



**NATIONAL CEREALS AND PRODUCE BOARD**

Leaders in Trade & Management of Agricultural Commodities

**TENDER NO. NCPB/RAIL TRANSPORT/24/2021-2022  
FRAMEWORK AGREEMENT FOR PROVISION OF RAIL TRANSPORT SERVICES  
FOR COMMODITIES**

**ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS TENDER  
DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID**

**NATIONAL CEREALS AND PRODUCE BOARD  
NYUMBA YA NAFKA  
MACHAKOS/ENTERPRISE ROADS  
INDUSTRIAL AREA  
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**NCPB IS ISO 9001:2015 CERTIFIED**

## SECTION I - INVITATION TO TENDER

**TENDER NO. NCPB/RAIL TRANSPORT/24/2021-2022:**

**FRAMEWORK AGREEMENT FOR PROVISION OF RAIL TRANSPORT SERVICES FOR COMMODITIES**

### Introduction.

The National Cereals and Produce Board (NCPB) invites bids from eligible Tenderers for **provision of rail transport services for commodities.**

1.2.1 The tender document with further detailed information may be obtained from **the office of the Head of Procurement Services** during normal working hours, between 9.00 am and 3.00 pm, **upon payment of non-refundable fees of Kshs. 1,000.00 (One thousand shillings)** per set via Mpesa at the cash office of National Cereals and Produce Board in Head Office.

1.2.2 Prospective bidders may also download the tender document from NCPB's website ([www.ncpb.co.ke](http://www.ncpb.co.ke)) or IFMIS supplier portal ([supplier.treasury.go.ke](http://supplier.treasury.go.ke)) free of charge.

1.2.3 Bidders who download the tender document are advised to sign a tender register at the NCPB Head Office, Procurement Services Department OR send their detailed address using the Email: [supplies@ncpb.co.ke](mailto:supplies@ncpb.co.ke) or [ncpbsupplies@gmail.com](mailto:ncpbsupplies@gmail.com) before the tender closing date, to facilitate any further clarification or addendum.

**1.2.4** The Tenderer shall **chronologically serialize all pages of the tender documents submitted.**

1.2.5 Bids must be accompanied by a Tender Security/Bid Bond equal to **Kshs. 200,000.00** (one hundred thousand shillings) and must be in the form of a bank guarantee or Insurance guarantee from insurance companies approved by Public Procurement Regulatory Authority. Failure to attach Tender Security will lead to automatic rejection of the tender.

1.2.6 The service shall be for **duration of two (2) years from the date of execution of the contract.**

### **1.3 Submission of Tender documents**

Completed tender document should be submitted in a sealed envelope clearly marked in Bold Letters: Letters: **"NCPB/RAIL TRANSPORT/24/2021-2022- FRAME WORK AGREEMENT FOR PROVISION OF RAIL TRANSPORT SERVICES FOR COMMODITIES"**

Addressed to:-

**THE MANAGING DIRECTOR,  
NATIONAL CEREALS AND PRODUCE BOARD,  
NYUMBA YA NAFKA,  
MACHAKOS/ENTERPRISE ROADS,  
INDUSTRIAL AREA,  
P.O BOX 30586,  
NAIROBI.**

**and physically deposited in the tender box situated in Nafaka House, Ground Floor, by the Reception Area, so as to be received on or before 15<sup>th</sup> March, 2022 at 12.00 noon.**

Electronic Tenders will not be permitted /accepted.

Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address above.

Bulky or large bid documents which cannot fit through the slot of the Tender Box must be delivered to the Office of the Manager Procurement situated on the ground floor of the above address, door no. G.48. Late tenders will be rejected.



#### 1.4 Prices

Offered Price shall be inclusive of all taxes, duties, levies and delivery costs to the NCPB premises and shall remain valid for **the entire contract period**.

#### 1.5 Opening of submitted Tenders

Tenders will be opened promptly thereafter at **12:00 noon on 15<sup>th</sup> March, 2022** in the presence of the Tenderers or their representatives who choose to attend in NCPB Gilfillan hall Machakos/Enterprise roads, Industrial area, Nairobi.

Bidders are advised to send details of ONE representative in advance to enable NCPB organize for required protocols in compliance with MOH guidelines on Covid19.

#### **NOTES TO TENDERERS**

**Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All registered Tenderers must provide a valid Tax Compliance Certificate.**

##### **A. Address for Submission of Tenders.**

- 1) National Cereals & Produce Board
- 2) Postal Address 30586 – 00100, NAIROBI
- 3) Physical address for hand Courier Delivery to an office or Tender Box  
(Industrial Area, enterprises / Machakos Roads, NYUMBA YA NAFKA, Head of Procurement Services, ground floor, door no. G.48

##### **B. Address for Opening of Tenders.**

- 1) National Cereals & Produce Board
- 2) Physical address for hand Courier Delivery to an office or Tender Box  
(Industrial Area, Enterprises / Machakos Roads, NYUMBA YA NAFKA, Head of Procurement Services, ground floor, door no. G.48

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**[Authorized Official (name, designation, Signature and date)]**

Name\_\_\_\_\_

(Official of the National Cereals & Produce Board issuing the invitation)

Designation\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_



## SECTION I - INSTRUCTIONS TO TENDERERS

### A. General

#### 1. Scope of Tender

This tendering document is for the provision of road transportation services as specified in Section V, NCPB's requirements.

#### 2. Definitions

2.1 Throughout this tendering document:

- a) the term **"in writing"** means communicated in written form (e.g. by mail or e-mail, including if specified in the **TENDER DOCUMENT**, distributed or received through the electronic-procurement system used by the NCPB) with proof of receipt;
- b) if the context so requires, **"singular"** means **"plural"** and vice versa; and
- c) **"Day"** means calendar day, unless otherwise specified as **"Business Day"**. A Business Day is any day that is an official working day of the NCPB. It excludes the NCPB's official public holidays.

2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided in the contract.

#### 3. Fraud and Corruption

3.1 The National Cereals & Produce Board 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 National Cereals & Produce Board requires compliance with the provisions of the Competition Act 2015, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

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 this tender. To that end, the National Cereals & Produce Board shall indicate in the **tender document** 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 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 contract being tendered for. The National Cereals & Produce Board shall indicate in the **tender document** firms (if any) that provided consulting services for the contract being tendered for. The National Cereals & Produce Board shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The National Cereals & Produce Board shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.



3.5 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the National Cereals & Produce Board 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 NCPB.

#### 4. Eligible Tenderers

4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to INSTRUCTIONS TO TENDERERS 4.6, or any combination of such entities in the form of an association or subcontracting arrangement or a Joint Venture (JV) under an existing agreement or with the intent to enter into 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. The maximum number of JV members shall be specified in the **tender document**.

4.2 Public Officers of the National Cereals & Produce Board, their Spouses, Child, Parent, Brothers or Sister, Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

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 National Cereals & Produce Board regarding this Tendering process; or
- e) Or any of its affiliates participated as a consultant in the preparation of the NCPB's Requirements for the Transport services 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 National Cereals & Produce Board or National Cereals & Produce Board for the Contract implementation; or
- g) Would be providing Transport services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **tender document**, INSTRUCTIONS TO TENDERERS 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 National Cereals & Produce Board or of the project implementing agency, 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 National Cereals & Produce Board throughout the procurement 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 sub-contractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to INSTRUCTIONS TO TENDERERS 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya, shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the electronic address [info@ppra.go.ke](mailto:info@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 that they: (i) are legally and financially autonomous; (ii) operate under commercial law; and (iii) are not under supervision of the NCPB.
- 4.8 A Tenderer under suspension from tendering as the result of the operation of a Tender-Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.
- 4.9 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.
- 4.10 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 National Cereals & Produce Board determine if this condition is met shall be provided for this purpose in "SECTION III - EVALUATION AND QUALIFICATION CRITERIA".
- 4.11 Pursuant to the eligibility requirements of INSTRUCTIONS TO TENDERERS 4.10, a tender is considered a foreign tenderer, if it is registered in Kenya, has less than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual

member firms are registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

4.12 The NCPB may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the **tender document**, 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 signature of contract.

4.13 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)

## **5. Qualification of the Tenderer**

5.1 In the event that prequalification of Tenderers has been undertaken as stated in INSTRUCTIONS TO TENDERERS 6.2, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

## **B. Contents of Tendering Document**

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

6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with INSTRUCTIONS TO TENDERERS 9.

### **PART 1: Tendering Procedures**

- i) Section I-Instructions to Tenderers (INSTRUCTIONS TO TENDERERS)
- ii) Section II-Tender document (TENDER DOCUMENT)
- iii) Section III-Evaluation and Qualification Criteria
- iv) Section IV – Tendering Forms

### **PART 2: NCPB's Requirements**

- v) Section V- NCPB's Requirements

### **PART 3: Contract**

- vi) Section VI- General Conditions of Contract (GCC)
- vii) Section VII- Special Conditions of Contract (SCC)
- viii) Section VIII- Contract Forms

6.2 The Invitation to Tender or the notice to prequalify Tenderers, as the case may be, issued by the National Cereals & Produce Board is not part of this tendering document.

6.3 Unless obtained directly from the NCPB, the National Cereals & Produce Board is





not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with INSTRUCTIONS TO TENDERERS. In case of any contradiction, documents obtained directly from the National Cereals & Produce Board shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

## **7. Instruction to Tenderers**

7.1 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.

## **8. Questions asked by Tenderers.**

8.1 The Tenderer is requested to submit any questions in writing, to reach the National Cereals & Produce Board not later than the period specified in the **tender document**.

8.2 Any modification to the Tender Documents that may become necessary shall be made by the National Cereals & Produce Board exclusively through the issue of an Addendum pursuant to INSTRUCTIONS TO TENDERERS 10.

## **9. Clarification of Tender Documents**

9.1 A Tenderer requiring any clarification of the Tender document shall contact the National Cereals & Produce Board in writing at the NCPB's address specified in the **tender document**. The National Cereals & Produce Board will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **tender document** prior to the deadline for submission of tenders. The National Cereals & Produce Board shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with INSTRUCTIONS TO TENDERERS 6.3, including a description of the inquiry but without identifying its source. If so specified in the **tender document**, the national cereals & produce board shall also promptly publish its response at the web page identified in the **tender document**. should the clarification result in changes to the essential elements of the Tender Documents, the National Cereals & Produce Board shall amend the Tender Documents appropriately following the procedure under INSTRUCTIONS TO TENDERERS 10.

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

10.1 At any time prior to the deadline for submission of Tenders, the National Cereals & Produce Board 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 National Cereals & Produce Board in accordance with INSTRUCTIONS TO TENDERERS 6.3. The National Cereals & Produce Board shall also promptly publish the addendum on the NCPB's webpage in accordance with INSTRUCTIONS TO TENDERERS 8.1.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the National Cereals & Produce Board shall extend, as necessary, the deadline for submission of Tenders, in accordance with INSTRUCTIONS TO TENDERERS 24.2 below.





## C. Preparation of Tenders

### 11. Cost of Tendering

11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the National Cereals & Produce Board shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

### 12. Language of Tender

12.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the National Cereals & Produce Board shall be written in the English language. Supporting documents and printed literature that are part of the Tender maybe 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.

### 13. Documents Comprising the Tender

13.1 The Tender shall comprise the following:

- a) **Form of Tender**
- b) **Schedules:** Schedules or Requirements and priced Activity Schedule completed
- c) **Tender Security or Tender-Securing Declaration**
- d) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer.
- e) **Qualifications:** documentary evidence in accordance with INSTRUCTIONS TO TENDERERS 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- f) **Tenderer's Eligibility:** documentary evidence in accordance with INSTRUCTIONS TO TENDERERS 19 establishing the Tenderer's eligibility to Tender;
- g) **Conformity:** documentary evidence in accordance with INSTRUCTIONS TO TENDERERS 18, that the Services conform to the tendering document; and
- h) Any other document required in the tender document.

13.2 In addition to the requirements under INSTRUCTIONS TO TENDERERS 4.1, Tenders submitted by a Joint Venture shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted. 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.

### 14. Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under INSTRUCTIONS TO TENDERERS 21.3. All blank spaces shall be filled in with the information requested.

### 15. Alternative Tenders

15.1 Unless otherwise indicated in the TENDER DOCUMENT, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives,

if any, of the Most Advantageous Tenderer shall be considered by the NCPB.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the tender document and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified in the TENDER DOCUMENT, Tenderers are permitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified in the tender document, as will the method for their evaluating, and described in Section V, NCPB's Requirements.

## **16. Tender Prices and Discounts**

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule(s) shall conform to the requirements specified below.

16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).

16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.

16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with INSTRUCTIONS TO TENDERERS 16.1.

16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, NCPB's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the National Cereals & Produce Board when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

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

16.7 If provided for in the tender document, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

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

The currency of the Tender and the currency of payments shall be Kenya Shillings.

## **18. Documents Establishing Conformity of Services**

18.1 To establish the conformity of the Transport services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services

provided conform to standards specified in Section VII, NCPB's Requirements.

18.2 Standards for provision of the transport services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the NCPB's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, NCPB's Requirements.

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

19.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with INSTRUCTIONS TO TENDERERS 4.

19.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the NCPB's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

19.3 In the event that prequalification of tenderers has been undertaken as stated in the **tender document**, only tenders from prequalified tenderers shall be considered for award of contract. the prequalified tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.

19.4 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 NCPB, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable the National Cereals & Produce Board 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 there by help to prevent any corrupt influence in relation to the procurement process or contract management.

19.5 The purpose of the information described in INSTRUCTIONS TO TENDERERS 18.1 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 National Cereals & Produce Board as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that the National Cereals & Produce Board may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under INSTRUCTIONS TO TENDERERS 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.

19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the NCPB. 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 NCPB.

19.8 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the National Cereals & Produce Board 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.



19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the National Cereals & Produce Board (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
- ii) If the contract has been awarded to that tenderer, the contract award will be set aside,
- iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.

19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences INSTRUCTIONS TO TENDERERS 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the National Cereals & Produce Board 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.

19.11 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

## **20. Period of Validity of Tenders**

20.1 Tenders shall remain valid for **120 days**. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the National Cereals & Produce Board in accordance with INSTRUCTIONS TO TENDERERS 24.1). A Tender valid for a shorter period shall be rejected by the National Cereals & Produce Board as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the National Cereals & Produce Board 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 INSTRUCTIONS TO TENDERERS 21, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security.

## **21. Tender Security**

21.1 All Tenderers shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified in the tender document, in original form. The security must be valid for one hundred and twenty (120) days from the date of closing the tender.

21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

21.3 The Tender Security specified pursuant to INSTRUCTIONS TO TENDERERS 21, shall be in any of the following forms at the Tenderer's option:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
- iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

21.4 If a Tender Security is specified pursuant to INSTRUCTIONS TO TENDERERS 21, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the National Cereals & Produce Board as non-responsive.

21.5 If a Tender Security is specified pursuant to INSTRUCTIONS TO TENDERERS 21, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to INSTRUCTIONS TO TENDERERS 46.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. The Procurement Entity shall also return tender security to the tenderers where;

- a). The procurement proceedings are terminated
- b). All tenders were determined non-responsive and
- c). Where a bidder declines to extend the tender validity period.

21.7 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 in 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 INSTRUCTIONS TO TENDERERS 46; or
  - ii) furnish a performance security in accordance with INSTRUCTIONS TO TENDERERS 46.3 (i)

21.8 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 INSTRUCTIONS TO TENDERERS 4.1.

21.9 If a Tender Security is not required in the tender document, pursuant to INSTRUCTIONS TO TENDERERS 21, and

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or
- b) if the successful Tenderer fails to:
  - i) sign the Contract in accordance with INSTRUCTIONS TO TENDERERS 46; or
  - ii) furnish a performance security in accordance with INSTRUCTIONS TO TENDERERS 46.3 (i); the National Cereals & Produce Board may, if provided for in the tender document, declare the Tenderer eligible to be awarded a contract by the National Cereals & Produce Board for a period of time as stated in the tender document.

## 22. Format and Signing of Tender

- 22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in INSTRUCTIONS TO TENDERERS 12, bound containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit a copy of the Tender, as specified in the **tender document**, and clearly marked as "Copy." In the event of discrepancy between them, the original shall prevail.
- 22.2 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.
- 22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the tender document 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.
- 22.4 In case the Tenderer is a Joint Venture, the Tender shall be signed by an authorized representative of the Joint Venture on behalf of the Joint Venture, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5 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**

### **23. Sealing and Marking of Tenders**

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the National Cereals & Produce Board and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the documents.

i) The bidder shall submit his/her bid as a **one envelope** tender boldly and clearly marked: **"PROVISION OF RAIL TRANSPORT SERVICES FOR COMMODITIES" TENDER NO. NCPB/RAIL TRANSPORT/24/2021-2022"**.

ii) The tenderer shall prepare an original and a copy of the tender, clearly marking each **"ORIGINAL TENDER"** and **"COPY OF TENDER,"** as appropriate.

iii) In the event of any discrepancy between them, the original shall govern.

23.2 The inner envelopes or packages or containers shall:

- a) Bear the name and address of the NCPB.
- b) Bear the name and address of the Tenderer; and
- c) Bear the name and tender number of the Tender.

23.3 If an envelope or package or container is not sealed and marked as required, the **national cereals & produce board will** assume no responsibility for the misplacement or premature opening of the tender. Tenders that are misplaced or opened prematurely will be rejected.

### **24. Deadline for submission of tenders**

24.1 Tenders must be received by the national cereals & produce board at the address and not later than 15<sup>th</sup> March, 2022 as specified in the **tender document**.

24.2 The national cereals & produce board may, at its discretion, extend the deadline for the submission of tenders by amending the tendering document in accordance with instructions to tenderers 9, in which case all rights and obligations of the national cereals & produce board and tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **25 Late tenders**

25.1 The national cereals & produce board shall not consider any tender that arrives after the deadline for submission of tenders, in accordance with instructions to tenderers 1.3 any tender received by the national cereals & produce board after the deadline for submission of tenders shall be declared late, rejected, and returned unopened to the tenderer.

### **26 Withdrawal, Substitution and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written instruction to NCPB, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with INSTRUCTIONS TO TENDERERS 27.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written instructions to tenderers notice. All notices must be:



- a) Prepared in accordance with INSTRUCTIONS TO TENDERERS 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 National Cereals & Produce Board prior to the deadline prescribed for submission of Tenders, in accordance with INSTRUCTIONS TO TENDERERS 23.
- c) Tenders requested to be withdrawn in accordance with INSTRUCTIONS TO TENDERERS 25.1 shall be returned unopened to the Tenderers.
- d) No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## 27 Tender Opening

- 27.1** Except as in the cases specified in INSTRUCTIONS TO TENDERERS 22.2, the National Cereals & Produce Board shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the tender document** in the presence of Tenderers' designated representatives and anyone who choose to attend.
- 27.2 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.
- 27.3 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 to tenderers unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted to tenderers unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the National Cereals & Produce Board may consider appropriate.
- 27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by the opening committee of the National Cereals & Produce Board attending Tender opening in the manner specified in the **tender document**.
- 27.7 The national cereals & produce board shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with INSTRUCTIONS TO TENDERERS 24.1).

- 27.8 The National Cereals & Produce Board 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; and
  - c) Any alternative Tenders;
  - d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
- 27.9 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 opening registers shall be distributed to all Tenderers upon request.

## **E. Evaluation and Comparison of Tenders**

### **28 Confidentiality**

- 28.1 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 information on the Intention to Award the Contract is transmitted to tenderers to all Tenderers in accordance with INSTRUCTIONS TO TENDERERS 41.
- 22.2 Any effort by a Tenderer to influence the National Cereals & Produce Board in the evaluation or contract award decisions may result in the rejection of its Tender.
- 28.3 Notwithstanding INSTRUCTIONS TO TENDERERS 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the National Cereals & Produce Board on any matter related to the Tendering process, it should do so in writing.

### **29 Clarification of Tenders**

- 29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the National Cereals & Produce Board may, at the NCPB's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that the National Cereals & Produce Board may require. Any clarification submitted to tenderers in respect to its Tender and that is not in response to a request by the National Cereals & Produce Board shall not be considered. The NCPB's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted to tenderers.
- 29.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the NCPB's request for clarification, its Tender may be rejected.

### **30 Deviations, Reservations, and Omissions**

- 31.1 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.

### 31. Determination of Responsiveness

31.1.1 The NCPB's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in INSTRUCTIONS TO TENDERERS 12.

31.1.2 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 Transport services specified in the Contract; or
  - ii) Limit in any substantial way, inconsistent with the tendering document, the NCPB'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.

31.2 The National Cereals & Produce Board shall examine the technical aspects of the Tender submitted in accordance with INSTRUCTIONS TO TENDERERS 18, in particular, to confirm that all requirements of Section V, NCPB's Requirements have been met without any material deviation or reservation, or omission.

- a) If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the National Cereals & Produce Board and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. Non-conformities, Errors and Omissions
- b) Provided that a Tender is substantially responsive, the National Cereals & Produce Board may waive any non-conformities in the Tender.
- c) Provided that a Tender is substantially responsive, the National Cereals & Produce Board 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. Requesting information or documentation on such non-conformities 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.
- d) Provided that a Tender is substantially responsive, the National Cereals & Produce Board shall rectify quantifiable non-material 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 **tender document**.



### **32. Arithmetical Errors**

32.1.1 Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.

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

32.1.3 Provided that the Tender is substantially responsive, the National Cereals & Produce Board shall handle errors on the following basis:

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail,

### **33. Conversion to Single Currency**

33.1 For evaluation and comparison purposes, conversion of the currency (ies) to a single currency preference shall apply.

### **34. Margin of Preference**

34.1 The tender is open to all categories of local service providers.

### **35. Evaluation of Tenders**

35.1 The National Cereals & Produce Board shall use the criteria and methodologies listed in this INSTRUCTIONS TO TENDERERS and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the National Cereals & Produce Board shall determine the Most Advantageous Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the National Cereals & Produce Board will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered.
- b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with INSTRUCTIONS TO TENDERERS 33;
- c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with INSTRUCTIONS TO TENDERERS 31.2; d)
- d) The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

35.3 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.

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots.

### **36. Comparison of Tenders**

36.1 The National Cereals & Produce Board shall compare the evaluated costs of all substantially responsive Tenders established in accordance with INSTRUCTIONS TO TENDERERS 35.2 to determine the Tender that has the lowest evaluated cost.

### **37. Abnormally Low Tenders and**

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

#### **Low Tenders**

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender, the National Cereals & Produce Board shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that the National Cereals & Produce Board determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the National Cereals & Produce Board shall reject the Tender.

#### **Abnormally High Tenders**

37.4 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 National Cereals & Produce Board is concerned that it 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.

37.5 In case of an abnormally high tenders, the Procurement Entity should (a) review the specifications, and conditions of tender, or correctness of the estimate or (b) possibility of a collusion, formation of cartels, or other form of fraudulent and corrupt activity in the tendering processor (c) perception of the firms on the credibility of the NCPB. The National Cereals & Produce Board shall treat abnormally low and high tenders in accordance with procedures provided for in this tender document

37.6 If the National Cereals & Produce Board 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 National Cereals & Produce Board shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **38. Unbalanced and/or Front-Loaded Tenders**

38.1 If in the NCPB's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the National Cereals & Produce Board may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the National Cereals & Produce Board may as appropriate:

- a) Accept the Tender; or
- b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
- c) agree on a payment mode that eliminates the inherent risk of the National Cereals & Produce Board paying too much for undelivered services; or
- d) reject the Tender.

### **39. Qualification of the Tenderer**

39.1 The National Cereals & Produce Board 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 in Section III, Evaluation and Qualification Criteria.

39.1 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to INSTRUCTIONS TO TENDERERS 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

39.2 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 National Cereals & Produce Board 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 qualifications to perform satisfactorily.

### **40 NCPB's Right to Accept Any Tender, and to Reject Any or All Tenders**

40.1 The National Cereals & Produce Board 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 Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

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

#### **41 Award Criteria**

41.1 The National Cereals & Produce Board shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

#### **42. Notice of Intention to enter into a Contract/Notification of award**

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the National Cereals & Produce Board 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 (b) above already reveals the reason;
- d) the expiry date of the Stand still Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

#### **43. Standstill Period**

43.1 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.

43.2 Where a Standstill Period applies, it shall commence when the National Cereals & Produce Board has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

#### **44. Debriefing by the NCPB**

44.1 On receipt of the NCPB's debriefing the unsuccessful tenderer may make a written request to the National Cereals & Produce Board for a debriefing on specific issues or concerns regarding their tender. The National Cereals & Produce Board shall provide the debriefing within five days of receipt of the request.

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

#### **45. Letter of Award**

45.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in INSTRUCTIONS TO TENDERERS 43, upon addressing a complaint that has been filed within the Standstill Period, the National Cereals & Produce Board 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 **14** days of the date of the letter.

#### **46. Signing of Contract**

46.1 Upon the expiry of the fourteen days (14) of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the National Cereals & Produce Board shall send the successful Tenderer the Contract Agreement.

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

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

#### **Performance Security**

- i) Within fourteen (14) days of the date of notification of award from NCPB, the successful Tenderer shall furnish NCPB with a Performance Security as follows:-
  - a) An original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- ii) The Performance Security shall be denominated in Kenya Shillings or in another freely



convertible currency in Kenya. A Performance Security in form of a Bank Guarantee issued on behalf of local bidders should be from a commercial bank licensed by the Central Bank of Kenya.

iii) The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.

iv) NCPB shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from NCPB. The period for response shall not exceed three (3) days from the date of NCPB's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.

v) Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event NCPB may notify the next lowest evaluated Tenderer that its Tender has been accepted.

#### **47. Publication of Procurement Contract**

47.1 Within fourteen days after signing the contract, the National Cereals & Produce Board shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) Name and address of the NCPB;
- 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.

#### **48. Adjudicator**

48.1 The National Cereals & Produce Board proposes the person named in the tender document to be appointed as Adjudicator under the Contract, at an hourly fee specified in the tender document, plus reimbursable expenses. If the Tenderer disagrees with the proposed Adjudicator, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the National Cereals & Produce Board has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

#### **49. Procurement Related Complaints and Administrative Review**

49.1 The procedures for making a Procurement-related Complaint areas specified in the tender document.

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

## SECTION II - TENDER DOCUMENT (TENDER DOCUMENT)

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

### 1.0 SCOPE OF SERVICES

1.1 The engagement will entail provision of all services related to rail transport inclusive but not limited to requisitioning and obtaining wagons from the carrier Kenya Railway Corporation as at now, negotiating freight charges, paying the charges and liaising with the Board on all aspects pertaining to the services, ensuring wagons obtained are placed in the required loading points, supervising loading and documentation of the cargo, tracking the cargo en-route, ensuring cargo loaded is delivered to the destination wholesomely as loaded and in time.

***Specifically the scope of the service shall entail;***

- a) Pay any other party facilitating the service provider in effecting the transportation of the commodities including KRC or its successor.
- b) Be responsible for ensuring that efficient rail transport services are provided to the Board to ferry the commodities in a timely and expeditious manner so as to reach the destination not later than ten days after loading of dispatch source Depot/Silos.
- c) Take adequate precautions to ensure that the actual quantity of commodities loaded onto the wagons, at source/dispatch depot/silos are safely delivered and discharged at the Board's designated/receiving Depot or Silos.
- d) Provide security services en-route to the designated destination to ensure that all the commodities loaded are received intact at Board's warehouse(s) and be duly acknowledged and receipted by Board's Authorised Officers.
- e) Take an insurance cover, for goods in transit to cover the commodities to be transported.
- f) Make appropriate arrangements to ensure that no commodity is spilt or rained on or damaged in any other way whilst on transit.
- g) Transport all the goods availed for transportation.
- h) Report to the Board's Manager, Warehousing & Logistics any events or occurrences that need to be brought to the attention of the Board.
- i) Take remedial measures to minimize the impact of any undesirable occurrence.

### 2.0 LOADED AND OFF-LOADED WEIGHTS

#### 2.1 Loaded Weight

The net weight of the commodity being transported shall be that weight declared on the Board's weighbridge ticket, or the average weight of 10% of the total weight if there is no weighbridge. This shall be taken as the loaded weight to be transported by the transporter.

#### 2.3 Off-loaded weight

The net weight of the commodity being received shall be that weight declared on the Board's weighbridge ticket as the receiving station or the average weight of 10% of the total weight if there is no weighbridge. This shall be taken as the weight transported by the transporter. The transporters or their representatives are strongly advised to witness the weighing.

#### 2.4 Witnessing of Loaded/Off-loaded weight

The transporter shall ensure that his/her agents witness the loading by maintaining a parallel record, which shall be countersigned by both dispatching and receiving clerks. The record shall provide an easy reference in case of disputes in weight.

### **3.0 DAMAGES OR LOSS OF CARGO EN-ROUTE TO BOARD'S DEPOTS**

- 3.1 All damages and losses of any of the commodities whilst en-route from the despatching Depot/Silos to the designated Board's receiving Depot/Silos shall be on the account of the transporter who must make good the loss immediately to be deducted from his pending bills or performance security.
- 3.2 The unit rate for debiting the transporter shall be the current commodity selling price, for the full value of the weight of the commodity that is damaged/lost while on transit and in his care without further reference.
- 3.3 Where there are no outstanding payments adequate to cover the damage/loss, the Board reserves the rights to place lien on the transporter's property including vehicles which the Board will impound and dispose to recover the damage/loss.
- 3.4 The Board will not pay rail transport charges for the lost quantity.

### **4.0 LOSS IN WEIGHT**

- 4.1 The transporter shall be responsible for all spillages and short weights that occur en-route to the Board's destinations.
- 4.2 The Board shall at its sole discretion recover the equivalent value of short weight deliveries and/or lost weight from the transporters final invoice with due notification to the transporter at the time of forwarding or collection of cheque payment(s).

### **5.0 SAFETY OF COMMODITY**

The transporter shall not carry any other commodity that may be injurious to the commodity being transported. **Any breach of this condition shall automatically render this agreement invalid.**



### SECTION III - **EVALUATION CRITERIA**

The prospective applicant must attach/meet the following documents/conditions:-

- i. Copy of Certificate of Incorporation/Registration. Attach system generated copy of CR12 for incorporated companies
- ii. Copy of valid and current Kenya Revenue Authority Tax compliance certificate
- iii. Valid trading license.
- iv. Original Bid Bond/Tender security of Kshs 200,000.00 prepared in the manner described in Clause 16.0
- v. Duly filled, signed and stamped confidential business questionnaire by the applicant or authorized representative.
- vi. Proof of dealership in rail transportation services OR written agency agreement with Kenya Railways Corporation for provision of rail transportation and logistics service.
- vii. A written commitment by rail transporters that they are in a position to indemnify the Board in case of losses incurred once in possession of the commodities.
- viii. Copies of audited/certified accounts/financial statements for two (2) financial years: 2019 and 2020
- ix. Duly completed forms as provided in Part III.

*All bidders who provide all the documents and instruments listed in the mandatory requirements will be deemed to be qualified for next assessment/evaluation.*

#### **TECHNICAL EVALUATION CRITERIA**

Technical capabilities of the firms shall be evaluated on the basis of the following criteria.

	<b>Criteria</b>	<b>Score</b>
A.	<b>Track record and references</b>	30
	At least three (3) reputable corporate clients supported with LPO/LSO/contracts or recommendation letters where transport services have been provided in the last two (2) years (Attach Evidence) <b>(one evidence =10 marks)</b>	
D	Volume of business handled in the last three (3) years (Attach evidence) <b>(30 marks)</b> i. Equal or over Kshs. 20 million <b>(30 marks)</b> ii. 20 million ≤ and >5million <b>(25marks)</b> iii. 5million ≤ and >2million <b>(15 marks)</b> iv. Below 2million <b>(10 marks)</b>	30
E	<b>Financial health (to be calculated from the submitted audited accounts)</b> <b>Liquidity ratio</b> i) 1: 2 & above <b>(20 marks)</b> ii) 1: 1-1.99 <b>(10 marks)</b> iii) 1 : 0.5 – 0.99 <b>(8 marks)</b> iv) 1:< 0.5 <b>(4 marks)</b> v) Below 0 <b>(0 marks)</b>	20
	<b>Profitability ratio</b> i) 20% and above <b>(20 marks)</b> ii) 15% - 19% <b>(10 marks)</b> iii) 10% - 14% <b>(8 marks)</b> vi) 1% -9% <b>(4 marks)</b> vii) Below 0 <b>(0 marks)</b>	20
	<b>TOTAL SCORE</b>	100%

- ✓ **Profitability Margin** = EBIT / Gross Revenue or Sales x 100%
- ✓ **Current Ratio** = Current Assets / Current Liabilities
- ✓ **EBIT** = Earnings Before Interest and Taxes

**NB:** Only bids that attain 70% marks and above applicable to the technical evaluation stage shall proceed to comparison of financial bids stage.

Financial evaluation/comparison of financial offers

The tender shall be awarded to the firm offering the lowest rate per kilometre per ton

Instructions for filing of bids and their evaluation award criteria

- Form F1 requires the bidder to quote the rates for up and down directions from port of Mombasa and inter Depots/Silos which must include all the applicable government taxes and costs related to the rail services.
- Actual quantities to be lifted shall be determined later
- The form also provides space for quoting the rate per ton/KM

Prior to contracting, the successful tenderer will be required to take a suitable insurance policy for transportation of cargo and also for allied activities/risks. This is in the interest of the contractor to cover himself from risks involved in transportation of cargo.

The Board will recover the value of any damage that may arise while the cargo is in the custody of the contractor from contractor's outstanding bills/performance security etc irrespective of whether insurance policy has been taken by contractor or not.

## **6. Award of Contract**

### **6.1 Post - qualification**

- (a) If it deems fit, NCPB may employ available mechanisms to satisfy itself whether the tenderer that is selected having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- (b) The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer as well as such other information as the procuring entity deems necessary and appropriate.
- (c) An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the tenderers tender, in which event the procuring entity will proceed to the next lowest evaluated bid to make a similar determination of that tenderer's capabilities to perform satisfactorily.

Tenderers will proceed to Financial Evaluation stage only if they qualify in compliance with Parts I i.e. Preliminary and Technical stages.



## SECTION IV - TENDERING FORMS

### 1. FORM OF TENDER

#### INSTRUCTIONS TO TENDERERS

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

**Date of this Tender submission:** 15<sup>th</sup> March, 2022 at 12 noon

**Tender No.:** ..... [NCPB/RAIL TRANSPORT/24/2021-2022]

**To:** ..... National Cereals & Produce Board

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with INSTRUCTIONS TO TENDERERS 9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with INSTRUCTIONS TO TENDERERS 4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the National Cereals & Produce Board based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with INSTRUCTIONS TO TENDERERS 4.7;
- d) **Conformity:** We offer to provide the Transport services in conformity with the tendering document of Framework agreement for **provision of road transportation services of various commodities within the Boards network.**
- e) **Tender Price:** indicate your Charges per ton per kilometre excluding any discounts offered in item (f) below.
- f) **Discounts:** The discounts offered and the methodology for their application :
  - 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 120 days specified in TENDER DOCUMENT 19.1 from the date of closing the Tender submission deadline, 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 other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member or as a subcontractor, and meet the requirements of INSTRUCTIONS TO TENDERERS 4.3, other than alternative Tenders submitted in accordance with INSTRUCTIONS TO TENDERERS 14;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's 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 INSTRUCTIONS TO TENDERERS 4.6];
- l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].

Name of Recipient	Address	Reason	Amount

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

- m) [Delete if not appropriate, or amend to suit] We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- n) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- o) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and
- p) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- q) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- r) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Suppliers, Contractors and Service Providers, copy available from\_\_\_\_(specify website) during the procurement process and the execution of any resulting





contract.

- s) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
  - c) Self-Declaration of the Tenderer- to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in

**"Appendix 1- Fraud and Corruption"** attached to the Form of Tender.

**Name of the Tenderer:** \* .....[insert complete name of person signing the Tender]

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:**

.....\*\*[insert complete name of person duly authorized to sign the Tender]

**Title of the person signing the Tender:** .....

**Signature of the person named above:** .....

**Date signed**..... **day of**.....

**i) TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE**

**Instruction to Tenderer**

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

**a) Tenderer's details**

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (postal and physical addresses, email, and telephone number) 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 (postal and physical addresses, email, and telephone number) 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

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

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

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

ii) State the nominal and issued capital of the Company: -  
Nominal Kenya Shillings (Equivalent) \_\_\_\_\_

Issued Kenya Shillings (Equivalent) \_\_\_\_\_

iii) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

(e) **DISCLOSURE OF INTEREST-Interest of the Firm in the NCPB.**

i) Are there any person/persons in.....(National Cereals & Produce Board ) who has/have an interest or relationship in this firm?  
Yes/No.....

If yes, provide details as follows.

	<b>Names of Person</b>	<b>Designation in the NCPB</b>	<b>Interest or Relationship with Tenderer</b>
1			
2			
3			

ii) **Conflict of interest disclosure**

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the National Cereals & Produce Board regarding this tendering process.		
5	Any of the Tenderer's affiliates		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the National Cereals & Produce Board 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 National Cereals & Produce Board 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 National Cereals & Produce Board throughout the tendering process and execution of the Contract.		

**f) Certification**

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

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



**ii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_

for: \_\_\_\_\_

in response to the request for tenders made by:

\_\_\_\_\_[Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

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

disclosed pursuant to paragraph (5) (b) above;

8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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



(iii) SELF-DECLARATION FORMS

FORM SD 1

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

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

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

.....(Title)

.....(Signature)

..... (Date)

**Bidder's Official Stamp**



**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone.....

Email.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness

Name.....

Sign.....

Date.....



#### iv) **APPENDIX 1-FRAUD AND CORRUPTION**

(Appendix 1 shall not be modified)

##### **1. Purpose**

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**

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.

Kenya's public procurement and asset disposal act (no. 33 of 2015) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the National Cereals & Produce Board under subsection (7) does not limit any legal remedy the National Cereals & Produce Board may have;
- 5) An employee or agent of the National Cereals & Produce Board or a member of the Board or committee of the National Cereals & Produce Board 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 subcontract or 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 NCPB;

- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the NCPB:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

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

- (b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the National Cereals & Produce Board 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 National Cereals & Produce Board of the benefits of free and open competition.

- c) Rejects a proposal for award<sup>1</sup> 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 debar 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.



## 2. 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].

INSTRUCTIONS TO TENDERERS No.: \_\_\_\_\_ [insert number of Tendering process]

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

1. Tenderer's Name [insert Tenderer's legal name]
2. In case of JV, legal name of each member: [insert legal name of each member in JV]
3. Tenderer's actual or intended country of registration: [insert actual or intended country of registration]
4. Tenderer's year of registration: [insert Tenderer's year of registration]
5. Tenderer's Address in country of registration: [insert Tenderer's legal address in country of registration]
6. Tenderer's Authorized Representative Information Name: [insert Authorized Representative's name] Address: [insert Authorized Representative's Address] Telephone: [insert Authorized Representative's telephone/fax numbers] Email Address: [insert Authorized Representative's email address]
7. Attached are copies of original documents of [check the box(es) of the attached original documents] <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 INSTRUCTIONS TO TENDERERS 4.4. <input type="checkbox"/> In case of JV, Form of intent to form JV or JV agreement, in accordance with INSTRUCTIONS TO TENDERERS 4.1. <input type="checkbox"/> A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the the Kenya Revenue Authority in accordance with INSTRUCTIONS TO TENDERERS 4.14. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with INSTRUCTIONS TO TENDERERS 4.6 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 agency of the NCPB</li></ul>
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## OTHER FORMS

### 3. TENDERER'S JOINT VENTURE (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]

INSTRUCTIONS TO TENDERERS No.: ..... [insert number of Tendering process]

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

1. Tenderer's Name:
2. Tenderer's JV Member's name:
3. Tenderer's JV Member's country of registration:
4. Tenderer's JV Member's year of registration:
5. Tenderer's JV Member's legal address in country of registration:
6. Tenderer's JV Member's authorized representative information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of [check the box(es) of the attached original documents] <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with INSTRUCTIONS TO TENDERERS 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the NCPB, in accordance with INSTRUCTIONS TO TENDERERS 4.6.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.



**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 \_\_\_\_\_(hereinafter 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 INSTRUCTIONS TO TENDERERS").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of\_(\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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

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



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

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

1. Whereas ..... [Name of the tenderer] (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 INSTRUCTIONS TO TENDERERS").
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 ..... [National Cereals & Produce Board] (hereinafter called "the NCPB") in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said NCPB, 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 ("INSTRUCTIONS TO TENDERERS ") 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.**



## FORM OF TENDER - SECURING DECLARATION

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

Date:.....[date (as day, month

and year)] INSTRUCTIONS TO TENDERERS

No.:.....[number of Tendering

process] Alternative No.:.....[insert identification No if this is a

Tender for an alternative] To:.....[complete

name of Procuring Entity] We, the

undersigned, declare that: We understand that,

according to your conditions, Tenders must be supported by a Tender-Securing

Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the National Cereals & Produce Board for the period of time of [number of months or years] starting on [date], if we are in breach of our obligation(s) under the Tender conditions, because we:

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the National Cereals & Produce Board during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the INSTRUCTIONS TO TENDERERS.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name of the Tenderer\* \_\_\_\_\_ Name of the person duly authorized to sign the Tender on behalf of the Tenderer\*\*

\_\_\_\_\_

\_\_\_\_\_ Title of the person signing the Tender

\_\_\_\_\_ Signature of the

person named above \_\_\_\_\_

Date signed \_\_\_\_\_ day of \_\_\_\_\_,

\*: In the case of the Tender submitted by 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 attached to the Tender

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

## QUALIFICATION FORMS

### 2 FOREIGN TENDERERS 40% RULE

Pursuant to INSTRUCTIONS TO TENDERERS 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			



### 3 FORM PER-1 Tenderer's/Contractor's

#### Representative and Key Personnel

#### Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Tenderer's/Contractor' Representative and Key Personnel.

1.	<b>Title of position:</b> Contractor's Representative	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
2.	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
3.	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
4.	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
5.	<b>Title of position:</b> [insert title]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]



#### 4 FORM PER - 2:

Resume and Declaration - Contractor's Representative and Key Personnel.  
Name of Tenderer\_\_\_\_\_

Position [# 1]: [title of position from Form PER-1]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Academic qualifications:	
	Language proficiency: [language and levels of speaking, reading and writing skills] Language proficiency: [language and levels of speaking, reading and writing skills]	
Details		
	Address of NCPB:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present NCPB:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
[main project details]	[role and responsibilities on the project]	[time in role]	[describe the experience relevant to this position]



## Declaration

I, the undersigned..... [insert either "Contractor's Representative" or "Key Personnel" as applicable], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]
Time commitment:	[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel:

\_\_\_\_\_

[insert name] Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

\_\_\_\_\_

Counter signature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_



## TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

### 5. FORM

#### EL I -1.1

##### Tenderer

##### Information

##### Form

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

INSTRUCTIONS TO TENDERERS No. and title: \_\_\_\_\_

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: [indicate country of Constitution]
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <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 INSTRUCTIONS TO TENDERERS 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with INSTRUCTIONS TO TENDERERS 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with INSTRUCTIONS TO TENDERERS 4.6, 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 NCPB</li></ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.



## 6. FORM ELI - 1.2

### Tenderer's JV Information Form

(to be completed for each member of Tenderer's JV)

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

INSTRUCTIONS TO TENDERERS No. and title: \_\_\_\_\_

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
<p>1. Attached are copies of original documents of</p> <p><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with INSTRUCTIONS TO TENDERERS 4.4.</p> <p><input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the NCPB, in accordance with INSTRUCTIONS TO TENDERERS 4.6.</p> <p>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.</p>





## 7. FORM CON -2

Historical Contract Non-Performance, Pending Litigation

and Litigation History. Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_ JV Member's

Name \_\_\_\_\_ INSTRUCTIONS TO TENDERERS No. and title: \_\_\_\_\_

Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] National Cereals & Produce Board : [insert full name] Address of NCPB: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.

☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ National Cereals & Produce Board : _____ Address of NCPB: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: _____ National Cereals & Produce Board : _____ Address of NCPB: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	

Litigation History in accordance with Section III, Evaluation and Qualification Criteria

☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.

☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-



Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
Factor 2.4 as indicated below.			
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
[insert year]	[insert percentage]	Contract Identification: [indicate complete contract name, number, and any other identification] National Cereals & Produce Board: [insert full name] Address of NCPB: [insert street/city/country] Matter in dispute: [indicate main issues in dispute] Party who initiated the dispute: [indicate "NCPB" or "Contractor"] Reason(s) for Litigation and award decision [indicate main reason(s)]	[insert amount]



## 8 FORM FIN –3.1:

### Financial Situation and Performance

Tenderer's Name: \_\_\_\_\_

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

JV Member's Name \_\_\_\_\_

INSTRUCTIONS TO TENDERERS No. and title: \_\_\_\_\_

#### 6.4.1. Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
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					

\*Refer to INSTRUCTIONS TO TENDERERS 15 for the exchange rate



## 15. Sources of Finance

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

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

### Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- b) Be independently audited or certified in accordance with local legislation.
- c) Be complete, including all notes to the financial statements.
- d) Correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>2</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

**16. FORM FIN -3.3:****Financial Resources**

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

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (Kenya Shilling equivalent)</b>
1		
2		
3		

**17. FORM FIN -3.4:****Current Contract Commitments / Works in Progress**

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

<b>No.</b>	<b>Name of Contract</b>	<b>NCPB's Contact Address, Tel,</b>	<b>Value of Outstanding Work [Current Kenya Shilling /month Equivalent]</b>	<b>Estimated Completion Date</b>	<b>Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]</b>
1					
2					
3					
4					
5					



**18. FORM EXP - 4.2 (a)****Specific Work and Management Experience**

Tenderer's Name: \_\_\_\_\_ Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

INSTRUCTIONS TO TENDERERS No. and title: \_\_\_\_\_

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<b>Kenya Shilling</b>			
If member in a JV or sub-contractor, specify participation in total Contract amount				
NCPB's Name:				
Address:				
Telephone/fax number				
E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:				
1. Amount				
2. Physical size of required works items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				



#### 4. NOTIFICATION OF INTENTION TO AWARD

[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.] [Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form]

1) For the attention of Tenderer's Authorized Representative Name: .....

Address: .....

Telephone numbers: .....

Email Address: .....

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

**Contract title:** NCPB/RT/21/2021-2022

**INSTRUCTIONS TO TENDERERS No:** .....[insert INSTRUCTIONS TO TENDERERS 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.

#### 2) How to request a debriefing.

**DEADLINE:** The deadline to request a debriefing expires at midnight on [insert date] (local time).

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

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

**Attention:** .....

**Title/position:** .....

**Agency:** ..... National Cereals & Produce Board

**Email address:** .....

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In



this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

### 3) How to make a complaint?

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

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

**Attention:**

.....

**Title/position:**

.....

**Agency:** National Cereals & Produce Board

**Email**

**address:**

.....

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

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted to tenderers ed a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required to support the complaint.
5. The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be

refundable (information available from the Public Procurement Authority at [info@ppra.go.ke](mailto:info@ppra.go.ke) or [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke)

### 4) Standstill Period

**DEADLINE: The Standstill Period is due to end at midnight on [insert date] (local time).**

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above.

If you have any questions regarding this Notification please don't hesitate to contact us. On behalf of the NCPB:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_





## 1. Request for Review

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

#### PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... APPLICANT

AND

.....RESPONDENT (NCPB)

Request for review of the decision of the..... (Name of the National Cereals & Produce Board 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.....

---

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

**SIGNED**

**Board Secretary**



## 2 LETTER OF AWARD

[Form head paper of the NCPB] [date] To: .....[name and address of the Service Provider]

This is to notify you that your Tender dated [date] for execution of the [name of the Contract and identification number, as given in the Special Conditions of Contract] for the Contract Price of the equivalent of [amount in numbers and words] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (NCPB).

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

Please return the attached Contract dully signed Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract



### 3 FORM OF CONTRACT [Form head paper of the NCPB] LUMP-SUMREMUNERATION

This CONTRACT (herein after called the "Contract") is made the [day] day of the month of [month], [year], between, on the one hand, [National Cereals & Produce Board ] (herein after called the "NCPB") and, on the other hand, [name of Service Provider] (herein after called the "Service Provider").

[**Note:** In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: "... (herein after called the "NCPB") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the National Cereals & Produce Board for all the Service Provider's obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (herein after called the "Service Provider").]

#### WHEREAS

- a) the National Cereals & Produce Board has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the "Services");
- b) the Service Provider, having represented to the National Cereals & Produce Board that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
  - a) The Form of Acceptance;
  - b) The Service Provider's Tender
  - c) The Special Conditions of Contract;
  - d) The General Conditions of Contract;
  - e) The Specifications and the Priced Activity Schedule; and
  - f) The following Appendices: [**Note:** If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]

Appendix A: Description of the

Services Appendix B: Schedule of

Payments Appendix C:

Subcontractors Appendix D:

Breakdown of Contract Price

2. The mutual rights and obligations of the National Cereals & Produce Board and the Service Provider shall be as set forth in the Contract, in particular:
  - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - b) The National Cereals & Produce Board shall make payments to the Service Provider in



accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in the irrelative names as of the day and year first above written.

For and on behalf of [National Cereals

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& Produce Board ] [Authorized

Representative]

For and on behalf of [name of

---

Service Provider] [Authorized

Representative]

[**Note:** If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Service Provider

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[name of member]

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*[name of member]*

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*[Authorized Representative]*

## PART II – NCPB'S REQUIREMENTS

### SECTION V – NCPB Requirements

#### 1. TRACK RECORD

- a) Please provide information about road transportation services performed by your firm over the past three years in the table provided hereafter.

**Attach evidence**

NAME OF CLIENT	CONTRACT DESCRIPTION	LOADING POINT AND DESTINATION POINT	TOTAL CONTRACT PRICE (KSHS)	PERCENTAGE COMPLETED CERTIFIED

- b) Please provide the contact details of at least three clients that you have mentioned above in the table provided hereafter.

No.	Client/Company Name and Address	Name of Contact Person	Telephone No. and/or Email of contact person
01			
02			
03			
04			
05			

I/We the undersigned certify that the information given above is true to the best of my/our belief and knowledge.

**DATE:** ..... **SIGNED:** .....

**FULL NAME:** .....

**POSITION HELD:** .....



## F1: FORM OF TENDER (FINANCIAL BID FORM)

TO: National Cereals and Produce Board \_\_\_\_\_ (Date)

### **TENDER NAME/ No. PROVISION OF RAIL TRANSPORT SERVICES FOR COMMODITIES" TENDER NO. NCPB/RAIL TRANSPORT/24/2021-2022,**

Dear Sir,

1. Having examined Tender No. (TENDER NO. NCPB/RAIL TRANSPORT/24/2021-2022) the receipt of which is hereby duly acknowledged, we, the undersigned, offer to render the bidder services in conformity with the said tender documents for the rates under the below titles;

a) **Rate per ton per Kilometer for upstream cargo..... (Rate in words)**

b) **Rate per ton per Kilometer for downstream cargo.....(rate in words)** or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We agree to abide by this tender for a period of ..... [number] days from the date fixed for tender opening of the Instructions to bidders, and it shall remain binding upon us and may be accepted at any time before the expiry of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us, subject to signing of the Contract by the parties.

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign tender for and on behalf of \_\_\_\_\_



## F 2: PRICE SCHEDULE FORM

The bidder with the lowest evaluated bid shall be the successful.

### Form F1 FINANCIAL BID

No.	DESCRIPTION	Rate per Ton/KM (Kshs.)	Other Costs (Kshs.)	Total Cost per Ton/KM (Kshs.)
1.	Up direction from Mombasa			
2.	Down direction to Mombasa			
3.	Inter Depots/Silos			

Signature and Stamp of Bidder\_\_\_\_\_ Date:\_\_\_\_\_



## SECTION VI - GENERAL CONDITIONS OF CONTRACT

### 1. General Provisions

#### 1.1 Definitions

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

- a) The Adjudicator is the person appointed jointly by the National Cereals & Produce Board and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- d) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the NCPB
- e) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- f) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- g) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- h) "NCPB" means the National Cereals & Produce Board or party who employs the Service Provider
- i) "Foreign Currency" means any currency other than the currency of Kenya;
- j) "GCC" means these General Conditions of Contract;
- k) "Government" means the Government of Kenya;
- l) "Local Currency" means Kenya shilling;
- m) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the National Cereals & Produce Board under this Contract;
- n) "Party" means the National Cereals & Produce Board or the Service Provider, as the case may be, and "Parties" means both of them;
- o) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- p) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the NCPB;
- q) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the NCPB
- r) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- s) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the NCPB





- t) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- u) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- v) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.
- w) "Project Manager" shall the person appointed by the National Cereals & Produce Board to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the National Cereals & Produce Board and notified to the Contractor.
- x) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

## 1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

## 1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## 1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

## 1.5 Location

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the National Cereals & Produce Board may approve.

## 1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the National Cereals & Produce Board or the Service Provider may be taken or executed by the officials **specified in the SCC**.

## 1.7 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its subcontractors and sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

## 1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

## 2. Commencement, Completion, Modification, and Termination of Contract

### 2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**.

### 2.2 Commencement of Services

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

### 2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

### 2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

### 2.5 Value Engineering

2.5.1 The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following:

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

2.5.2 The National Cereals & Produce Board may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the NCPB; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the NCPB, without compromising the necessary functions of the Facilities.

2.5.3 If the value engineering proposal is approved by the National Cereals & Produce Board and results in:



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

## **2.6 Force Majeure**

### **2.6.1 Definition**

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

### **2.6.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative Measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.6.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **2.6.5 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.7 Termination**

### **2.7.1 By the NCPB**

The National Cereals & Produce Board may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the National Cereals & Produce Board may have subsequently approved in writing;
- b) If the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the National Cereals & Produce Board has

engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Attachment 1 to the GCC, in competing for or in executing the Contract

### **2.7.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the NCPB, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If the National Cereals & Produce Board fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### **2.7.3 Payment upon Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the National Cereals & Produce Board shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

## **3. Obligations of the Service Provider**

### **3.1 General**

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the NCPB, and shall at all times support and safeguard the NCPB's legitimate interests in any dealings with Subcontractors or third parties.

### **3.2 Conflict of Interests**

#### **3.2.1 Service Provider Not to Benefit from Commissions and Discounts.**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

#### **3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project**

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be

disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

### 3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

### 3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the NCPB's business or operations without the prior written consent of the NCPB.

**3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the NCPB, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the NCPB's request, shall provide evidence to the National Cereals & Produce Board showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### 3.5 Service Provider's Actions Requiring NCPB's Prior Approval

The Service Provider shall obtain the NCPB's prior approval in writing before taking any of the following actions:

- a) entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),
- c) changing the Program of activities; and
- d) any other action that may be **specified in the SCC**.

### 3.6 Reporting Obligations

The Service Provider shall submit to the National Cereals & Produce Board the reports and documents specified in Appendix Bin the form, in the numbers, and within the periods set forth in the said Appendix.

### 3.7 Documents Prepared by the Service Provider to Be the Property of the NCPB

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the NCPB, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the NCPB, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any,



shall be **specified in the SCC**.

### **3.8 Liquidated Damages**

#### **3.8.1 Payments of Liquidated Damages**

The Service Provider shall pay liquidated damages to the National Cereals & Produce Board at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The National Cereals & Produce Board may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

#### **3.8.2 Correction for Over-payment**

If the Intended Completion Date is extended after liquidated damages have been paid, the National Cereals & Produce Board shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

#### **3.8.3 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the NCPB's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

### **3.9 Performance Security**

The Service Provider shall provide the Performance Security to the National Cereals & Produce Board no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the NCPB, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

### **3.10 Fraud and Corruption**

The National Cereals & Produce Board requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The National Cereals & Produce Board requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### **3.11 Sustainable Procurement**

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC**.

## 4. Service Provider's Personnel

### 4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the NCPB.

### 4.2 Removal and/or Replacement of Personnel

- a) Except as the National Cereals & Produce Board may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the National Cereals & Produce Board finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the NCPB's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the NCPB.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## 5. Obligations of the NCPB

### 5.1 Assistance and Exemptions

The National Cereals & Produce Board shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

### 5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

### 5.3 Services and Facilities

The National Cereals & Produce Board shall make available to the Service Provider the Services and Facilities listed under Appendix F.

## 6. Payments to the Service Provider

### 6.1 Lump-Sum Remuneration

6.1.1 The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.4 and 6.3.

6.1.2 Where the contract price is different from the corrected tender price, in order to ensure the





contract or is not paid less or more relative to the contract price (which would be the tender price), any part payment valuation and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: (corrected tender price-tender price)/tenderpriceX100.

## 6.2 Contract Price

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

## 6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**6.3.2 If the SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.

## 6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the National Cereals & Produce Board specifying the amount due.

## 6.5 Interest on Delayed Payments

If the National Cereals & Produce Board has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

## 6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_C = A_C + B_C L_{mc}/L_{oc} + C_C I_{mc}/I_{oc}$$

Where:

$P_C$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

$A_C$ ,  $B_C$  and  $C_C$  are coefficients specified in the **SCC**, representing:  $A_C$  the non-adjustable portion;  $B_C$  the adjustable portion relative to labor costs and  $C_C$  the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

$L_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $L_{oc}$  is the index prevailing 28 days before Tender opening for labor; both in the specific currency "c".

$I_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and



loc is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor  $Z_o/Z_n$  will be applied to the respective component factor of pn for the formula of the relevant currency.  $Z_o$  is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and  $Z_n$  is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## 6.7 Day works

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the National Cereals & Produce Board has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the NCPB. Each completed form shall be verified and signed by the National Cereals & Produce Board representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

## 7. Quality Control

### 7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the National Cereals & Produce Board shall be as **indicated in the SCC**. The National Cereals & Produce Board shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The National Cereals & Produce Board may instruct the Service Provider to search for a Defect and to uncover and test any service that the National Cereals & Produce Board considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

### 7.2 Correction of Defects, and Lack of Performance Penalty

a) The National Cereals & Produce Board shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.

b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the NCPB's notice.

c) If the Service Provider has not corrected a Defect within the time specified in the NCPB's notice, the National Cereals & Produce Board will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

## **8. Settlement of Disputes**

### **8.1 Contractor's Claims**

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the National Cereals & Produce Board shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the NCPB's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full Supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) This fully detailed claim shall be considered as interim;
- b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
- c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall never the less give his response on the principles of the claim within the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause

3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until



the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub- Clause.

## **8.2 Matters that may be referred to arbitration**

**8.2.1** Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the National Cereals & Produce Board and the Contractor agree otherwise in writing.

## **8.3 Amicable Settlement**

Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty- sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

## **8.4 Arbitration**

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.4.3 Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.5 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.4.6 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

## **8.5 Arbitration with proceedings**

8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

- i) Law Society of Kenya or
- ii) Chartered Institute of Arbitrators (Kenya Branch)

8.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

8.5.3 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

## **8.6 Failure to Comply with Arbitrator's Decision**

8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## **9. The Adjudicator**

9.1. Should the Adjudicator resign or die, or should the National Cereals & Produce Board and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the National Cereals & Produce Board and the Service Provider. In case of disagreement between the National Cereals & Produce Board and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TENDER DOCUMENT and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the National Cereals & Produce Board and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

## SECTION VII - SPECIAL CONDITIONS OF CONTRACT

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

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is _____
1.1(w)	Project Manager is _____
1.1(e)	The contract name is _____.
1.1(h)	The National Cereals & Produce Board is _____
1.1(m)	The Member in Charge is _____
1.1(p)	The Service Provider is _____
1.4	<p>The addresses are:</p> <p>NCPB: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email address _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the NCPB: _____</p> <p>For the Service Provider: _____</p>
2.1	The date on which this Contract shall come into effect is _____.
2.2.2	The Starting Date for the commencement of Services is _____.
2.3	The Intended Completion Date is _____.
2.5.3	If the value engineering proposal is approved by the National Cereals & Produce Board the amount to be paid to the Service Provider shall be ____% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.
3.2.3	Activities prohibited after termination of this Contract are: _____
3.4	<p>The risks and coverage by insurance shall be:</p> <p>(i) Third Party motor vehicle _____</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	(ii) Third Party liability _____ (iii) NCPB's liability and workers' compensation _____ (iv) Loss or damage to equipment and property _____
<b>3.5(d)</b>	The other actions are _____.]
<b>3.7</b>	Restrictions on the use of documents prepared by the Service Provider are: _____
<b>3.8.1</b>	The liquidated damages rate is _____ per day The maximum amount of liquidated damages for the whole contract is _____ percent of the final Contract Price.
<b>3.8.3</b>	The percentage _____ to be used for the calculation of Lack of performance Penalty(ies) is _____.
<b>5.1</b>	The assistance and exemptions provided to the Service Provider are: _____
<b>6.2(a)</b>	The amount in Kenya Shillings _____.
<b>6.3.2</b>	The performance incentive paid to the Service Provider shall be: _____ _____
<b>6.4</b>	<p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> <li>• Advance for Mobilization, Materials and Supplies: ____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same.</li> <li>• Progress payments in accordance with the milestones established as follows, subject to certification by the NCPB, that the Services have been rendered satisfactorily, pursuant to the performance indicators:  ____ (indicate milestone and/or percentage) _____  ____ (indicate milestone and/or percentage) _____ and  ____ (indicate milestone and/or percentage) _____</li> </ul> <p>Should the certification not be provided, or refused in writing by the National Cereals &amp; Produce Board within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> <ul style="list-style-type: none"> <li>• The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%.</li> <li>• The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.</li> </ul>
<b>6.5</b>	Payment shall be made within _____ days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within _____

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>_____ days in the case of the final payment.</p> <p>The interest rate is _____.</p>
<b>6.6.1</b>	<p>Price adjustment is _____ in accordance with Sub-Clause 6.6.</p> <p>The coefficients for adjustment of prices are _____:</p> <p>(a) For local currency:</p> <p style="padding-left: 40px;"><math>A_L</math> is _____</p> <p style="padding-left: 40px;"><math>B_L</math> is _____</p> <p style="padding-left: 40px;"><math>C_L</math> is _____</p> <p style="padding-left: 40px;"><math>L_{mc}</math> and <math>L_{oc}</math> are the index for Labor from _____</p> <p style="padding-left: 40px;"><math>I_{mc}</math> and <math>I_{oc}</math> are the index for _____ from _____</p> <p>(b) For foreign currency</p> <p style="padding-left: 40px;"><math>A_F</math> is _____</p> <p style="padding-left: 40px;"><math>B_F</math> is _____</p> <p style="padding-left: 40px;"><math>C_F</math> is _____</p> <p style="padding-left: 40px;"><math>L_{mc}</math> and <math>L_{oc}</math> are the index for Labor from _____</p> <p style="padding-left: 40px;"><math>I_{mc}</math> and <math>I_{oc}</math> are the index for _____ from _____</p>
<b>7.1</b>	<p>The principle and modalities of inspection of the Services by the National Cereals &amp; Produce Board are as follows: _____</p> <p>The Defects Liability Period is _____.</p>
<b>9.1</b>	<p>The designated Appointing Authority for a new Adjudicator is _____</p>
<b>9.2</b>	<p>The Adjudicator is _____. Who will be paid a rate of _____ per hour of work. The following reimbursable expenses are recognized: _____</p>



## Appendices

### Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by NCPB, etc.

### Appendix B - Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."

### Appendix C - Subcontractors

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

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

### Appendix E - Services and Facilities Provided by the NCPB

## SECTION VIII - CONTRACT FORMS

### Table of Forms

1. PERFORMANCE SECURITY OPTION 1– (Unconditional Demand Bank Guarantee)
2. PERFORMANCE SECURITY OPTION 2– (Performance Bond)

### FORM NO. 1 - PERFORMANCE SECURITY - (Unconditional Demand Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_[insert name and Address of NCPB]

**Date:** \_\_\_\_\_[Insert date of issue]

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

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

1. We have been informed that \_\_\_\_\_(herein after called" the Applicant") has entered into Contract No. \_\_\_\_\_[dated] \_\_\_\_\_with the Beneficiary, for the execution of \_\_\_\_\_(herein after called" the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.



3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_ ( ),<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.
4. 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.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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

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

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

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

**Beneficiary:** \_\_\_\_\_ [insert name and Address of NCPB]

**Date:** \_\_\_\_\_ [Insert date of issue]

**PERFORMANCE BOND No.:** \_\_\_\_\_

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

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called "the Contractor") and \_\_\_\_\_] as Surety (hereinafter called "the Surety"), are held and firmly bound unto \_\_\_\_\_] as Obligee (herein after called "the NCPB") in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the National Cereals & Produce Board dated the \_\_\_\_\_ Day of \_\_\_\_\_, 20, for \_\_\_\_\_ in accordance with the



documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are herein after referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the National Cereals & Produce Board to be, in default under the Contract, the National Cereals & Produce Board having performed the NCPB's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
  - 1) Complete the Contract in accordance with its terms and conditions; or
  - 2) Obtain a tender or tenders from qualified tenderers for submission to the National Cereals & Produce Board for completing the Contract in accordance with its terms and conditions, and upon determination by the National Cereals & Produce Board and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and National Cereals & Produce Board and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by National Cereals & Produce Board to Contractor under the Contract, less the amount properly paid by National Cereals & Produce Board to Contractor; or
  - 3) Pay the National Cereals & Produce Board the amount required by National Cereals & Produce Board to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the National Cereals & Produce Board named herein or the heirs, executors, administrators, successors, and assigns of the NCPB.
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day\_\_of\_\_\_\_20\_\_.

SIGNED ON\_\_\_\_\_on behalf of

By\_\_\_\_\_in the

capacity of In the presence of\_\_\_\_\_SIGNED

ON\_\_\_\_\_on behalf of

By\_\_\_\_\_in the

capacity of In the presence of \_\_\_\_\_

