "The Project Plan" means the document to be developed by the Supplier and approved by the Procuring Entity, pursuant to GCC Clause 19, based on the requirements of the Contract and the Preliminary Project Plan included in the Supplier's tender. The "Agreed Project Plan" is the version of the Project Plan approved by the Procuring Entity, in accordance with GCC Clause 19.2. Should the Project Plan conflict with the Contract in any way, the relevant provisions of the Contract, including any amendments, shall prevail.
- vii. "Software" means that part of the System which are instructions that cause information processing Sub systems to perform in a specific manner or execute specific operations.
- viii. "System Software" means Software that provides the operating and management instructions for the underlying hardware and other components, and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Systems Software. Such System Software includes, but is not restricted to, micro-code embedded in hardware (i.e., "firmware"), operating systems, communications,

system and network management, and utility software.

- ix. "General-Purpose Software" means Software that supports general-purpose office and software development activities and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be General-Purpose Software. Such General-Purpose Software may include, but is not restricted to, word processing, spreadsheet, generic database management, and application development software.
- x. "Application Software" means Software formulated to perform specific business or technical functions and interface with the business or technical users of the System and is identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Application Software.
- xi. "Standard Software" means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Standard Software.
- xii. "Custom Software" means Software identified as such in Appendix 4 of the Contract Agreement and such other Software as the parties may agree in writing to be Custom Software.
- xiii. "Source Code" means the database structures, dictionaries, definitions, program source files, and any other symbolic representations necessary for the compilation, execution, and subsequent maintenance of the Software (typically, but not exclusively, required for Custom Software).
- xiv. "Materials" means all documentation in printed or printable form and all instructional and informational aides in any form (including audio, video, and text) and on any medium, provided to the Procuring Entity under the Contract.
- xv. "Standard Materials" means all Materials not specified as Custom Materials.
- xvi. "Custom Materials" means Materials developed by the Supplier at the Procuring Entity's expense under the Contract and identified as such in Appendix 5 of the Contract Agreement and such other Materials as the parties may agree in writing to be Custom Materials. Custom Materials includes Materials created from Standard Materials.
- xvii. "Intellectual Property Rights" means any and all copyright, moral rights, trademark, patent, and other intellectual and proprietary rights, title and interests worldwide, whether vested, contingent, or future, including without limitation all economic rights and all exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, extractor re-utilize data from, manufacture, introduce into circulation, publish, distribute, sell, license, sub license, transfer, rent, lease, transmit or provide access electronically, broadcast, display, enter in to computer memory, or otherwise use any portion or copy, in whole or in part, in any form, directly or indirectly, or to authorize or assign others to do so.
- xviii. "Supplier's Equipment" means all equipment, tools, apparatus, or things of every kind required in or for installation, completion and maintenance of the System that are to be provided by the Supplier, but excluding the Information Technologies, or other items forming part of the System

**d) Activities**

- i. "Delivery" means the transfer of the Goods from the Supplier to the Procuring Entity in accordance with the current edition Incoterms specified in the Contract.

- ii. "Installation" means that the System or a Subsystem as specified in the Contract is ready for Commissioning as provided in GCC Clause 26 (Installation).
- iii. "Pre-commissioning" means the testing, checking, and any other required activity that may be specified in the Technical Requirements that are to be carried out by the Supplier in preparation for Commissioning of the System as provided in GCC Clause 26 (Installation).
- iv. "Commissioning" means operation of the System or any Subsystem by the Supplier following Installation, which operation is to be carried out by the Supplier as provided in GCC Clause 27.1 (Commissioning), for the purpose of carrying out Operational Acceptance Test (s).
- v. "Operational Acceptance Tests" means the tests specified in the Technical Requirements and Agreed Project Plan to be carried out to ascertain whether the System, or a specified Sub system, is able to attain the functional and performance requirements specified in the Technical Requirements and Agreed Project Plan, in accordance with the provisions of GCC Clause 27.2 (Operational Acceptance Test).
- vi. "Operational Acceptance" means the acceptance by the Procuring Entity of the System (or any Subsystem(s) where the Contract provides for acceptance of the System in parts), in accordance with GCC Clause 27.3 (Operational Acceptance).

**e) Place and Time**

- i. "Supplier's Country" is the country in which the Supplier is legally organized, as named in the Contract Agreement.
- ii. **Unless otherwise specified in the SCC** "Project Site (s)" means the place (s) in the Site Table in the Technical Requirements Section for the supply and installation of the System.
- iii. "Eligible Country" means the countries and territories eligible for participation in procurements.
- iv. "Day" means calendar day of the Gregorian Calendar.
- v. "Week" means seven (7) consecutive Days, beginning the day of the week as is customary in Kenya.
- vi. "Month" means calendar month of the Gregorian Calendar.
- vii. "Year" means twelve (12) consecutive Months.
- viii. "Effective Date" means the date of fulfillment of all conditions specified in Article 3 (Effective Date for Determining Time for Achieving Operational Acceptance) of the Contract Agreement, for the purpose of determining the Delivery, Installation, and Operational Acceptance dates for the System or Sub system(s).
- ix. "Contract Period" is the time period during which this Contract governs the relations and obligations of the Procuring Entity and Supplier in relation to the System, as **unless otherwise specified in the SCC**, the Contract shall continue in force until the Information System and all the Services have been provided, unless the Contract is terminated earlier in accordance with the terms set out in the Contract.
- x. "Defect Liability Period" (also referred to as the "Warranty Period") means the period of validity of the warranties given by the Supplier commencing at date of the Operational Acceptance Certificate of the System or Sub system(s), during which the Supplier is responsible for defects with respect to the System (or the relevant Sub-system[s]) as provided in GCC Clause 29 (Defect Liability).

- xi. "The Coverage Period" means the Days of the Week and the hours of those Days during which maintenance, operational, and/ or technical support services (if any) must be available.
- xii. The Post-Warranty Services Period" means the number of years **defined in the SCC** (if any), following the expiration of the Warranty Period during which the Supplier may be obligated to provide Software licenses, maintenance, and/ or technical support services for the System, either under this Contractor under separate contract(s).

## **2. Contract Documents**

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. The documents forming the Contract shall be interpreted in the following order of priority:

- a) The Contract Agreement,
- b) The Letter of Acceptance,
- c) The Special Conditions- Part A,
- d) The Special Conditions-Part B
- e) The General Conditions of Contract
- f) The Form of Tender,
- g) The Specifications and Schedules of the Drawings (if any), and
- h) The Schedules of Requirements and any other documents forming part of the Contract.

## **3. Fraud and Corruption**

- 3.1 The Procuring Entity requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.
- 3.2 The Procuring Entity requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## **4. Interpretation**

- 4.1 If the context so requires it, singular means plural and vice versa.
- 4.2 Incoterms
  - a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties there under shall be as prescribed by Incoterms specified **in the SCC**.
  - b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified **in the SCC** and published by the International Chamber of Commerce in Paris, France.

#### 4.3 Entire Agreement

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

#### 4.4 Amendment

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

#### 4.5 Non waiver

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

#### 4.6 Severability

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

### 5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier 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.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

### 6. Joint Venture, Consortium or Association

6.1 If the Supplier 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.



## **7. Eligibility**

- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontract 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.
- 7.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

## **8. Notices**

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

## **9. Governing Law**

- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
- 9.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya when
- 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 goods from that country or any payments to any country, person, or entity in that country.

## **10. Settlement of Disputes**

- 10.1 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.1.1 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as herein after 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 Goods under the Contract.
- 10.2 Arbitration proceedings shall be conducted as explained in SCC

- 10.2.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 10.1 shall be finally settled by arbitration.
- 10.2.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within thirty days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 10.2.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 10.2.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any due payments.
- 10.2.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.
- 10.2.6 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.
- 10.2.7 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.
- 10.3 Arbitration Proceedings
- 10.3.1 Arbitration proceedings with both national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person or persons to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Kenya National Chamber of Commerce
  - ii) Chartered Institute of Arbitrators (Kenya Branch)
  - iii) The Law Society of Kenya
- 10.3.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.
- 10.4 Arbitration with Foreign Suppliers

10.4.1 Arbitration with foreign suppliers shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

10.4.2 The place of arbitration shall be a location specified in the **SCC**; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

## 10.5 Alternative Arbitration Proceedings

10.5.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

## 11. Inspections and Audit by the PPRA

11.1 The Supplier shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time changes and costs.

11.2 Pursuant to paragraph 2.2e. of Appendix to the General Conditions the Supplier shall permit and shall cause its subcontractors and sub-consultants to permit, PPRA and/or persons appointed by the PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/ or contract execution, and to have such accounts and records audited by auditors appointed by the PPRA. The Supplier'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 PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination.

## 12. Scope of Supply

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

## 13. Delivery and Documents

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

## 14. Supplier's Responsibilities

14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.



## **15 Contract Price**

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

## **16 Terms of Payment**

- 16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified **in the SCC**.
- 16.2 The Supplier's Invitation to payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCCClause13 and upon fulfillment of all other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or Invitation to payment by the Supplier, and after the Procuring Entity has accepted it.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.
- 16.5 In the event that the Procuring Entity fails to pay the Supplier any payment by its due date or within the period set forth **in the SCC**, the Procuring Entity shall pay to the Supplier interest on the amount of such delayed payment at the rate shown **in the SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

## **17 Taxes and Duties**

- 17.1 For goods manufactured outside Kenya, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside Kenya.
- 17.2 For goods Manufactured within Kenya, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Procuring Entity.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Kenya, the Procuring Entity shall use its Lowest efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

## **18 Performance Security**

- 18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a Performance Security for the performance of the Contract in the amount specified **in the SCC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 As specified in the SCC, the Performance Security, if required, shall be denominated in the currency (ies) of the Contract, or in a freely convertible currency acceptable to the Procuring Entity; and shall be in one of the format stipulated by the Procuring Entity **in the SCC**, or in another form at acceptable to the Procuring Entity.

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

## **19. Certification of Goods in Accordance with Laws of Kenya**

19.1 If required under the Applicable Law, Goods supplied under the Contract shall be registered for use in Kenya. The Procuring Entity undertakes to cooperate with the Supplier to facilitate registration of the Goods for use in Kenya as specified **in the SCC**.

19.2 Unless otherwise specified **in the SCC**, the Contract shall become effective on the date ("the Effective Date") that the Supplier receives written notification from the relevant authority in Kenya that the Goods have been registered for use in Kenya.

19.3 If thirty (30) days, or such longer period specified **in the SCC**, elapse from the date of Contract signing and the Contract has not become effective pursuant to Sub-Clause 19.2 above, then either party may, by not less than seven (7) days' written notice to the other party, declare this Contract null and void. In such event, the Supplier's Performance Security shall be promptly returned.

## **20. Confidential Information**

20.1 The Procuring Entity and the Supplier 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 Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

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

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

- a) the Procuring Entity or Supplier need to share with the PPRA or other institutions participating in the financing of the Contract;
- b) now or here after enters the public domain through no fault of that party;
- c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **21. Subcontracting**

- 21.1 The Supplier 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 Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontractors shall comply with the provisions of GCC Clauses 3 and 7.

## **22. Specifications and Standards**

- 22.1 The Goods supplied under this Contract shall conform to technical specifications and standards mentioned in Section VII, Schedule of Requirements and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the concerned institution.

## **23. Packing and Documents**

- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

## **24. Insurance**

- 24.1 Unless otherwise specified **in the SCC**, the Goods supplied under the Contract shall be fully insured-in a freely convertible currency from an eligible country – against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

## **25. Transportation and Incidental Services**

- 25.1 Unless otherwise specified **in the SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

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

## **26 Inspections and Tests**

- 26.1 The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified **in the SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or the manufacturer, at point of delivery, and /or at the Goods' final destination, or in another place in Kenya as specified **in the SCC**. Subject to GCCSub-Clause 26.3, if conducted on the premises of the Supplier or the manufacturer, all reasonable facilities and assistance, including access to production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 26.3 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.
- 26.4 Whenever the Supplier 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 Supplier 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.
- a) Said inspection and testing is for the Procuring Entity's account. In the event that inspection and testing is required prior to dispatch, the Goods shall not be shipped unless a satisfactory inspection and quality control report has been issued in respect of those Goods.
  - b) The Supplier may have an independent quality test conducted on a batch ready for shipment. The cost of such tests will be borne by the Supplier.
  - c) Upon receipt of the Goods at place of final destination, the Procuring Entity's representative shall inspect the Goods or part of the Goods to ensure that they conform to the condition of the Contract and advise the Procuring Entity that the

Goods were received in apparent good order. The Procuring Entity will issue an Acceptance Certificate to the Supplier in respect of such Goods (or part of Goods). The Acceptance Certificate shall be issued within ten (10) days of receipt of the Goods or part of Goods at place of final destination.

- 26.5 Where the Supplier contests the validity of the rejection by the Procuring Entity or his representative, of any inspection as required by 26.4 above conducted before shipment or at ultimate destination, whether based on product or packing grounds, a sample drawn jointly by the Supplier and Procuring Entity or his or her representative and authenticated by both, will be forwarded for umpire analysis within four weeks of the time the Supplier contests to an independent agency mutually agreed by the Procuring Entity and Supplier. The umpire's finding, which will be promptly obtained, will be final and binding on both parties. The cost of umpire analysis will be borne by the losing party;
- 26.6 The Procuring Entity may require the Supplier 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 Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier'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 Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.7 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 26.8 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods 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.
- 26.9 The Supplier agrees that neither the execution of attest and/or inspection of the Goods 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 26.7, shall release the Supplier from any warranties or other obligations under the Contract.

## **27. Liquidated Damages**

- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods 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 Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified **in the SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.



## 28. Warranty

28.1 All goods must be of fresh manufacture and must bear the dates of manufacture and expiry.

The Supplier further warrants that all Goods supplied under the Contract will have remaining a minimum of five-sixths (5/6) of the specified shelf life upon delivery at port/airport of entry for goods with a shelf life of more than two years and three-fourths (3/4) for goods with shelf life of two years or less, unless otherwise specified **in the SCC**; have “overages” within the ranges set forth in the Technical Specifications, where applicable; are not subject to recall by the applicable regulatory authority due to unacceptable quality or an adverse drug reaction; and in every other respect willfully comply in all respects with the Technical Specifications and with the conditions laid down in the Contract.

28.2 The Procuring Entity shall have the right to make claims under the above warranty for three months after the Goods have been delivered to the final destination indicated in the Contract. Upon receipt of a written notice from the Procuring Entity, the Supplier shall, with all reasonable speed, replace the defective Goods without cost to the Procuring Entity. The Supplier will be entitled to remove, at his own risk and cost, the defective Goods once the replacement Goods have been delivered.

28.3 In the event of a dispute by the Procuring Entity, a counter-analysis will be carried out on the manufacturer's retained samples by an independent neutral laboratory agreed by both the Procuring Entity and the Supplier. If the counter-analysis confirms the defect, the cost of such analysis will be borne by the Supplier as well as the replacement and disposal of the defective goods. In the event of the independent analysis confirming the quality of the product, the Procuring Entity will meet all costs for such analysis.

28.4 If, after being notified that the defect has been confirmed pursuant to GCC Sub-Clause 28.2 above, the Supplier fails to replace the defective Goods within the period specified **in the SCC** the Procuring Entity may proceed to take such remedial action as may be necessary, including removal and disposal, at the Supplier's risk and expense and without prejudice to any other rights that the Procuring Entity may have against the Supplier under the Contract. The Procuring Entity will also be entitled to claim for storage in respect of the defective Goods for the period following notification and deduct the sum from payments due to the Supplier under this Contract. *Recalls.* In the event any of the Goods are recalled, the Supplier shall notify the Procuring Entity within fourteen (14) Days, providing full details of the reason for the recall and promptly replace, at its own cost, the items covered by the recall with Goods that fully meet the requirements of the Technical Specification and arrange for collection or destruction of any defective Goods. If the Supplier fails to fulfill its recall obligation promptly, the Procuring Entity will, at the Supplier's expense, carry out the recall.

## 29. Patent Indemnity

29.1 The Supplier 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, trade mark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- a) The installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- b) the sale in any country of the products produced by the Goods. Such indemnity shall not cover any use of the Goods 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 Goods or any part thereof, or any products produced there by in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 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 Supplier a notice thereof, and the Supplier 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.

29.3 If the Supplier 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.

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

29.5 The Procuring Entity shall indemnify and hold harmless the Supplier 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 Supplier 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.

### **30 Limitation of Liability**

31.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 29,

- a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity and
- b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective

equipment, or to any obligation of the supplier to indemnify the Procuring Entity with respect to patent infringement.

### **31. Change in Laws and Regulations**

31.1 Unless otherwise specified in the Contract, if after the date of 30 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 the place of Kenya where the Site is located (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 Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

### **32. Force Majeure**

32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. 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.

32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

### **33. Change Orders and Contract Amendments**

33.1 The Procuring Entity may at any time order the Supplier 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 Goods 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 Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier'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 Supplier for adjustment



under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Procuring Entity's change order.

33.3 Prices to be charged by the Supplier 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 Supplier for similar services.

33.4 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. This includes, if specified **in the SCC**, any variation to the contract resulting from a value engineering proposal agreed between the parties.

#### **34 Extensions of Time**

34.1 If at any time during performance of the Contract, the Supplier or its sub-contractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier 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 Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 27, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

#### **35 Termination**

##### **35.1 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 Supplier, may terminate the Contract in whole or in part:
  - i) if the Supplier fails to deliver any or all of the Goods 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 Supplier fails to perform any other obligation under the Contract; or
  - iii) if the Supplier, 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, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

##### **35.2 Termination for Insolvency.**

- c) The Procuring Entity may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the supplier, 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.

### 35.3 Termination for Convenience.

- d) The Procuring Entity, by notice sent to the Supplier, 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 Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- e) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, 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 Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

## 36. Assignment

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

## 37. Export Restriction

Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Procuring Entity, to Kenya or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier 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 export of the products/goods, 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 Sub-Clause 35.3.

# APPENDIX TO GENERAL CONDITIONS

## SECTION VII-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 here in shall prevail over those in the GCC.

### Special Conditions of Contract

GCC 1.1 (i)	The Procuring Entity is: Kenya Medical Supplies Authority (KEMSA)
GCC 1.1 (n)	The project site/ final destination is: KEMSA Commercial Street
GCC 4.2 (a)	Incoterms 2020
GCC 4.2 (b)	DDP Incoterms 2020
GCC 5.1	The Language shall be English
GCC 8.1	For notices the procuring entity's address shall be:  Kenya Medical Supplies Authority (KEMSA) Commercial Street, Industrial Area Nairobi/Kenya P.O. Box: 47715- 00100 Nairobi, Kenya Tel No: +254 719033000/ +254 726618520/1 E- mail: <a href="mailto:procure@kemsa.co.ke">procure@kemsa.co.ke</a>
GCC 10.2.4	The place of arbitration shall be: Nairobi, Kenya-the venue shall be as agreed by the parties
GCC 10.2	Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Supplier and Clause 10.2 (b) shall be retained in the case of a Contract with a national of the Purchaser's country. The dispute resolution mechanism to be applied pursuant to GCC Sub-Clause 10.2 shall be as follows: (i) <b>Contracts with foreign Supplier:</b> GCC 10.2 (a) <input type="checkbox"/> All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said rules. (ii) <b>Contracts with Supplier national of the Purchaser's country:</b> In the case of a dispute between the Purchaser and a Supplier who is a national of the Kenya, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Kenya
GCC 13.1	<b>For goods supplied from abroad:</b> Upon shipment, the Supplier shall notify the Purchaser and the insurance company in writing the full details of the shipment including Contract number, description of the Goods, quantity, date and place of shipment, mode of transportation, and estimated date of arrival at place of destination. In the event of Goods sent by airfreight, the Supplier shall notify the Purchaser a minimum of forty-eight (48) hours ahead of dispatch, the name of the carrier, the flight number, the expected time of arrival, and the waybill number. Under all transport modes, the Supplier shall send the following documents to the Purchaser, with a copy to the insurance company:  i. Three originals and two copies of the Supplier's invoice, showing Purchaser (Kenya Medical Supplies Authority (KEMSA)) as Consignee; the Contract number, grant no., goods description, quantity, unit price, and total amount. Invoices must be signed in

<p>original and stamped or sealed with the company stamp/seal;</p> <p>ii. one original and two copies of the negotiable, clean, on-board through MT Document marked “freight prepaid” and showing Purchaser (Kenya Medical Supplies Authority (KEMSA)) as Consignee and Notify Party as stated in the Contract, with delivery through to final destination as per the Schedule of Requirements and two copies of non-negotiable bill of lading, or three copies of railway consignment note, road consignment note, truck or air waybill, or multi-modal transport document, marked “freight prepaid” and showing delivery through to final destination as per the Schedule of Requirements;</p> <p>iii. copy of the packing list identifying contents of each package;</p> <p>iv. copy of the Insurance Certificate, showing the Purchaser as the Beneficiary;</p> <p>v. one original of the manufacturer’s or supplier’s Warranty Certificate covering all items supplied;</p> <p>vi. one original of the Supplier’s Certificate of Origin covering all items supplied;</p> <p>vii. each batch to be accompanied by Certificate of Analysis (CoA) stating quantitative assays, chemical analysis, sterility, pyrogen content, uniformity, microbial limit, and other tests as appropriate to the Goods origin;</p> <p>viii. any other procurement-specific documents required for delivery/payment purposes;</p> <p>ix. one original of the Certificate of Pharmaceutical Product as per the WHO’s recommended template for each of the items supplied;</p> <p>x. one original and one copy of a protocol (certificate of analysis) of a product test per batch conducted by the laboratory of the manufacturer.</p> <p>xi. One original of the Certificate of Pharmaceutical Product as recommended by the WHO for each of the items supplied.</p> <p>xii. Certificate of quality control test results in conformity with the World Health Organization “Certification Scheme on the Quality of Pharmaceutical Products Moving in International Trade” stating quantitative assays, chemical analysis, sterility, pyrogen content, uniformity, microbial limit, and other tests as appropriate to the Goods.</p> <p>xiii. Original copy of the certificate of weight issued by the port authority/licensed authority and six copies</p> <p>At arrival of the goods at port of clearance, the Supplier or its Shipping agent shall provide the Purchaser with:</p> <p>1) Arrival notice      and</p> <p>2) Delivery note.</p> <p>The above documents 1) and 2) shall be received by the Purchaser immediately after arrival of the Goods at port of clearance and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p><b>Note:</b> In the event that the documents presented by the Supplier are not in accordance with the Contract, payment will be made against issue of the Acceptance Certificate, to be issued in accordance with SCC 9 (GCC 9) above.</p> <p>As a policy requirement of the Government of Kenya and for all goods contracted by KEMSA; All cargo imported and or exported by the government agencies, including project cargo for GoK projects undertaken by 3rd Parties be moved on Standard Gauge Railway.</p> <p><b>For goods supplied from within Kenya:</b></p> <p>The Supplier shall notify the Purchaser at least forty-eight (48) hours ahead of delivery of</p>
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	<p>the goods in writing and deliver the following documents to the Purchaser:</p> <ul style="list-style-type: none"> <li>i. two originals and two copies of the Supplier's invoice, showing Purchaser, the Contract number, grant number, goods description, quantity, unit price, and total amount. Invoices must be signed in original and stamped or sealed with the company stamp/seal;</li> <li>ii. two copies of delivery note, railway consignment note, road consignment note, truck or air waybill, or multimodal transport document showing Purchaser (Kenya Medical Supplies Authority (KEMSA)) as consignee and delivery through to final destination as stated in the Contract;</li> <li>iii. copy of the Insurance Certificate, showing the Purchaser as the Beneficiary;</li> <li>iv. four copies of the packing list identifying contents of each package;</li> <li>v. one original of the manufacturer's or Supplier's Warranty certificate covering all items supplied;</li> <li>vi. one original of the Supplier's Certificate of Origin covering all items supplied;</li> <li>vii. each batch to be accompanied by Certificate of Analysis (CoA) stating quantitative assays, chemical analysis, sterility, pyrogen content, uniformity, microbial limit, and other tests as appropriate to the Goods</li> <li>viii. other procurement-specific documents required for delivery/payment purposes</li> </ul> <p>As a policy requirement of the Government of Kenya and for all goods contracted by KEMSA; All cargo imported and or exported by the government agencies, including project cargo for GoK projects undertaken by 3rd Parties be moved on Standard Gauge Railway.</p> <p>The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
GCC 15.1	The prices charged for the goods supplied and the related services performed <i>shall not</i> be adjustable
GCC 16.1	Payment shall be made in supplier's currency.
GCC 16.5	Not Applicable
GCC 18.1	A performance Security shall be required for awards above Kenya Shillings Five Million. Performance Security shall not exceed 10% of the contract value.
GCC 18.3	<p>The Performance Security shall be in the form of a Bank Guarantee</p> <p>The Performance Security shall be denominated in a freely convertible currency.</p>
GCC 18.4	Discharge of Performance Security shall be done twenty- Eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract.
GCC 19.1	The registration and other certification necessary to prove registration in Kenya shall
GCC 19.2	Not Applicable
GCC 19.3	Not used
GCC 23.2	Additional requirements for packing and transport are indicated in Technical Specifications
GCC 24.1	The insurance coverage shall be as specified in the incoterms
GCC 25.1	Responsibility for transportation shall be as specified in the incoterms
GCC 25.2	<p>Incidental services to be provided:</p> <p>The Supplier shall provide all necessary licenses and permissions for use of the Goods in the Purchaser's country that may be required for the Goods. The cost shall be deemed included in the Contract Price.</p>
GCC 26.1	The Supplier shall demonstrate conformity to Kenya Standards or approved equivalents by evidence of Test report or Certificate from ISO/IEC 17025 accredited laboratory, recognized by the International Laboratory Accreditation Co-operation (ILAC) or preferable from any conformity body recognized by the International Federation of Inspection Agencies (IFIA) prior to shipment. Cost shall be borne by the supplier.

GCC 26.2	The tests and inspection can be conducted at an ISO/IEC 17025 accredited laboratory, recognized by the International Laboratory Accreditation Co-operation (ILAC) or preferable from any conformity body recognized by the International Federation of Inspection Agencies (IFIA)
GCC 27.1	The applicable rate is one-half (0.5) percent per week, the maximum rate is ten (10) percent of the Contract Price and this shall be deducted from the payment due to the supplier.
GCC 28.1	All Goods supplied under the Contract will have a remaining minimum of seventy-five percent (75%) of the shelf life but for commodities that have a shelf life of less than one year, a remaining shelf life of 50% shall be acceptable.
GCC 28.4	The Supplier shall remove, at his own risk and cost, the defective Goods Within fourteen (14) Days of the advice by the Procuring Entity.
GCC 33.4	Not Applicable

## SECTION VIII - CONTRACT FORMS

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

### Table of Forms

Notification of Intention to Award

Request for Review

Letter of Award

Contract Agreement

Performance Security

Advance Payment Security

Beneficial Ownership Disclosure Form

## NOTIFICATION OF INTENTION TO AWARD

*[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]*

*[Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form]* For the attention of Tenderer's Authorized Representative Name:

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

Address: .....*[insert Authorized Representative's Address]* Telephone/Fax

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

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

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

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

**Notification of Intention to Award Procuring Entity:** *Kenya Medical Supplies Authority*

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

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

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

- a) Request a debriefing in relation to the evaluation of your Tender, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

### 1. The successful Tenderer

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

- 2 **Other Tenderers** *[INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as readout.]*

Name of Tenderer	Tender price	Evaluated Tender price (if applicable)
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]

### 3 Reason/s why your Tender was unsuccessful

*[INSTRUCTIONS: State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include:(a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]*

### 5. How to request a debriefing

**DEADLINE:** The deadline to request a debriefing expires at midnight on [the 3<sup>rd</sup> day after date of notification] (local time).

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

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Invitation to debriefing as follows:

**Attention:**

The Chief Executive Officer  
Kenya Medical Supplies Authority (KEMSA)  
Commercial Street, Industrial Area  
Nairobi/Kenya

Postal address:

P.O. Box: 47715  
00100 Nairobi  
Kenya

Tel No: +254 719033000/ +254 726618520/1

E-mail: [procure@kemsa.co.ke](mailto:procure@kemsa.co.ke)

If your Invitation to a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request.

The debriefing will be in writing,

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



## 5. How to make a complaint?

**Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [of the 14th day after date of notification] (local time).**

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

The Chief Executive Officer  
Kenya Medical Supplies Authority (KEMSA)  
Commercial Street, Industrial Area  
Nairobi/Kenya

Postal address:

P.O. Box: 47715  
00100 Nairobi  
Kenya

Tel No: +254 719033000/ +254 726618520/1

E- mail: [procure@kemsaco.ke](mailto:procure@kemsaco.ke) At this point in the procurement process, you may submit a

Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

### **Further information:**

Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [info@ppra.go.ke](mailto:info@ppra.go.ke) or [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke) provides a useful explanation of the process, as well as a sample Form of complaint.

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required by the Procurement Regulations

## 6. Standstill Period

**DEADLINE: The Standstill Period is due to end on the 14th day after date of notification] at midnight on [insert date] (local time).**

The Stand Still Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended as stated in Section 4 above.

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

Signature: \_\_\_\_\_ Name: \_\_\_\_\_  
Title/position: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

## REQUEST FOR REVIEW

### FORM FOR REVIEW (r.203(1))

#### PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... APPLICANT

AND

.....RESPONDENT (Procuring Entity)

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

#### REQUEST FOR REVIEW

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

- 1.
  - 2.
- By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

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

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

**SIGNED**

**Board Secretary**

## LETTER OF AWARD

[letterhead paper of the Procuring Entity] [date] To: [name and address of the Supplier]

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

This is to notify you that your Tender dated.....[insert date] .....for execution of the..... [insert name of the contract and identification number, as given in the SCC] .....for the Accepted Contract Amount of..... [insert amount in numbers and words and name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 30days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section VIII, Contract Forms, of the tendering document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

**Attachment: Contract Agreement**

## CONTRACT AGREEMENT

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

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

- 1) *[insert complete name of Procuring Entity]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of.... of the Government of Kenya, or corporation in Kenya]* and having its principal place of business at *[insert address of Procuring Entity]* (hereinafter called “the Procuring Entity”), of the one part, and
- 2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (herein after called “the Supplier”), of the other part:

WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Tender by the Supplier for the supply of those Goods and Services.

The Procuring Entity and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail overall other contract documents.
  - a) The Form of Tender
  - b) the Addenda Nos. (if any)
  - c) Special Conditions of Contract
  - d) General Conditions of Contract
  - e) The Specification (including Schedule of Requirements and Technical Specifications)
  - f) the completed Schedules (including Price Schedules)
  - g) The Purchaser’s Notification of Award
  - h) Acceptance by the tenderer
  - i) Performance Bond (where applicable)
  - j) Bidders’ current CR12 (should have been issued within the last 12 months)
  - k) Beneficial Ownership Disclosure Form
3. In consideration of the payments to be made by the Procuring Entity to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein conformity in all respects with the provisions of the Contract.
4. The Procuring Entity here by covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS where of the parties here to have caused this Agreement to be executed in accordance with the laws of  
*Kenya* on the day, month and year

indicated above. For and on behalf of

the Procuring Entity

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

in the presence of *[insert identification of official witness]* For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]* in the capacity of *[insert title or other appropriate designation]* in the presence of *[insert identification of official witness]*

## PERFORMANCE SECURITY

**Bank Guarantee** *[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated] [Guarantor letterhead or SWIFT identifier code]*

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

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

PERFORMANCE GUARANTEE No.: ..... *[Insert guarantee reference number]* Guarantor:  
..... *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that..... *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the supply of..... *[insert name of contract and brief description of Health Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total amount of..... *[insert amount in figures]* (.....) *[insert amount in words]*,<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation (s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the..... Day of....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement under Article 15(a) is hereby excluded.

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[Signature]

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

<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Form of Acceptance, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup>Insert the date *twenty-eight* days after the expected completion date as described in GC Clause 18.4. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed ..... [six months] [one year], in response to the Beneficiary's written Invitation to such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

## ADVANCE PAYMENT SECURITY

*[Guarantor letter head or SWIFT identifier code]*

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

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

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

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

We have been informed that.....*[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (here in after called "the Applicant") has entered into Contract No. ....*[insert reference number of the contract]* dated.....*[insert date]* with the Beneficiary, for the execution of.....*[insert name of contract and brief description of Health Goods and related Services]* (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of.....*[insert amount in figures]* (.....) *[insert amount in words]*<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- a) Has used the advance payment for purposes other than toward delivery of Goods; or
- b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number.....*[insert number]*at.....*[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the.....*[insert day]* day of..... *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.



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[Signature]

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

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

**FORM NO. 8 BENEFICIAL OWNERSHIP DISCLOSURE FORM**  
**(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 legal person (Tenderer) or arrangement.*

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

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

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

**Details of beneficial ownership**

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name		Directly----- ----- % 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----	1. Exercises significant influence or control over the Company body of the Company (tenderer)
	National identity card number or Passport number					
	Personal Identification Number (where applicable)		Indirectly--- ----- % of shares	Indirectly----- --% of voting rights		

	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)
	Nationality				2. Is this right held directly or indirectly?	Yes ----No-- --
	Date of birth [dd/mm/yyyy]				Direct..... .....	2. Is this influence or control exercised directly or indirectly?
	Postal address				Indirect..... .....	Direct..... ....
	Residential address					Indirect..... .....
	Telephone number					
	Email address					
	Occupation or profession					
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----	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No-- ---
	National identity card number or Passport number				2. Is this right held directly or indirectly?	2. Is this influence or control exercised directly or indirectly?
	Personal Identification Number (where applicable)		Indirectly--- ----- % of shares	Indirectly----- --% of voting rights	Direct..... .....	Direct..... ....
	Nationality(ies)				Indirect..... .....	Indirect.....
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					

	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)
					.....
3. et 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