



# NATIONAL CEREALS AND PRODUCE BOARD

Leaders in Trade & Management of Agricultural Commodities

## TENDER DOCUMENT FOR:-

**FRAMEWORK AGREEMENT FOR SUPPLY, DELIVERY AND INSTALLATION OF  
TOTAL AFLATOXINS TEST KITS**

**TENDER NO. NCPB/AFLATOXINS KITS/15/2021– 2022**

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

**Website: [www.ncpb.co.ke](http://www.ncpb.co.ke)**



**NCPB IS ISO 9001:2015 CERTIFIED**

## INVITATION TO TENDER

PROCURING ENTITY: - NATIONAL CEREALS AND PRODUCE BOARD

1. **CONTRACT NAME AND DESCRIPTION:** FRAMEWORK AGREEMENT FOR SUPPLY, DELIVERY AND INSTALLATION OF TOTAL AFLATOXINS TEST KITS.
2. National Cereals and Produce Board invites sealed tenders for the *Supply, Delivery and Installation of Total Aflatoxins Test Kits* under Framework Agreement for a Period of One Year.
3. **The Procuring entity shall determine the quantity of the test kits on a need basis.**
4. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Bidders.
5. Qualified and interested bidders may obtain further information and inspect the Tender Documents during office hours *[0800 to 1600hours]* at the address given below.
6. A complete set of tender documents may be purchased or obtained by interested tenders upon payment of non-refundable fees of Kshs. 1,000.00 (*Kenya shillings One Thousand Only*) through MPESA at the cash office of NCPB Head office.
7. Tender documents may be viewed and downloaded for free from the website [www.ncpb.co.ke](http://www.ncpb.co.ke) or IFMIS Supplier Portal: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke). Bidders who download the tender document must forward their particulars immediately to [supplies@ncpb.co.ke](mailto:supplies@ncpb.co.ke) / [ncpbsupplies@gmail.com](mailto:ncpbsupplies@gmail.com) to facilitate any further clarification or addendum.
8. Bidders are advised to regularly visit the NCPB website ([www.ncpb.co.ke](http://www.ncpb.co.ke)) to obtain any additional information/addendum on the tender. **All addenda/additional information on the tender shall be posted on the NCPB website as they become available. Bidders are therefore encouraged to regularly check on the website to avoid missing out on instructions**
9. All Tenders must be accompanied by an original tender security equal to Kenya Shillings One Hundred Thousand (Kshs. 100,000.00) in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 120 days from the date of tender opening.
10. The Bidder shall chronologically serialize all pages of the tender documents submitted.
11. Completed tender documents, **Original plus copy**, shall be enclosed in a plain sealed envelope and marked “**FRAMEWORK AGREEMENT FOR SUPPLY, DELIVERY AND INSTALLATION OF TOTAL AFLATOXINS TEST KITS, TENDER NO. NCPB/AFLATOXINS KITS/15/2021– 2022**”, and deposited in the **Tender box situated at Nafaka House, Ground Floor, by the Main Entrance** or delivered to the address below on or before **Thursday 25th November, 2021 at 12:00 noon**. Electronic Tenders *will not be* permitted.  
Bulky or large bid documents which cannot fit through the slot of the Tender Box must be delivered to the office of the Head of Procurement Services situated on the Ground floor of the above address.
12. Tenders will be opened immediately after 12.00 noon on Thursday, 25<sup>th</sup> November 2021 or any other time specified later if applicable. Tenders will be publicly opened at the NCPB Gilfillan hall in the presence of interested bidders or their representatives who choose to attend.
13. Late tenders shall be rejected.
14. Completed tender documents shall be marked “**DO NOT OPEN BEFORE 1200HOURS ON THURSDAY 25<sup>TH</sup> NOVEMBER 2021**”
15. The address referred to above is:

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



**NELSON W. SAWENJAH**  
**HEAD OF PROCUREMENT SERVICES**  
**FOR: MANAGING DIRECTOR**



## SECTION I: INSTRUCTIONS TO BIDDERS

### A GENERAL PROVISIONS

#### 1. Scope of Tender

National Cereals and Produce Board invites sealed tenders for the **Supply, Delivery and Installation of Total Aflatoxins Test Kits under Framework Agreement for a period of One Year.**

#### 2. Throughout this tendering document:

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

#### 3. Fraud and Corruption

- 3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any bidder 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 Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

#### 4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender.

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 **TDS**.

- 42 Public Officers of the Procuring Entity, 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.
- 43 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this Tendering process, if the Bidder:
- a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - b) receives or has received any direct or indirect subsidy from another Bidder; or
  - c) has the same - representative or ownership as another Bidder; or
  - d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the Tender of another Bidder, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
  - f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - h) has a close business or family relationship with a professional staff of the Procuring Entity (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 Procuring Entity throughout the Tendering process and execution of the Contract.

A firm that bid either individually or as a JV member) shall not submit more than one ~~bid~~, 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 Bidder or a JV member, may participate as a subcontractor in more than one Tender.

- 44 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITT4.9.
- 45 A Bidder 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 pre-qualified 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 PPRA Website [www.ppra.go.ke](http://www.ppra.go.ke) or at the electronic address [info@ppra.go.ke](mailto:info@ppra.go.ke).
- 46 Bidders 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 Procuring Entity.

- 4.7 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.
- 4.8 A Bidder shall be deemed to have the nationality of a country if the Bidder 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 subconsultants for any part of the Contract including related Services.
- 4.9 Foreign bidders 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 bidder shall provide in its tender documentary evidence that this requirement is met. Foreign bidders not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is provided in *"SECTION III-EVALUATION AND QUALIFICATION CRITERIA, 6.3"*.
- 4.10 Pursuant to the eligibility requirements of ITT 4.9, a tender is considered a foreign bidder, if the bidder is not registered in Kenya or if the bidder is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign bidders if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not sub contract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.11 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 bidder shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 4.12 A Bidder may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 4.13 A Kenyan bidder shall be eligible to tender if it provides 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.

## **5 Qualification of the Bidder**

- 5.1 All Bidders shall provide in Section IV, Tendering Forms, a preliminary description of the proposed schedule of supply, delivery and installation of test kits, as necessary.

## **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 ITT 9.

**PART: Tendering Procedures**

- i) Section I - Instructions to Bidders (ITT)
- ii) Section II - Tendering Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

**PART 2: Supply Requirements**

- v) Section V - Schedule of Requirements

**PART 3: Contract**

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

- 6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Bidders, as the case may be, issued by the Procuring Entity is not part of this tendering document.
- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addendum to the tendering document in accordance with ITT 9. In case of any Contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.4 The Bidder 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. Delivery Points**

- 7.1 The bidders to take note that the price quoted per kit shall include delivery and installation to the aflatoxin testing laboratories located in the following NCPB depots/silos
- i) Nairobi Grain silos laboratory
  - ii) Machakos depot
  - iii) Meru depot
  - iv) Nakuru Silos
  - v) Eldoret Silos
  - vi) Moi's Bridge silos
  - vii) Kitale depot
  - viii) Bungoma silos
  - ix) Narok silos
  - x) Migori depot

**8. Clarification of Tendering Document**

- 8.1 A Bidder requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all bidders who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the webpage identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity

shall amend the Tender Documents appropriately following the procedure under ITT 10.

## 9. Amendment of Tendering Document

- 9.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.
- 9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tender document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page.
- 9.3 To give prospective bidders reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, in accordance with ITT 23.2 below.

## C. Preparation of Tenders

### 10 Cost of Tendering

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

### 11 Language of Tender

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

### 12 Documents Comprising the Tender

- 12.1 The Tender shall comprise the following:
  - a **Form of Tender** prepared in accordance with ITT 13;
  - b **Schedules:** priced Activity Schedule completed in accordance with ITT 13 and ITT
  - c **Tender Security or Tender-Securing Declaration** in accordance with ITT 20.1;
  - d **Alternative Tender:** if permissible in accordance with ITT 14;
  - e **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Bidder, in accordance with ITT 21.3;
  - f **Qualifications:** documentary evidence in accordance with ITT 18 establishing the Bidder's qualifications to perform the Contract if its Tender is accepted;
  - g **Bidder's Eligibility:** documentary evidence in accordance with ITT 18 establishing the Bidder's eligibility to Tender;
  - h **Conformity:** documentary evidence in accordance with ITT 17, that the Services conform to the tendering document; and
  - i Any other document required in the **TDS**.

The Bidder shall chronologically serialize pages of all tender documents submitted.

- 12.2 In addition to the requirements under ITT 9.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender,



together with a copy of the proposed Agreement. The Bidder shall chronologically serialize pages of all tenders documents submitted.

- 12.3 The Bidder shall furnish in the Form of Tender information on commissions gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Tender.

### **13 Form of Tender and Activity Schedule**

- 13.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

### **14 Alternative Tenders**

- 14.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by the Procuring Entity.
- 14.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the TDS** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
- 14.3 When specified **in the TDS**, Bidders are reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified **in the TDS**, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

### **15 Tender Prices and discounts**

- 15.1 The prices and discounts (including any price reduction) quoted by the Bidder in the Form of Tender and in the Requirement Schedule shall conform to the requirements specified.
- 15.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
- 15.3 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 Bidder.
- 15.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 15.1.
- 15.5 The Bidder shall fill in rates and prices for all items of the Services described in the Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Bidder will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 15.6 All duties, taxes, and other levies payable by the Supplier under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Bidder.
- 15.7 If provided for **in the TDS**, the rates and prices quoted by the Bidder 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 Bidder shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 15.8 For the purpose of determining the remuneration due for additional Services, a breakdown

of the lump-sum price shall be provided by the Bidder in the form of Appendices D and E to the Contract.

## **16 Currencies of Tender and Payment**

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

## **17 Documents Establishing Conformity of Services**

17.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Bidder shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.

17.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.

## **18 Documents Establishing the Eligibility and Qualifications of the Bidder**

18.1 Bidders shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.

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

18.3 In the event that prequalification of Bidders has been undertaken as stated in the **TDS**, only Tenders from prequalified Bidders shall be considered for award of Contract. The prequalified Bidders 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.

18.4 Bidders shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Supplier or group of suppliers qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between bidders, and there by help to prevent any corrupt influence in relation to the procurement process or contract management.

18.5 The purpose of the information described in ITT 17.1 above overrides any claims to confidentiality which a bidder may have. There can be no circumstances in which it would be justified for a bidder to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Bidder's failure to disclose, or failure to provide required information on its ownership and control.

18.6 The Bidder shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the bidder under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or

management of the contract.

- 18.7 All information provided by the bidder pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Bidder shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 18.8 If a bidder fails to submit the information required by these requirements, its bidder will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a bidder pursuant to these requirements, then the tender will be rejected.
- 18.9 If information submitted by a bidder pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the bidder in relation to the procurement or contract management process, then:
- i. If the procurement process is still ongoing, the bidder will be disqualified from the procurement process,
  - ii. If the contract has been awarded to that bidder, the contract award will be set aside,
  - iii. The bidder will be referred to the relevant law enforcement authorities for investigation of whether the bidder or any other person have committed any criminal offence.
- 18.10 If a bidder submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the bidder can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the bidder.
- 18.11 A Kenyan bidder 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.

## 19 Period of Validity of Tenders

- 19.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 23.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 19.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Bidders to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Tender Security. A Bidder granting the request shall not be required or permitted to modify its Tender.

## 20 Tender Security

- 20.1 The Bidder shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 20.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 20.3 If a Tender Security is specified pursuant to ITT 19.1, from a reputable source, and an eligible

country and shall be in any of the following forms at the Bidder's option:

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

20.4 If a Tender Security is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

20.5 If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to ITT 45. The Procuring Entity shall also promptly return the tender security to the bidders where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

20.6 The Tender Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.

20.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

- a. If a Bidder withdraws its Tender during the period of Tender validity specified by the Bidder in the Form of Tender, or any extension thereof to provide by the Bidder; or
- b. if the successful Bidder fails to:
- c. sign the Contract in accordance with ITT 45; or
- d. Furnish a performance security in accordance with ITT 46.

20.8 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 ITT 4.1 and ITT 11.2.

20.9 If a Tender Security is not required in the **TDS**, pursuant to ITT 19.1, and

- a) if a Bidder withdraws its Tender during the period of Tender validity specified by the Bidder on the Form of Tender; or
- b) if the successful Bidder fails to:
  - i) sign the Contract in accordance with ITT 44; or
  - ii) furnish a performance security in accordance with ITT 45;

The Procuring Entity may, if provided for in the **TDS**, declare the Bidder ineligible to be awarded a contract by the Procuring Entity for a period of time as stated in the **TDS**.

## 21 Format and Signing of Tender

21.1 The Bidder shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked "Original. "In addition, the Bidder shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as "Copies. "In the event of discrepancy between them, the original shall prevail.

21.2 Bidders 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.

21.3 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 Bidder. This authorization shall consist of a written confirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

- 21.4 In case the Bidder is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 21.5 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**

### **22 Sealing and Marking of Tenders**

- 22.1 Depending on the sizes or quantities or weight of the tender documents, a bidder may use an envelope, package or container. The Bidder shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Bidder shall place the following separate, sealed envelopes:
- a. in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT12; and
  - b. in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
  - c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:
    - i. in an envelope or package or container marked “ORIGINAL–ALTERNATIVE TENDER”, the alternative Tender; and
    - ii. in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the Procuring Entity.
  - b) Bear the name and address of the Bidder; and
  - c) Bear the name and Reference number of the Tender.
- 22.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

### **23 Deadline for Submission of Tenders**

- 23.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**. When so specified **in the TDS**, Bidders shall have the option of submitting their Tenders electronically. Bidders submitting Tenders electronically shall follow the electronic Tender submission procedures specified **in the TDS**.
- 23.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT8, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **24 Late Tenders**

- 24.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Bidder.

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

- 25.1 A Bidder may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:



- a) Prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

25.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Bidders.

25.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Bidder on the Form of Tender or any extension thereof.

## 26 Tender Opening

26.1 Except as in the cases specified in ITT 22 and ITT 24.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 22.1 shall be as specified **in the TDS**.

26.2 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 Bidder. 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 Bidder, 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.

26.3 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 Bidder. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

26.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

26.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Bidder 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 Procuring Entity may consider appropriate.

26.6 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 representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.

26.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

26.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:

- a) The name of the Bidder 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.
- e) Number of pages of each tender document submitted

26.9 The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the tenderopening register shall be distributed to Bidder upon request.

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

### **27 Confidentiality**

- 27.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Bidders in accordance with ITT 41.
- 27.2 Any effort by a Bidder to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 27.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Bidder wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **28 Clarification of Tenders**

- 28.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Bidders, the Procuring Entity may, at the Procuring Entity's discretion, ask any bidder for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Bidder in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT31.
- 28.2 If a Bidder does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

### **29 Deviations, Reservations, and Omissions**

- 29.1 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 therequirements 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.

### **30 Determination of Responsiveness**

- 30.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tenderitself, as defined in ITT 11.

- 30.2 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 Non-Consulting Services specified in the Contract; or
    - ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Bidder's obligations under the Contract; or
  - b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Tenders.
- 30.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT 18, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.
- 30.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30.5 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

Provided that a Tender is substantially responsive, the Procuring Entity may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify non-material 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 Bidder to comply with the request may result in the rejection of its Tender.

- 30.6 Provided that a Tender is substantially responsive, the Procuring Entity 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 TDS.

## 31 Arithmetical Errors

- 31.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 31.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
  - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, 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
- 31.3 Bidders shall be notified of any error detected in their bid during the notification of a ward.

## 32 Conversion to Single Currency

- 32.1 For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted into

a single currency **as specified in the TDS**.

### **33 Margin of Preference and Reservations**

**33.1** Margin of preference on local suppliers may be allowed if it is deemed that the services require participation of foreign bidders. If so allowed, it will be indicated in the **TDS**.

**33.2** Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all bidders.

### **34 Evaluation of Tenders**

**34.1** The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Best Evaluated Tender. This is the Tender of the Bidder 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.

**34.2** In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 15.4;
- b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31; and
- d) Any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

**34.3** 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.

**34.4** In the case of multiple contracts or lots, Bidders are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

**35.5.** The methodology to determine the lowest evaluated bidder or bidders based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, bidder will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

### **35 Comparison of Tenders**

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

### **36 Abnormally Low Tenders and Abnormally High Tenders Abnormally Low Tenders**

**36.1** 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 Bidder in regards to the Bidder's ability to perform the Contract for the offered Tender Price.

- 36.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Bidder, 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.
- 36.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Bidder has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

- 36.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Bidders is compromised.
- 36.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the bidder on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.
- 36.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between bidders is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **37 Unbalanced and/or Front-Loaded Tenders**

- 37.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Bidder 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.
- 37.2 After the evaluation of the information and detailed price analyses presented by the Bidder, the Procuring Entity 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 Bidder to a level not exceeding 10% of the Contract Price; or
  - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
  - d) Reject the Tender.



## **38 Qualification of the Bidder**

- 38.1 The Procuring Entity shall determine to its satisfaction whether the Bidder 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.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Bidder's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Bidder that submitted the Tender.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Bidder who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Bidder's qualifications to perform satisfactorily.

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

- 39.1 The Procuring Entity reserves the right to accept or reject any tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Bidders. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Bidders.

## **F. AWARD OF CONTRACT**

### **40 Award Criteria**

- 40.1 The Procuring Entity shall award the Framework Contract to the successful bidder whose tender has been determined to be the Lowest Evaluated Tender.

### **41 Notice of Intention to enter in to a Contract/Notification of award.**

- 41.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Framework Contract/Notification of award to all bidders which shall contain, at a minimum, the following information:
- a) The name and address of the Bidder submitting the successful tender;
  - b) The Contract price of the successful tender;
  - c) a statement of the reason(s) the tender of the unsuccessful bidder to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
  - d) the expiry date of the Stand still Period; and
  - e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;

### **42 Stand still Period**

- 42.1 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.
- 42.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Bidder the Notification of Intention to enter in to a Contract with the successful Bidder.

### **43 Debriefing by the Procuring Entity**



- 43.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 41, an unsuccessful bidder may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 43.2 Debriefings of unsuccessful Bidders may be done in writing or verbally. The Bidder shall bear its own costs of attending such a debriefing meeting.

#### **44 Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Bidder. The letter of award shall request the successful bidder to furnish the Performance Security within 21 days of the date of the letter.

#### **45 Signing of Contract**

- 45.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Bidder the Framework Agreement.
- 45.2 Within fourteen (14) days of receipt of the Framework Agreement, the successful Bidder shall sign, date, and return it to the Procuring Entity.
- 45.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

#### **46 Performance Security**

- 46.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.
- 46.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Bidder offering the next Best Evaluated Tender.

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

- 47.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:
- a) Name and address of the Procuring Entity;
  - b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - c) The name of the successful Bidder, the final total contract price, the contract duration.
  - d) Dates of signature, commencement and completion of contract;

- e) Names of all Bidders that submitted Tenders and their Tender prices as read out at Tender opening.

#### **48 Adjudicator**

- 48.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Bidder disagrees with this Tender, the Bidder should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity 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 are as specified in the **TDS**.
- 49.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II – TENDER DATA SHEET (TDS)

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
ITT 1	<p>The Reference number of the invitation for Tenders is <b>NCPB/AFLATOXINS KITS/15/2021– 2022</b> The Procuring Entity is:- <b>National Cereals and Produce Board</b></p> <p>The name of the contract is: - <b>Supply, Delivery and Installation of Total Aflatoxins Test Kits.</b></p> <p>The number and identification of lots (contracts) comprising this Invitation for Tenders is:- <b>[N/A]</b></p>
ITT 2	<p><b>Electronic – Procurement System</b> The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process:</p> <p><b>N/A</b></p> <p>The electronic-procurement system shall be used to manage the following aspects of the Tendering process:</p> <p><b>N/A</b></p>
ITT 2	The Intended Completion Date is One year from date of contract.
<b>B. Contents of Tendering Document</b>	
ITT 8.1	The questions to reach the Procuring Entity not later than <b>23<sup>rd</sup> November, 2021 at 4.00pm</b>
ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 9.1	<p>a) Address where to send enquiries is</p> <p style="text-align: center;"><b>THE MANAGING DIRECTOR, NATIONAL CEREALS AND PRODUCE BOARD, NYUMBA YA NAFKA, MACHAKOS/ENTERPRISE ROADS, INDUSTRIAL AREA, P.O BOX 30586, NAIROBI.</b></p> <p>b) Email address: <a href="mailto:supplies@ncpb.co.ke">supplies@ncpb.co.ke</a></p> <p>to the Procuring Entity not later than <b>23<sup>rd</sup> November, 2021 at 4.00pm</b></p> <p>The Procuring Entity publish its responses at the website: <a href="http://www.ncpb.co.ke">www.ncpb.co.ke</a></p>
<b>C. Preparation of Tenders</b>	
ITT 14.1	Alternative Tenders <b>[shall not be]</b> considered.
ITT 14.2	Alternative times for completion <b>shall not be</b> permitted.

ITT 14.3	Alternative technical solution shall be <i>shall not be</i> permitted.
ITT 15.7	The prices quoted by the Bidder <i>shall not</i> be subject to adjustment during the performance of the Contract.
ITT 18.3	Prequalification <b>has not</b> been undertaken
ITT 19.1	The Tender validity period shall be <i>[120]</i> days.
ITT 20.1	The Tender Security shall be required; the amount and currency of the Tender Security shall be of <b>Kshs.100,000.00</b> in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for <b>120 days</b> from the date of tender opening. <i>Note: Tender Security is required for entire amounts indicated.</i>
ITT 21.3	The bidder shall provide a written Power of Attorney as a confirmation of authorization to sign on behalf of the Bidder

#### D. Submission and Opening of Tenders

ITT 23.1	<p>(A) For <u>Tender submission purposes</u> only, the Procuring Entity's address is:</p> <p style="text-align: center;"><b>THE MANAGING DIRECTOR, NATIONAL CEREALS AND PRODUCE BOARD, NYUMBA YA NAFKA, MACHAKOS/ENTERPRISE ROADS, INDUSTRIAL AREA, P.O BOX 30586, <u>NAIROBI.</u></b></p> <p style="text-align: center;"><i>7.1 for clarifications]</i><b>THE MANAGING DIRECTOR, NATIONAL CEREALS AND PRODUCE BOARD, NYUMBA YA NAFKA, MACHAKOS/ENTERPRISE ROADS, INDUSTRIAL AREA, P.O BOX 30586, <u>NAIROBI.</u></b></p> <p>The deadline for Tender submission is: Date: <i>[ 25Th November, 2021at 12.00noon]</i> Time: <i>[12.00noon]</i></p> <p><i>[Note: The date and time should be the same as those provided in the specific Procurement Notice – Request for Tenders, unless subsequently amended pursuant to ITT 23.2]</i></p> <p><i>Bidders shall not</i> have the option of submitting their Tenders electronically.</p>
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ITT 26.1	<p>(B) The Tender opening shall take place at:</p> <p style="text-align: center;"><b>National Cereals and Produce Board, Nyumba ya Nafaka, Machakos/Enterprise Roads, Industrial Area, Gilfilian Hall</b></p> <p style="text-align: center;">Date: <i>[ 25th November, 2021at 12.00pm]</i></p> <p style="text-align: center;">Time: <i>[12.00noon]</i></p>
ITT 26.1	The number of representatives of the Procuring Entity to sign is <i>(as per the appointed Tender opening Committee)</i>
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 32.1	The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: <i>[Kenya Shillings]</i>
ITT 33.1	A margin of preference and/or reservation <b><i>shall not</i></b> apply and specify the details. If a margin of preference applies, the application methodology shall be defined in Section III – Evaluation and Qualification Criteria.
ITT 33.2	The invitation to tender is extended to the following group that qualify for Reservations <i>[N/A]</i>
ITT 34.1	Bidders shall <u>not be allowed</u> ( <i>select one</i> ) to quote separate prices for different lots (contracts) and the methodology to determine the lowest bidder is specified in Section III, Evaluation and Qualification Criteria.
<b>F. Award of Contract</b>	
ITT 46.1	Performance security if so required shall be 10% of the total contract price.
ITT 49.1	<p>The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a></p> <p>If a Bidder wishes to make a Procurement-related Complaint, the Bidder should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: <b><i>The Director General</i></b></p> <p>Procuring Entity: <b><i>National Cereals and Produce Board</i></b></p> <p>Email address: <a href="mailto:supplies@ncpb.co.ke">supplies@ncpb.co.ke</a></p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ol style="list-style-type: none"> <li>1. the terms of the Tender Documents; and</li> <li>2. The Procuring Entity's decision to award the contract.</li> </ol>

## **SECTION III – EVALUATION AND QUALIFICATION CRITERIA**

### **1. General Provision**

- 1.1 Wherever a Bidder is required to state a monetary amount, Bidders should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.
  - b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
  - c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
- 1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify bidders. No other factors, methods or criteria shall be used other than specified in this tender document. The Bidder shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.
- 1.3 Evaluation and contract award Criteria

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

### **2 Preliminary examination for Determination of Responsiveness**

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

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

### **3 Tender Evaluation (ITT 34)**

**Price evaluation:** in addition to the criteria listed in ITT 34.2 (a)–(d) the following criteria shall apply:

- i) **Alternative Completion Times**, if permitted under ITT 14.2, will be evaluated as follows:  
.....N/A.....
- ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 14.3, will be evaluated as follows:..... N/A .....
- iii) **Other Criteria**; if permitted under ITT 35.2 (e): ..... N/A .....

### **4 Multiple Contracts- N/A**

Multiple contracts will be permitted in accordance with ITT 36.4. Bidders are evaluated on basis of Lots and the lowest evaluated bidder identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.



## OPTION 1

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

## OPTION 2

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

## **5 Alternative Tenders (ITT 14.1)**

*An alternative if permitted under ITT 12.1, will be evaluated as follows:-*

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Procuring Entity's requirements. Only the technical alternatives, if any, of the Bidder with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

## **6 MARGIN OF PREFERENCE**

**Apply Margin of Preference**, if so allowed to all evaluated and accepted tender as follows.

- 6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of foreign bidders, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).
- 6.2 Contractors applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractor's qualifies for a margin of preference.
- 6.3 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:
  - i) **Group A:** tenders offered by Kenyan Contractors and other Bidders where Kenyan citizens hold shares of over fifty one percent (51%).
  - ii) **Group B:** tenders offered by foreign Contractors and other Bidders where Kenyan citizens hold shares of less than fifty one percent (51%).
- 6.4 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 3.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

7 Post qualification and Contract ward (ITT 38), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated bidder, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated bidder shall be considered for contract award, subject to meeting each of the following conditions.
  - i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings
  - ii) Minimum average annual construction turnover of Kenya Shillings
  - iii) *[Insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the \_\_\_\_\_ *[insert no. of year]* years.
  - iv) At least \_\_\_\_\_ *(insert number)* of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings  
Equivalent.
  - v) Contractor's Representative and Key Personnel, which are specified as  
\_\_\_\_\_  
\_\_\_\_\_
  - vi) Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listed as *[specify requirements for each lot as applicable]*  
\_\_\_\_\_  
\_\_\_\_\_
  - vii) Other conditions depending on their seriousness.

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

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

**b) Pending Litigation**

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

**c) Litigation History**

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

## EVALUATION CRITERIA

1. PRELIMINARY REQUIREMENTS (MANDATORY)

## 2.4.1 Mandatory Requirements

Bids not meeting all the mandatory requirements will receive no further consideration during the evaluation process. The bidders shall be required to provide the following:-

No.	Documents to be submitted	Yes/No
01.	Copy of Certificate of Incorporation/Registration.	
02.	<b>Valid</b> Tax Compliance Certificate (will be confirmed online with TCC Checker).	
03.	<b>Dully</b> filled Confidential Business Questionnaire.	
04.	Manufacturer's method of analysis and Performance data of the Aflatoxin test kit.	
05.	Dully filled specifications and requirements schedule	
06.	Copy of recent CR 12 form (Issued within the <b>last 6 months from the Tender Opening Date</b> ).	
07.	Original copy of Tender Security of <b>Ksh.100, 000.00</b> in the form of Unconditional <b>Bank Guarantee</b> from a reputable bank in Kenya valid up to <b>120 days beyond the tender validity period</b> .	
08.	Audited Financial Statements for the last two (2) years i.e. 2019/2020 and 2020/2021.	
09.	<b>Duly</b> completed, signed and stamped form of tender.	
10.	Tender document submitted <b>MUST</b> be <b>paginated</b> and <b>sequentially</b> serialized.	

## 2.4.2 Technical Evaluation

The guiding criteria are as depicted below:

No.	Item of Evaluation	Score
1.	<b>Track record and references</b> List of at least Five (5) reputable corporate clients with copies of LSOs/LPOs or contracts where Supply, Delivery and Installation of Total Aflatoxins Test Kits have been handled in the past. Attach evidence in form of relevant documents and/or completion certificates <b>(Each evidence carries 8 marks) Total 40Marks</b>	40%
2.	Volume of business handled in the last two (2) years (Attach evidence) i. Over Kshs. 10 million <b>(30 marks)</b> ii. Over 5 million and below 10 million <b>(20 marks)</b> iii. Over 3million and below 5million <b>(10mark)</b> iv. Below 3 million <b>(1mark)</b>	30%
3.	<b>Financial health</b> (To be calculated from submitted audited accounts) <b>a. Liquidity Ratio</b> I. 1 : 2 & above = <b>15 marks</b> II. 1 :1.99 = <b>10 marks</b> III. 1 : 0.5 – 0.99 = <b>5marks</b> IV. 1:< 0.5 = <b>1 mark</b>	15%
	<b>b. Profitability ratio</b> I. 20% and above = <b>15 marks</b> II. 15% - 19% = <b>10 marks</b> III. 10% - 14% = <b>5 marks</b> IV. 1% -9% = <b>1mark</b>	15%
<b>Total Score</b>		<b>100%</b>

### Note:

- ✓ **Profitability Margin** =  $\text{EBIT} / \text{Gross Revenue or Sales} \times 100\%$
- ✓ **Current Ratio** =  $\text{Current Assets} / \text{Current Liabilities}$
- ✓ **EBIT** = Earnings Before Interest and Taxes
- ✓ NB: Only bidders that attain a score equal to or above 70% of the marks applicable to the technical evaluation stage shall proceed to the stage of comparison of financial offers.

## 2. TECHNICAL EVALUATION CRITERIA

**Note:**

- (i) Bidders must score a minimum of 70% in order to proceed to the next stage of evaluation.

## FINANCIAL SITUATION RATIOS

The Auditor shall be required to provide his/her workings and demonstrate the source of the workings from the various Audited statements by including the Page Numbers and references of the source of the figures used in the computation of the assigned values.

The above Financial Ratios have to be derived from first Principles from the Audit Statements. The Auditor undertaking the above Financial Analysis **MUST** duly fill the Contact Sheet below in all aspects.

### **Financial ratios Computed by a Certified Public Accountant:**

CPA: Name	
ICPAK Number	
Signature	
Date	
Personal/Corporate	
Stamp	

### **Ratios attested by the Company Director:**

Director's Name	
ID/Passport Number	
Signature	
Date	
Personal/Corporate	
Stamp	

## 3. FINANCIAL EVALUATION –

Bidders who shall have passed the technical evaluation qualify to be evaluated in the financial stage.

## SECTION IV - TENDERING FORMS

Form of Tender Bidder Information Form Bidder JV Members Information Form

Price Schedule: Goods Manufactured outside Kenya, to be Imported Price Schedule:

Goods Manufactured Outside Kenya, already imported Price Schedule: Goods

Manufactured in Kenya Price and Completion Schedule - Related Services Form of Tender

Security – Demand Guarantee Form of Tender Security (Tender Bond)

Form of Tender - Securing Declaration Manufacturer's Authorization Form



## SECTION IV - TENDERING FORMS

### 1 FORM OF TENDER

#### **INSTRUCTIONS TO BIDDERS**

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

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

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

**Alternative No.:** \_\_\_\_\_ [*insert identification No if this is a Tender f or an*

*alternative*] **To:** \_\_\_\_\_ [*insert complete name of Procuring Entity*]

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to bidders (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration.  
or  
Proposal-Securing Declaration in Kenya in accordance with ITT 3.6;
- d) **Conformity:** We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: [*insert a brief description of the Goods and Related Services*];
- e) **Tender Price:** The total price per test kit is:.....  
[*insert the total price of the Tender in words and figures in local currencies*];
- f) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- g) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- i) **One Tender per bidder:** We are not submitting any other Tender(s) as an individual bidder, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.9, other than alternative Tenders submitted in accordance with ITT 11;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants,

manufacturers, or suppliers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.7];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **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.
- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_ (specify website) during the procurement process and the execution of any resulting contract.
- q) **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) We, the Bidder, have completed fully and signed the following Forms as part of our Tender:
- Bidder's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict of interest.
  - Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other bidders.
  - Self-Declaration of the Bidder – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal. Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in ;

“Appendix 1- Fraud and Corruption” attached to the Form of Tender.

Name of the bidder: \*[insert complete name of the bidder]

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

*name of person duly authorized to sign the Tender]*

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

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

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

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

## i) BIDDER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Bidder

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

#### a) Bidder'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 Bidder	
5	Full Address and Contact Details of the Bidder.	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 ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Bidder handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

### General and Specific Details

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

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

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

Citizenship \_\_\_\_\_

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company

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

Nominal Kenya Shillings (Equivalent) .....

Issued Kenya Shillings (Equivalent) .....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

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

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

**d) Certification**

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

Full Name

Title or Designation

\_\_\_\_\_

*(Signature)*

\_\_\_\_\_

*(Date)*



## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

I certify, on behalf of \_\_\_\_\_ *[Name of Bidder]* 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 Bidder with authority to sign this Certificate, and to submit the Tender on behalf of the Bidder;
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 Bidder, whether or not affiliated with the Bidder, 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 Bidder discloses that [check one of the following, as applicable]:
  - a) The Bidder has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Bidder has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Bidder 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 Bidder, 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 Bidder and Date]*

## SELF-DECLARATION FORMS

### FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ..... (*Insert name of the Company*) who is a Bidder in respect of **Tender** No.....for..... (*Insert tender title/description*) for..... (*Insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deposed 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/BIDDER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

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

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

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witnes

sName

.....

Sign.....

Date.....



## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

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

### 2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Bidders, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Suppliers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
  - 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  - 2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
3. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement:-
  - a) shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
4. An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 4.1 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.
- 4.2 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:



- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) “obstructive practice” is:
- b) 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
- c) 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.
- d) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the bidder or the contractor, and includes collusive practices amongst bidders prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefit of free and open competition.

- e) 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, suppliers, 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;
- f) 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;
- g) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Bidders (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Suppliers, 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
- h) Pursuant to Section 62 of the above Act, requires Applicants/Bidders 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.

1. *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated supplier, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*
2. *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity.*

*includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

## BIDDER INFORMATION FORM

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

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

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

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

1. Bidder's Name:..... *[insert Bidder's legal name]*
2. In case of JV, legal name of each member ..... *[insert legal name of each member in JV]*
3. Bidder's actual or intended country of registration:..... *[insert actual or intended country of registration]*
4. Bidder's year of registration:..... *[insert Bidder's year of registration]*
5. Bidder's Address in country of registration ..... *[insert Bidder's legal address in country of registration]*
6. Bidder'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]*  
☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.  
☐ In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing:  
i) Legal and financial autonomy  
ii) Operation under commercial law  
iii) Establishing that the Bidder is not under the supervision of the agency of the Procuring Entity  
☐ A current tax clearance certificate or tax exemption certificate in case of Kenyan bidders issued by the Kenya Revenue Authority in accordance with ITT 4.14.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## OTHER FORMS

### 3. BIDDER'S JV MEMBERS INFORMATION FORM

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

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

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

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

1. Bidder's Name: <i>[insert Bidder's legal name]</i>
2. Bidder's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Bidder's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Bidder's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Bidder's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Bidder's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 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 Procuring Entity, in accordance with ITT 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\_\_\_\_\_ (here in after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here in after called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of ( ) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - i) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the Framework Agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the Framework Agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Bidder, 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 bidder*] (hereinafter called “the bidder”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of \_\_under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.  
  
Sealed with the Common Seal of the said Guarantor this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Framework Agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to bidders (“ITT”) of the Procuring Entity's Tendering document.then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.
4. This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the Framework Agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Signature of the Guarantor]



*[Witness]*

*[Seal]*

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



## TENDER-SECURING DECLARATION FORM

[The Bidder shall complete this Form in accordance with the instructions indicated] Date: *[insert date(as day, month and year) of Tender Submission]*

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

To .....*[insert complete name of*

*Purchaser]* I/We, the undersigned, declare that:

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

Signed:.....  
...

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

Name:  
.....

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

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

Seal or stamp

## SCHEDULE FORMS

*[The Bidder shall fill in these Forms in accordance with the instructions indicated.]*

### 1. The Specifications and Priced Requirements Schedules

#### REQUIREMENTS SPECIFICATIONS

The mode of supply and delivery includes all materials listed below, which involves the following:

#### MATERIALS REQUIRED (SPECIFICATIONS) FOR EACH TOTAL AFLATOXINS TEST KIT

NO.	REAGENT	PARAMETER(SPECIFICATIONS)	Yes/No
1	Antibody coated microwell plate	96 wells (12x8 well strips) in a microwell holder coated with antibody, Ready to use.	
2	Mixing wells	96 non-coated wells (12x8 well strips) in a microwell holder, Ready to use	
3	Aflatoxin standards	6(six) standards of different concentrations in methanol 70%, Ready to use	
4	Aflatoxin conjugate	Ready to use	
5	Substrate reagent	Ready to use	
6	Stop solution	Acidic solution, Ready to use	
7	Washing buffer	PBS with 0.05% Tween20	

A bidder will be required to submit a quotation for Supply, Delivery and Installation of Total Aflatoxins Test Kits that will be subjected to market rates and subsequent programme.

#### 4. PRICE SCHEDULE

Bidders are required to quote for a set of Total Aflatoxins Test Kit as below;

NO.	ITEM DESCRIPTION	QTY	UNIT COST		LEAD TIME
			KSHS	CTS	
1	SUPPLY,DELIVERY AND INSTALLATION OF TOTAL AFLATOXIN TEST KIT	1 (Kit)			

Name of Bidder.....

Signature of Bidder.....

Date.....

## NOTIFICATION OF INTENTION TO AWARD

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

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

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

Address: ..... *[insert Authorized Representative's Address]*

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

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

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

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

**Procuring Entity** ..... *[insert the name of the Procuring Entity]*

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

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

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

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

### **I). The successful Bidder**

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

**ii). Other Bidders** *[INSTRUCTIONS: insert names of all Bidders that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.]*

<b>Name of Bidder</b>	<b>Tender price</b>	<b>Evaluated Tender price (if applicable)</b>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>

### **iii). 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 Bidder, contact details; and address the request for debriefing as follows:

**Attention** ..... *[insert full name of person, if applicable]*

**Title/position**..... *[insert title/position]*

**Agency**..... *[insert name of Procuring Entity]*

**Email address**..... *[insert 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.

### **iv. 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 Bidder, contact details; and address the Procurement-related Complaint as follows:

**Attention** ..... *[insert full name of person, if applicable]*

**Title/position**..... *[insert title/position]*

**Agency**..... *[insert name of Procuring Entity]*

**Email address**..... *[insert 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 Bidder who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required 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)



**v). 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 do not hesitate to contact us.

On behalf of the Procuring Entity:

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

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

Title/position:

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

Email:

## 2 REQUEST FOR REVIEW

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

#### PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT AND

.....RESPONDENT (Procuring Entity)

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

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

### 3. LETTER OF AWARD

*[Form head paper of the Procuring Entity]*

.....*[date]*

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

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 Bidders is hereby accepted by us (Procuring Entity).

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

Please return the attached Contract duly signed

Authorized Signature:.....

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract

#### 4. FORM OF CONTRACT

*[Form head paper of the*

*Procuring Entity]* **LUMPSUM**

#### REMUNERATION

This CONTRACT (herein after called the “**Framework Contract**”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procuring Entity]* (herein after called the “Procuring Entity”) and, on the other hand, *[name of Supplier]* (hereinafter called the “Supplier”).

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

#### WHEREAS

- a) The Procuring Entity has requested the Supplier to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Supplier, having represented to the Procuring Entity 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 Supplier's Tender
  - c) The Special Conditions of Contract;
  - d) The General Conditions of Contract;
  - e) The Specifications;
  - f) The Priced Activity Schedule; and
  - g) 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

Appendix E: Services and Facilities Provided by the Procuring Entity

2. The mutual rights and obligations of the Procuring Entity and the Supplier shall be as set forth in the Contract, in particular:
  - a) The Supplier shall carry out the Services in accordance with the provisions of the Contract; and
  - b) The Procuring Entity shall make payments to the Supplier in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of \_\_\_\_\_ *[name of Procuring Entity]*  
*[Authorized Representative]*

For and on behalf of (name of supplier)

**[Note: If the Supplier 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 Supplier

..... *[name of member]*

..... *[Authorized Representative]*

..... *[Name of member]*

..... *[Authorized Representative]*

**SECTION VI - GENERAL CONDITIONS OF CONTRACT**

**A. General**

**Provisions**

**Definitions**

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

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Supplier 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 Supplier forming part of his Tender;
- c) "Completion Date" means the date of completion of the Services by the Supplier as certified by the Procuring Entity
- d) "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;
- e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) "Day works" means varied work inputs subject to payment on a time basis for the Supplier's employees and equipment, in addition to payments for associated materials and administration.
- g) "Procuring Entity" means the Procuring Entity or party who employs the Supplier
- h) "Foreign Currency" means any currency other than the currency of Kenya;
- i) "GCC" means these General Conditions of Contract;
- j) "Government" means the Government of Kenya;
- k) "Local Currency" means Kenya shilling;
- l) "Member," in case the Supplier 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 Supplier' rights and obligations towards the Procuring Entity under this Contract;
- m) "Party" means the Procuring Entity or the Supplier, as the case maybe, and "Parties" means both of them;
- n) "Personnel" means persons hired by the Supplier or by any Subcontractor as employees and assigned to the performance of the Services or any part there of;
- o) "Supplier" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- p) "Supplier's Tender" means the completed Tendering Document submitted by the Supplier to the Procuring Entity
- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Supplier to the Procuring Entity
- s) "Services" means the work to be performed by the Supplier pursuant to this Contract, as described



in Appendix A; and in the Specifications and Schedule of Activities included in the Supplier's Tender.

- t) "Subcontractor" means any entity to which the Supplier subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- u) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.
- v) "Project Manager" shall be the person appointed by the Procuring Entity 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 Procuring Entity and notified to the Contractor.
- w) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

## 1.1 Applicable Law

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

## 1.2 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.

## 1.3 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**.

## 1.4 Location

The Services shall be performed at such locations as 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 Procuring Entity may approve.

## 1.5 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Supplier may be taken or executed by the officials **specified in the SCC**.

## 1.6 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Supplier shall permit and shall cause its sub contract or 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 Supplier'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).

## 1.7 Taxes and Duties

The Supplier, 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

#### 2.2.1 Program

Before commencement, the supplier shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all the deliveries. The supply and delivery shall be carried out in accordance with the approved Program as updated.

#### 2.2.2 Starting Date

The Supplier shall start carrying out the supply and delivery 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 Supplier shall complete supply and delivery by the Intended Completion Date, as is **specified in the SCC**. If the Supplier 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 indicated as lead time.

### 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.

#### 2.4.1 Value Engineering

The Supplier 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 Procuring Entity may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

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

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or

- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

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

- a) a reduction of the Contract Price; the amount to be paid to the Supplier 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 to(d) above, the amount to be paid to the Supplier shall be the full increase in the Contract Price.

## **2.5 Force Majeure**

### **2.5.1 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.

### **2.5.2 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.

### **2.5.3 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.

### **2.5.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Supplier 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.

## **2.6 Termination**

### **2.6.1 By the Procuring Entity**

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Supplier, 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 Supplier 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 Procuring Entity may have subsequently approved in writing;
- b) if the Supplier becomes insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Supplier is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

- d) if the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a. of Attachment 1 to the GCC, in competing for or in executing the Contract

## **2.6.2 By the Supplier**

The Supplier may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, 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 Procuring Entity fails to pay any monies due to the Supplier pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Supplier that such payment is overdue; or
- b) if, as the result of Force Majeure, the Supplier is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

## **2.6.3 Payment up on Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Supplier:

- 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 Supplier**

## **3.1 General**

The Supplier 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 Supplier shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

## **3.2 Conflict of Interests**

### **3.2.1 Supplier Not to Benefit from Commissions and Discounts.**

The remuneration of the Supplier pursuant to Clause 6 shall constitute the Supplier's sole remuneration in connection with this Contract or the Services, and the Service Providers shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Supplier 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 Supplier and Affiliates Not to be Otherwise Interested in Project**

The Supplier agree that, during the term of this Contract and after its termination, the Supplier 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 Supplier 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 Supplier nor their Subcontractors shall hire public employees' inactive 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 Supplier, 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 Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

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

### 3.5 Supplier's Actions Requiring Procuring Entity's Prior Approval

The Supplier shall obtain the Procuring Entity'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 Supplier shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

### 3.7 Documents Prepared by the Supplier to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Supplier in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Supplier shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Supplier 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 Supplier shall pay liquidated damages to the Procuring Entity 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 Procuring Entity may deduct liquidated damages from payments due to the Supplier. Payment of liquidated damages shall not affect the Supplier's liabilities.

#### 3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Supplier by adjusting the next payment certificate. The Supplier 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 Supplier has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Supplier. 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 Supplier shall provide the Performance Security to the Procuring Entity 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 Procuring Entity, 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 Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### 3.11 Sustainable Procurement



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

## **4 Supplier'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 Supplier'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 Procuring Entity.

### **4.2 Removal and/or Replacement of Personnel**

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Supplier, it becomes necessary to replace any of the Key Personnel, the Supplier shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity 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 Supplier shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Supplier shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5 Obligations of the Procuring Entity**

### **5.1 Assistance and Exemptions**

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Supplier 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 Supplier, then the remuneration and reimbursable expenses otherwise payable to the Supplier 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 Procuring Entity shall make available to the Supplier the Services and Facilities listed under Appendix F.

## **6 Payments to the Supplier**

### **6.1 Lump-Sum Remuneration**

The Supplier'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 Supplier 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.



## 6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so allowed in this document.

## 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 supplier shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.
- 6.3.3** Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates 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*)/*tender price* X100.

## 6.4 Terms and Conditions of Payment

Payments will be made to the Supplier 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 Supplier 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 Supplier have submitted an invoice to the Procuring Entity specifying the amount due.

## 6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Supplier 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 fact or 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 invoiced ate 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  $I_{oc}$  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  $p_n$  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 to fall changes in cost due to fluctuations in costs.

## **6.7 Day works**

**6.7.1** If applicable, the Day work rates in the Supplier's Tender shall be used for small additional amounts of Services only when the Procuring Entity 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 Day works shall be recorded by the Supplier on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

**6.7.3** The Supplier shall be paid for Day works subject to obtaining signed Day works 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 Procuring Entity shall be as **indicated in the SCC**. The Procuring Entity shall check the Supplier's performance and notify him of any Defects that are found. Such checking shall not affect the Supplier's responsibilities. The Procuring Entity may instruct the Supplier to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

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

- a) The Procuring Entity shall give notice to the Supplier 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 Supplier shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.
- c) If the Supplier has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Supplier 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 Procuring

Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clauses 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 s 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 Procuring Entity'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:

8.1.5.1 This fully detailed claim shall be considered as interim;

- a) 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
- b) 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 nevertheless 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 framed 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.
- d) Any dispute arising in respect of war risks or war damage.
- e) 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 Procuring Entity and the Contractor agree otherwise in writing.

### **8.3 Amicable Settlement**

**8.3.1** 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** Neither 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.

**8.4.4** 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.

**8.4.5** 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 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;

- a) Law Society of Kenya or
- b) 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 Contractor on any matter or thing of what so ever 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.

## 9.1 The Adjudicator

9.1.1 Should the Adjudicator resign or die, or should the Procuring Entity and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Supplier. In case of disagreement between the Procuring Entity and the Supplier, 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 TDS and SCC**, together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Supplier, 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 and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is <i>The Chartered Institute of Arbitrators (Kenya)</i>
1.1(w)	Project Manager is: <b>Director Corporate Services</b>
1.1(e)	The contract name is: <b>SUPPLY, DELIVERY AND INSTALLATION OF TOTAL AFLATOXINS TEST KITS</b>
1.1(h)	The Procuring Entity is: <i>National Cereals and Produce Board</i>
1.1(m)	The Member in Charge is <i>N/A</i>
1.1(p)	The Supplier is:
1.4	<p>The addresses are:</p> <p>Procuring Entity:</p> <p>National Cereals and Produce Board (NCPB), P.O. Box 30586 - 00100 <u>NAIROBI</u></p> <p>Supplier: _____ Attention:</p> <p>Email address</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: _____</p> <p>For the Supplier: _____</p>
2.1	The date on which this Contract shall come into effect is <b>14 Days after Contract Signing</b>
2.2.2	The commencement date of supply and delivery is within <b>14 Days after Contract Signing</b>
2.3	The Intended Contract period is <b>12 Months from Contract Signing Date.</b>
2.5.3	<p>If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Supplier shall be _____% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price.</p> <p>– <b>N/A</b>–</p>
3.2.3	Activities prohibited after termination of this Contract are: <i>N/A</i>
3.4	The risks and coverage by insurance shall be: <i>N/A</i>



3.5(d)	The other actions are <b>N/A</b>
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Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.7	Restrictions on the use of documents prepared by the Supplier are: <b>N/A</b>
3.8.1	The liquidated damages rate is <b>N/A</b> per day The maximum amount of liquidated damages for the whole contract is <b>N/A</b> percent of the final Contract Price.
3.8.3	The percentage <i>% of Contract Price</i> to be used for the calculation of Lack of performance
5.1	The assistance and exemptions provided to the Supplier are: As Stated in the Schedule of Requirements
6.2(a)	The amount in Kenya Shillings _____.
47.1	The Supplier shall provide Performance Security of <b>10%</b> of the Tender Sum in the form of an Unconditional Bank Guarantee.
6.5	Payment shall be made on a monthly basis within <i>30</i> days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within <i>30</i> days in the case of the final payment. The interest rate is - <b>N/A</b> -
6.6.1	Price adjustment is <b>N/A</b> in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are - <b>N/A</b> - - (a) For local currency: - <b>N/A</b> - AL is _____ BL is _____ CL is _____ Lmc and Loc are the index for Labor from _____ lmc and loc are the index for _____ from _____ (b) For foreign currency - <b>N/A</b> - AF is _____ BF is _____ CF is _____ Lmc and Loc are the index for Labor from _____ lmc and loc are the index for _____ from _____
7.1	The principle and modalities of inspection of the Services by the Procuring Entity are as follows: <i>Approval by Inspection and Acceptance Committee</i> The Defects Liability Period is - <b>N/A</b> -
9.1	The designated Appointing Authority for a new Adjudicator is <i>Director General Ncpb</i>

<b>9.2</b>	The Adjudicator is <i>The Chartered Institute of Arbitrators (Kenya)</i> . Who will be paid an hourly rate as rate Provided <i>The Chartered Institute of Arbitrators (Kenya) Guidelines</i> . The following reimbursable expenses are recognized: <i>N/A</i>
<b>1.6</b>	<b>The Contractor address is:</b>  Name.... P.O Box.....

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	City/Town..... Email..... Telephone.....
	Signature of Bidder..... Date .....

## **SECTION VIII - CONTRACT FORMS**

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



**FORM NO. 1 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand BankGuarantee]**

*[Guarantor letterhead]*

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

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

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

1. We have been informed that  
(Here in after called \_\_\_\_\_ "the Contractor") has entered into Contract No. \_\_\_\_\_  
\_\_\_\_\_ (dated) \_\_\_\_\_ with *(name of Employer)*  
\_\_\_\_\_ (the Employer as the Beneficiary), for the execution  
of \_\_\_\_\_ (here in after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performanceguarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *(in words)*,<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 the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

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*[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*

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

**PERFORMANCE BOND No.:**

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

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called “the Employer”) 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 Employer dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer'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 bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidders, arrange for a Contract between such Bidder, and Employer 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 Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
  - 3) pay the Employer the amount required by Employer 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 Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

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

capacityof In the presence of

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

By\_\_\_\_\_in the capacity of In the presence of