



**TENDER DOCUMENT FOR:-**

***PROVISION OF MODULAR DATA CENTER AT HEAD OFFICE AND  
UPGRADE OF LOCAL AREA NETWORK (LAN)***

**TENDER NO. NCPB/DC-LAN/11/2021–2022**

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

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



**NCPB IS ISO 9001:2015 CERTIFIED**

## INVITATION TO TENDER

1. National Cereals and Produce Board invites sealed tenders for the **Tender for Provision of Modular Data Center at Head Office and Upgrade of Local Area Network (LAN)**.
2. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [0800 to 1700 hours] at the address given below.
4. The tender document with further detailed information may be obtained from **the office of the Head of Procurement Services** during normal working hours, between 9.00am and 3.00 pm, **upon payment of non-refundable fees of Kshs. 1,000.00 (One thousand shillings)** per set via Mpesa at the cash office of National Cereals and Produce Board.
5. 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). Tenderers 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.
6. All Tenders must be accompanied by an Original Tender Security **(Value Kshs. 500,000.00)** in the form of Unconditional Bank Guarantee from a reputable bank in Kenya and valid for 120 days from the date of tender opening.
7. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
8. Completed tender document shall be enclosed in a plain sealed envelope and marked **"Provision of Modular Data Center at Head Office and Upgrade of Local Area Network (LAN). Tender No. NCPB/DC-LAN/11/2021– 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 **25<sup>th</sup> 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.
9. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the NCPB Gilfillan hall in the presence of interested bidders or their representatives who choose to attend.
10. Late tenders will be rejected.
11. The addresses referred to above are:

**The Managing Director,  
National Cereals and Produce Board,  
Nyumba ya Nafaka,  
Machakos/Enterprise Roads,  
Industrial Area,  
P.O BOX 30586,  
Nairobi.**



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

Name \_\_\_\_\_  
(Official of the Procuring Entity issuing the invitation)

Designation \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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## **PART 1 - TENDERING PROCEDURES**

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## SECTION I: INSTRUCTIONS TO TENDERERS

### **A General Provisions**

#### 1. **Scope of Tender**

National Cereals and Produce Board invites sealed tenders for the **Provision of Modular Data Center at Head Office and Upgrade of Local Area Network (LAN)**.

#### 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 tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.
- 3.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 3.4 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. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

#### 4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT3.7, 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.

- 4.2 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.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - b) receives or has received any direct or indirect subsidy from another Tenderer; or
  - c) has the same - representative or ownership as another Tenderer; or
  - d) has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
  - f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 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 is a Tenderer (either individually or as a JV member) shall not submit more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender.

- 4.4 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT4.9.
- 4.5 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya shall be ineligible to be 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).
- 4.6 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they:
- (i) are legally and financially autonomous;
  - (ii) operate under Commercial law; and
  - (iii) are not under supervision of the 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 Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.
- 4.9 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is provided in "SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9".
- 4.10 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. Joint Ventures (JVs) are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not 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 tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)

- 4.12 A Tenderer 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 tenderer 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 Tenderer**

- 5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 5.2 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.3, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

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

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

- 6.1 The tendering document consists of Parts 1, 2, and 3, which include all the Sections indicated below and should be read in conjunction with any Addendum issued in accordance with ITT 9.

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

- i) Section I - Instructions To Tenderers (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 Tenderers, 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 Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

## **7. Site Visit**

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

## **8. Clarification of Tendering Document**

- 8.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the 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 Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, in accordance with ITT 23.2 below.
- 9.4 Bidders must regularly visit the NCPB website during the bidding period for any clarification or addendum ([www.ncpb.co.ke](http://www.ncpb.co.ke))

## **C. Preparation of Tenders**

### **10 Cost of Tendering**

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

### **11 Language of Tender**

- 11.1 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in 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 14;
  - 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 Tenderer, in accordance with ITT 21.3;
  - f **Qualifications:** documentary evidence in accordance with ITT 18 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
  - g **Tenderer's Eligibility:** documentary evidence in accordance with ITT 18 establishing the Tenderer'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 Tenderer 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 Tenderer shall chronologically serialize pages of all tenders documents submitted.
- 12.3 The Tenderer 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**, Tenderers are required 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 Tenderer in the Form of Tender and in the Activity Schedule (s) shall conform to the requirements specified below.
- 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 Tenderer.
- 15.4 The Tenderer 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 Tenderer 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 Tenderer 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 Service Provider 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 Tenderer.
- 15.7 If provided for **in the TDS**, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 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 Tenderer 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 Tenderer 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 Tenderer 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 Tenderer**

- 18.1 Tenderers 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 Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 18.3 In the event that prequalification of Tenderers has been undertaken as stated in the **TDS**, only Tenders from prequalified Tenderers shall be considered for award of Contract. The prequalified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.
- 18.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and 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 tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 18.6 The Tenderer 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 tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 18.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 18.8 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 18.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i. If the procurement process is still ongoing, the tenderer will be disqualified from the

procurement process,

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

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

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

## 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 Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

## 20 Tender Security

20.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.

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 Tenderer'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 Tenderers shall be returned as promptly as possible upon the successful Tenderer'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 tenderers 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 Tenderer shall be returned as promptly as possible once the successful Tenderer 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 Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereof to provide by the Tenderer; or
- b. if the successful Tenderer 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 Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or
- b) if the successful Tenderer fails to:
  - i) sign the Contract in accordance with 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 Tenderer 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 Tenderer 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 Tenderer 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 Tenderers shall mark as "CONFIDENTIAL "information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

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

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

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 tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the 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 Tenderer 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 Tenderer; 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**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified **in the TDS**.
- 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 Tenderers 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 dead line 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 un-opened to the Tenderer.

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

- 25.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include

a copy of the authorization (the power of attorney) in accordance with ITT 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 Tenderers.

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 Tenderer 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 Tenderers' 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 Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

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

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 Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the 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 ITT24.1).

- 26.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) The Tender Price, per lot (contract) if applicable, including any discounts; and any alternative Tenders;
  - c) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
  - d) Number of pages of each tender document submitted
- 26.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to Tenderer 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 Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.
- 27.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 27.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **28 Clarification of Tenders**

- 28.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any tenderer 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 Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's 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 Tenderer 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 the requirements specified in the tendering document; and
  - c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

### 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 Tender itself, 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 Tenderer's obligations under the Contract; or
  - b) If rectified, would unfairly affect the competitive position of other Tenderers 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 Tenderer 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 Tenderer 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 Tenderers 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 service providers may be allowed if it is deemed that the services require participation of foreign tenderers. 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 tenderers.

## **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 Tenderer that meets the qualification criteria and whose Tender has been determined to be:

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

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, Tenderers 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 tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form

for each Lot.

### **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 Tenderer in regards to the Tenderer'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 Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 36.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

#### **Abnormally High Tenders**

- 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 Tenderers 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 tenderer on the reason for the high tender price.

The Procuring Entity shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, 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 may be.
- 36.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **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 Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 37.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, 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 Tenderer 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 Tenderer**

- 38.1 The Procuring Entity shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.
- 38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's 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 Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

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

#### **40 Award Criteria**

- 40.1 The Procuring Entity shall award the Contract to the successful tenderer 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 Contract/Notification of a ward to all tenderers which shall contain, at a minimum, the following information:
- a) The name and address of the Tenderer submitting the successful tender;
  - b) The Contract price of the successful tender;

- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
- d) the expiry date of the 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 Tenderer the Notification of Intention to Enter in to a Contract with the successful Tenderer.

## **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 tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.
- 43.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

## **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 Tenderer. The letter of award shall request the successful tenderer 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 Tenderer the Contract Agreement.
- 45.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer 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 Tenderer, 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 Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined



by the successful Tenderer 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 Tenderer 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 Tenderer 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 Tenderer, the final total contract price, the contract duration.
  - d) Dates of signature, commencement and completion of contract;
  - e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

#### **48 Adjudicator**

- 48.1 The 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 Tenderer disagrees with this Tender, the Tenderer 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 Tenderers (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 1.1	<p>The Reference number of the invitation for Tenders is <b>NCPB/DC-LAN/11/2021-2022</b></p> <p>The Procuring Entity is:- <b>National Cereals and Produce Board</b></p> <p>The name of the contract is:- <b>Provision of Modular Data Center at Head Office and Upgrade of Local Area Network (LAN)</b></p> <p>The number and identification of lots (contracts) comprising this Invitation for Tenders is:- <b>[N/A]</b></p>
ITT 2.1(a)	<p><b>Electronic – Procurement System</b></p> <p>The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process:</p> <p><b>[www.ncpb.co.ke]</b></p> <p>The electronic-procurement system shall be used to manage the following aspects of the Tendering process:</p> <p><b>[Issuing Tendering document, Clarifications and Addendum]</b></p>
ITT 2.2	The Intended Completion Date is _____
ITT 3.3	Information that any unfair competitive advantage over competing firms is as follow: <b>N/A</b>
ITT 3.4	The firms that provided consulting services <b>N/A</b>
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: <b>2</b>
ITT 4.12	The procuring Entity may require tenderers to be registered with _____
<b>B. Contents of Tendering Document</b>	
ITT 8.1	<p><b>For Clarification of tender purposes;</b></p> <p><b>(a) Attention:</b> _____</p> <p style="text-align: center;"><b>The Managing Director, National Cereals and Produce Board, Nyumba ya Nafaka, Machakos/Enterprise Roads, Industrial Area, P.O BOX 30586, Nairobi.</b></p>
ITT 8.2	The questions to reach the Procuring Entity not later than <b>22<sup>nd</sup> November, 2021 at 5.00pm</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 Nafaka, 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> OR <a href="mailto:ncpbsupplies@gmail.com">ncpbsupplies@gmail.com</a> to reach Procuring Entity not later than <b>22<sup>nd</sup> November, 2021 at 5.00pm</b> 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 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender:- <b>[ NONE ]</b>
ITT 15.1	Alternative Tenders <b>[shall not be]</b> considered.
ITT 15.2	Alternative times for completion <b>shall not be</b> permitted.
ITT 15.3	Alternative technical solution shall be <b>shall not be</b> permitted.
ITT 16.7	The prices quoted by the Tenderer <b>shall not</b> be subject to adjustment during the performance of the Contract.
ITT 19.3	Prequalification <b>has not</b> been undertaken
ITT 20.1	The Tender validity period shall be <b>[120]</b> days.
ITT 21.1	The Tender Security shall be required; the amount and currency of the Tender Security shall be of <b>Kshs.500,000.00</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.
ITT 21.3 (a)	The Contract price shall be adjusted by <b>0%</b>
ITT 22.1	In addition to the original of the Tender, <b>[One Original and One Copy only]</b>
ITT 22.3	The bidder shall provide a written Power of Attorney as a confirmation of authorization to sign on behalf of the Tenderer

#### D. Submission and Opening of Tenders

ITT 24.1	<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 Nafaka, Machakos/Enterprise Roads, Industrial Area, P.O BOX 30586, <u>Nairobi.</u></b></p> <p><b>The deadline for Tender submission is:</b> Date:[ <b>25<sup>th</sup> November, 2021</b>] Time:[<b>12.00noon</b>] <i>Tenderers <b>shall not</b> have the option of submitting their Tenders electronically.</i></p>
ITT 26.9	<p>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 P.O BOX 30586, <u>Nairobi.</u></b></p> <p>Date:[ <b>25<sup>th</sup> November, 2021</b>] Time:[<b>12.00noon</b>]</p>
ITT 26.1	<p>The number of representatives of the Procuring Entity to sign is <b>(as per the appointed Tender opening Committee)</b></p>
<b>E. Evaluation, and Comparison of Tenders</b>	
ITT 34	<p>The manner of rectify quantifiable nonmaterial nonconformities described below: <b>N/A</b></p>
ITT 33	<p>A margin of preference and/or reservation <b>shall not</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.</p>
ITT 33	<p>The invitation to tender is extended to the following group that qualify for Reservations <b>[N/A]</b></p>
ITT 34	<p>Additional evaluation factors are <b>as per evaluation criteria</b></p>
ITT 15	<p>Tenderers shall be <b>allowed</b> to quote separate prices for different lots (contracts) and the methodology to determine the lowest tenderer is specified in Section III, Evaluation and Qualification Criteria.</p>

F. Award of Contract	
ITT 46.	<b>Performance security</b> if so required shall be <b>10%</b> of the total contract price.
ITT 49	<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 Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: <b>The Managing Director</b></p> <p>Procuring Entity: <b>National Cereals and Produce Board</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 Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction 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 tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for 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 Tenderers 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:  
.....
- ii) **Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 14.3, will be evaluated as follows:.....
- iii) **Other Criteria**; if permitted under ITT 35.2 (e): .....

## 4 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 Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

## 5 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 tenderers, 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 Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).
  - ii) **Group B:** tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).
- 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.
- 6.5 Post qualification and Contract award (ITT 38), more specifically,
  - a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, 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 tenderer shall be considered for contract award, subject to meeting each of the following conditions.
    - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the requirements of this tender.

- ii) Tenderer has performed 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.

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

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

**b) Pending Litigation**

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

**c) Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer. 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.

## SECTION III: EVALUATION AND QUALIFICATION CRITERIA

### EVALUATION CRITERIA

#### 1. PRELIMINARY REQUIREMENTS (MANDATORY)

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:-

<b>1. PRELIMINARY/MANDATORY EVALUATION</b>		
<p><b>The evaluation shall adopt YES/ NO Approach. The non-responsive submissions will be eliminated from the entire preliminary evaluation process and will not be considered further.</b></p> <p><b>The preliminary evaluation shall involve checking on mandatory requirements (MR) which include the following:</b></p>		
<b>No.</b>	<b>Parameters/Requirements</b>	<b>Compliance (Yes/No)</b>
1.	Attach a copy of certificate of registration / incorporation	<b>YES/ NO</b>
2.	Attach a copy of valid tax compliance certificate	<b>YES/ NO</b>
3.	Attach a copy of valid Business Permit	<b>YES/ NO</b>
4.	Attach Tender Security of <b>Kshs.500,000.00</b> in the form of Unconditional Bank Guarantee from a reputable bank in Kenya or a reputable insurance recognized and Registered by PPRA and valid for <b>120 days</b> from the date of tender opening	<b>YES/ NO</b>
5.	Attach CR12 for the company where applicable (Must not be more than 6 months old)	<b>YES/ NO</b>
6.	Attach a Sworn Affidavit	<b>YES/ NO</b>
7.	Attach Filled and signed Joint Venture form (Only where two or more firms are bidding together)	<b>YES/ NO</b>
8.	Attach a Power of Attorney for Joint Venture	<b>YES/ NO</b>
9.	Attach a valid and commissioned/certified certificate from the Communication Authority of Kenya as a contractor	<b>YES/ NO</b>
10.	Provide a Valid Annual Practising Certificate of Registration from National Construction Authority in Electrical Works Category 1 and Above for Electrical Engineering Service Contractor	<b>YES/NO</b>
11.	The bidding document MUST be Completed, Properly Tape Bounded, serialized and paginated	<b>YES/ NO</b>
12.	Duly filled signed and stamped Site Survey form	<b>YES/ NO</b>
13.	Duly filled, signed and stamped confidential business questionnaire	<b>YES/ NO</b>
14.	Duly Filled, signed and stamped Conflict of interest disclosure	<b>YES/ NO</b>
15.	Duly filled, signed and stamped Certificate of Independent Tender Determination	<b>YES/ NO</b>
16.	Duly filled, signed and commissioned by Commissioner for Oaths bidder's debarment declaration form (SD1)	<b>YES/ NO</b>
17.	Duly filled, signed, stamped and commissioned by Commissioner for Oaths bidder's declaration that they will not engage in corrupt or	<b>YES/ NO</b>

	fraudulent practice (SD2)	
<b>18.</b>	Dully Filled, signed and stamped price schedule	<b>YES/ NO</b>
<b>19.</b>	Duly filled, signed and stamped Tenderer Information Form	<b>YES/ NO</b>
<b>20.</b>	Dully Filled, signed and stamped the form of tender	<b>YES/ NO</b>
<b>21.</b>	Duly fill, sign and stamp the delivery schedule in the format Provided	<b>YES/NO</b>
<b>22.</b>	Attach Certified and audited accounts for the last 3 years (2020, 2019 and 2018)	<b>YES/NO</b>
<b>23.</b>	Duly Filled, signed and stamped Litigation History Form attached	<b>YES/NO</b>
<b>24.</b>	Attach Duly filed, signed and stamped Declaration and Commitment to the Code of Ethics	<b>YES/NO</b>
<b>25.</b>	Attach Certified copies of ICTA authorization for Data Centre. Must be ICTA <b>1</b>	<b>YES/NO</b>
<b>26.</b>	Attach Certified copies of ICTA authorization for ICT Networks. Must be ICTA <b>1</b>	<b>YES/NO</b>

- **Certificates/Licenses may be verified from or with the Issuing Authorities or Agencies. Any negative response during authentication process shall result in automatic disqualification**



## TECHNICAL EVALUATION

After preliminary evaluation, the non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further. The evaluation shall involve checking on the technical mandatory requirements of the proposed solution provided Those that pass preliminary evaluation shall be subjected to Technical evaluation as detailed below;

Item	Description	Marks
MAF	Dully filled Manufacturer Authorization Form for both active and passive equipment for this Tender for the following equipment(s) (Switches, Wireless Devices, UPSs, Cabling Equipment(s) and data center infrastructure) <b>(This will be verified from the manufacturer)</b> <b>Bidders who attach forged MAF shall be disqualified.</b>	10
Compliance	Bidders must quote for all the items to cover the entire scope as indicated in bid document and as listed in the bill of Materials. Failure to do so will lead to disqualification  The bidders must enclose together with their submitted bids brochures detailing technical Literature and specifications of the active and passive components of the structured cabling system. The brochures shall be used to evaluate the suitability of these components. Any bid submitted without the highlighted brochures shall be considered technically non- responsive, and shall be subsequently be disqualified. 1) Aggregation Switch-1 2) AccessSwitches-1 3) UPS-1 4) Face Plates and Modules-1 5) F/UTP CAT 6A cable-1 6) Wireless AccessPoints-1 7) Wireless Controller-1 8) Cabinets-1 9) Data Centre Infrastructure 5 10) All LAN active equipment must be from same manufacturer 11) All passive components must be from same manufacturer	10
Implementation Services for Modular Data center	Bidders Must include original equipment manufacturer (OEM) professional services to implement the modular Data center. Attach Evidence.	5
Reference Sites	Original Equipment Manufactures (OEM) Proof of implementation of the same data center solutions in the last 5 years for at least two large corporate clients in Kenya.	20
	Bidder should have at least 5 Reference where they have installed successfully IT Infrastructure Solution, scope is limited to Structured Cabling, Network Switches and Wi Fi Solution  Attach Contract /LPO, Sign off letter and recommendation in clients letter heads. Must provide email ID and valid contact number of the client.	10
	Bidder should have experience in deployed data center power backup solution, must provide at least one site reference, including LPO, Sign Off and Recommendation letter.	5
Technical Staff	Bidder must provide proof of having technical competency by providing CVs and certificates of technical personnel as below:	20
	1. <b>Project Manager</b> –Must have below qualification <b>5 marks</b> <ul style="list-style-type: none"> <li>Must be Prince 2 or PMP Certified</li> <li>Must be ISO 27001 certified</li> </ul>	

	<ul style="list-style-type: none"> <li>• Must have certificate in Technical Consultant for Data Centers</li> <li>• Must have certificate in Integrated Design Consultant for Data Centers</li> <li>• Master's degree with at least 15 years of work experience</li> </ul>	
	2. The Bidder Must Have At least 2 expert/Architect level certified Engineers in Enterprise networks. CCNP or equivalent – <b>4 marks</b>	
	3. Technical Lead of the project must have below education – <b>4 marks</b> <ul style="list-style-type: none"> <li>• PMP Certified or Prince 2 certified</li> <li>• CCNP Certified</li> <li>• ITIL Certified</li> <li>• Master degree with 10 Years of work experience</li> </ul>	
	4. Should have at least 2 Certified engineers on the proposed LAN active equipment – <b>3 marks</b>	
	5. Bidder Should have at least one Certified Data Centre Designer with 10 Years of work experience, provide valid certification. <b>2 marks</b>	
	6. Bidders must have at least two certified cable installers – <b>2 marks</b>	
Project Implementation	Provide proposed implementation methodology and work plan in phased manner and must include a draft implementation schedule in form of a Gantt chart showing completion within the required 120 days from date of signing Contract	5
	Provide draft Service Level Agreement (SLA) for support and maintenance of the Network Infrastructure after commissioning, One Year. This must also provide a detailed escalation plan.	
	Training Proposal	
Network diagram	The Bidder must provide detailed layout network diagrams for proposed network solutions for the HQ showing the position of data points, cable and trunking path, cabinet positions, Backbone network layout diagram and overall topology of how HQ blocks/rooms are interconnecting with each other and the branches.	5
Financial Strength	Financial Ratios will be computed from the audited accounts in line with financial Ratios Situation provided	10
	<b>TOTAL</b>	100

## TECHNICAL EVALUATION CRITERIA

**Note:**

- (i) Bidders must score a minimum of 80% in order to proceed to the next stage of evaluation.

**FINANCIAL SITUATION RATIOS:** Detailed Financial Situation Evaluation

No.	Ratio	Auditors Assessment 2019	Auditors Assessment 2020	Evaluation Score Award Criteria	Max Score/Av./ yr
1.	$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$			Current Ratio more than 1 = 2.5 marks Current Ratio less than 1 = 1 Mark	2.5
2.	$\text{Equity Capital Ratio} = \frac{\text{Total Equity}}{\text{Total Assets}}$			Equity Capital Ratio more than 1 = 1 mark Equity Capital Ratio less than 1 = 2.5 Marks	2.5
3.	$\text{Net Working Capital} = \text{Current Assets} - \text{Current Liabilities}$			Positive Working Capital = 2.5 marks Negative Working Capital = 1 Mark	2.5
4.	$\text{Operating Cash Flow Ratio} = \frac{\text{Cash Flow from Operations}}{\text{Current Liabilities}}$			Operating Cashflow more than 1 = 2.5 marks Operating Cashflow less than 1 = 1 Mark	2.5

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	

**FINANCIAL EVALUATION –**

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

## **DUE DILIGENCE**

Due diligence may be carried out to the successful bidder. The evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract. Due diligence may include obtaining confidential references from persons with whom the tenderer has had prior engagement.

## **REQUIREMENTS FOR THE INSTALLATION, CONFIGURATION AND COMMISSIONING OF NCPB DATA CENTER AND NETWORK INFRASTRUCTURE**

### **BACKGROUND**

National cereals and Produce Board is a State Corporation that was established in 1985 through an Act of Parliament (Cap 338). It is a Statutory Board under the Ministry of Agriculture, Livestock, Fisheries, and Cooperatives. It was formed by the amalgamation of The Maize and Produce Board and The Wheat Board on 1st July 1979. NCPB is in the process of procuring its own data center and LAN Upgrade. Therefore, NCPB intends to embark on seeking bids from competent bidders to supply and setup a data center.

### **OBJECTIVE OF THE ASSIGNMENT**

NCPB desires to:

- i. Supply, deliver and setup of a data centre and LAN Upgrade at NCPB Head Office, Machakos Road, Nairobi.
- ii. Ensure that NCPB IT administrators are suitably trained and equipped in the usage of the supplied solution and with its associated accessories.

### **SCOPE OF WORK**

The scope of works includes but not limited to the following:

- 1) Supply and install of a Modular data centre with its associated accessories as per the attached specifications.
- 2) Supply install and commission of data centre cooling system complete with its associated accessories as per the attached specifications.
- 3) Supply and install of modular data centre power supply & distribution unit with its associated accessories as per the attached specifications.
- 4) Supply and install modular data centre: Server and network cabinets with its associated accessories as per the attached specifications.
- 5) Supply, Install and commission server room environmental monitoring system for temperature, humidity, liquid leaks and smoke complete with associated accessories to complete the system with its associated accessories as per attached specifications.
- 6) Supply and install the associated civils work, electrical and fire suppression works in the data centre as per the specifications.
- 7) Supply and install of a Local Area Network (LAN) with its associated accessories as per the attached specifications.

## **DATA CENTRE IMPLEMENTATION TECHNICAL SPECIFICATION**

The bidders MUST meet ALL Technical Requirements/ Specifications to be considered for the next phase of Technical Capacity Evaluation. Bidders should ensure to attach technical literature (Data Sheets) for item / product quoted.

### **Infrastructure preparation for the Data Centre:**

The bidders MUST meet ALL Technical Requirements/ Specifications to be considered for the next phase of Technical Capacity Evaluation. Bidders ensure to attach technical literature (Data Sheets) for item / product quoted.

#### **1. Data Centre Room**

- a) Data Centre area will have raised access floor with 2 x 2 ft size tiles having cement fill/Calcium sulphate & anti-static 1.5 mm laminate top cover. Height of the fire rated raised floor top finish will be 1.5 (450mm) ft from true floor and capable of withstanding UDL of 1350 kgs/ sq. mtr. and a point load of 450 kgs.
- b) Modular false ceiling grid will be provided, to hide installation on the ceiling support and will have 2 x 2 ft size fine fissure type tiles fire rated & supported on a hot dipped galvanized steel section with vertical supports using 2mm wire on true ceiling.
- c) Fly-ash /Aerocon /Fire rated bricks/Gypsum board partition made will be made extending from slab to slab creating 1-hour fire rating room envelope. Partition facing the passage area and Data center other rooms will have fire rated part glazing. Upon smoothened surface, one coat of primer and two coats of paint will be applied.
- d) Fire rated Door(s): Fire rated Entrance door frame and leaves shall be made from galvanized steel 46mm thick fully flush, double skin door shell in specially designed honeycomb structure for reinforcements & fire rated vision glass.
- e) Thermal Insulation will be provided for flooring using epoxy flooring.
- f) Emergency doors and path are also planned for ease of evacuation both for data centre, occupants and other office area keeping the safety in view.
- g) UPS/Electrical room is planned for supporting the data centre loads
- h) Bidders to attach their proposed design for the Data centre, Electrical and operator rooms

#### **2. Very Early Smoke Detection Apparatus (VESDA) System**

VESDA system shall be installed in the Data Centre to provide a very early notification regarding fire thus allowing operations team a bigger time window to check the incident and take appropriate actions. The VESDA system shall be integrated with fire panel. The technical specifications of VESDA system are given below:

S.N	Equipment Specification	Compliance
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1	The installation of the VESDA system shall comply with industry	
2	The system shall consist of a highly sensitive LASER-based smoke detector, aspirator and filter.	
3	The system shall provide very early smoke detection and provide multiple output levels corresponding to Alert, Action, and Fire	
4	The system shall monitor for filter contamination automatically	
5	The system shall have a clean air supply to maintain laser chamber cleanliness all the time	
6	Monitoring contamination of the filter (dust & dirt etc.) and to notify automatically when maintenance is required.	
7	The Detector, Filter, Aspirator and Relay Outputs shall be housed in a mounting box and shall be arranged in such a way that air is drawn continuously from the fire risk area by the aspirator and a	
8	Equipment shall include a high-level interface with the fire alarm	
9	All Media / filters required for smooth functioning of air and gas purification systems, VESDA systems, has to be supplied by the bidder as and when required, for the entire period of Warranty and AMC.	

### 3. Fire Detection & Alarm System

Fire detection system shall be installed in all the areas and all the voids to detect fire incident and to take appropriate actions to prevent its outbreak to unaffected areas and to suppress fire. The fire panel shall be integrated with VESDA, Access control system, Fire suppression system and cooling units. The technical specifications of fire detection system are given below.

S.L.	Equipment Specification	Compliance
1	Fire detection system shall conform to the industry standards / codes "UL" 864 Control Panels "UL" 268 Smoke Detectors "UL" 268A Smoke Detectors (HVAC) "UL"1076 Security "UL" 1971, Standard for Visual Signalling Appliances	
2	Fire detection system shall be a complete, electrically supervised fire detection and notification system and shall have a microprocessor operating system	
4	The system modules shall communicate with a network communications protocol.	
5	LED displays shall indicate Power, audible on or Silenced, and Partial system disabled. Systems not having the above LEDs shall provide separate LEDs within the control panel enclosure with appropriate labels. Selection buttons shall be backlit to aid the operator in the selection process.	
6	Multipoint Addressable Fire alarm panel with minimum of 4 detectors with communication port for BMS and synchronizing with Gas Suppression	
7	MOD Bus compatible control panel along-with other control and annunciating devices.	
8	Wall mounted Manual Call Points of at least 2 Nos.	
9	Hooter cum Strobes	
10	Response Indicator	

#### 4. Gas based Fire Suppression System for Data Centre

Clean agent-based fire suppression system shall be installed in the server farm to suppress any outbreak of fire. This system shall be integrated with the fire panel. The technical

S.N.	Equipment Specification	Compliance
1	Clean Agent and design of Fire protection system for computer rooms should follow the Standard on "Clean Agent Extinguishing systems NFPA Standard including its safety guidelines with respect to "Hazards to Personnel", electrical clearance and environmental factors in line with environmental considerations of Kyoto Protocol.	
2	The clean agent shall also comply with all Environmental Regulations in Kenya.	
3	All the components of the system shall be capable of withstanding heat of fire and severe weather conditions.	
4	The clean agent shall have Zero Ozone Depleting Potential.	
5	For safety reasons the clean agent fire suppression system cylinder, valve, discharge hose, nozzles, fire detection detectors and panels, etc. must be provided from the same manufacturer to ensure proper performance as a system with UL / FM approvals, thereby giving a confidence that a third party has tested the performance of the whole unit as a system.	
6	Clean Agent System shall preferably be a low-pressure system. It shall be possible to carry out refilling of the clean agent cylinder at site location.	
7	The tank shall have a pressure gauge and low-pressure switch to provide visual and electrical supervision of the container pressure.	
8	The system must have a manual operation to enable activation or switch off manually in case of a problem	

#### 5. Fire Safety Signs

S.N.	Equipment Specification	Compliance
1	The Signs shall have capacity to absorb light in the course of normal working and glow in the dark once the lights have gone out.	
2	Shall be used for guiding employees and visitors and rescue team for Evacuation	
3	Shall also ensure the path for locating nearest fire extinguisher.	
4	<b>Escape Route Marking Signs:</b> These signs shall serve as clear indicators of Fire Exits on the premises in case of an emergency.	

#### 6. Surveillance System

Surveillance cameras shall cover all the areas of the Data Centre and UPS room. Surveillance system shall include cameras, video management software and online storage. Storage shall be sized to keep feed of all cameras online for 30 days. After 30 days the surveillance feed will be moved to a backup storage (NAS). The technical specifications of surveillance cameras are given below:



S.N.	Equipment Specification	Compliance
1	2 Megapixel IP Dome camera	
2	The sensor should be 1/3" CMOS Progressive Scan technology.	
3	Min illumination for camera should be 0.5 Lux@ F1.2.	
4	The cameras should produce viewing angle of min 101~30.4 degrees and lens should be min 2.7~9mm MP lens.	
5	The camera should carry vari focal lens.	
6	Camera should support H.264, MPEG4 & MJPEG compression.	
7	The camera should support maximum resolution of 1600x1200 resolutions.	
8	The cameras should be capable of triggering alarm in scenario such Motion Detection, Video Loss, Network Disconnect, Storage exception and IP address conflict.	
9	The software and hardware should be of same make.	
10	The network protocols supported should be TCP/IP, HTTP, DHCP, DNS, DDNS, RTP/RTSP, PPPoE, SMTP, NTP	
11	Communication interface should be RJ45 100 M/1000 M Ethernet port	

## 7. Access Control System

Biometric finger print and proximity card readers shall be installed at the entrance of Data Centre and UPS room to restrict entry of unauthorized persons and to enforce access control policies.

The access control system shall be capable to be integrated with BMS in future for monitoring and Fire panel to disable the door contacts in case of a fire incident. The technical specifications of the access control system are given below:

S.N.	Equipment Specification	Compliance
1	The biometric finger print and proximity card reader shall have a transaction storage capacity	
2	The biometric reader shall have anti-microbial coating for the hygiene of users	
3	10 Proximity Cards compatible with the system shall be provided	
4	The biometric reader shall capable to interface with the BMS	
5	The biometric reader shall be PoE with RJ45 capability or alternative	
6	All the necessary hardware, software with its cabling are to be supplied and installed	
7	The access control mechanism must have biometric as well as proximity card readers	

## 8. Electrical System

The electrical system is the backbone of the Data Centre and the; bidder shall ensure that the electrical system does not have any single point of failure in terms of component or delivery path.

The Bidder shall provide electrical wiring from the UPS for the offered equipment.

The bidder shall be required to carry out all related activities such as, infrastructure and associated electrical work pertaining to equipment for the Data Centre.



The bidder shall use approved industry standard equipment. The bidder needs to provide additional minimum 5 numbers of 30 amps industrial sockets beneath the false floor for any additional loads.

Electrical work for the Data Centre including testing of earthing, etc. shall be the responsibility of the Bidder. The bidder needs to consult with NCPB representative for the same. The technical specifications of the electrical system are given below:

S.N.	Equipment Specification	Compliance
1	Cables & Conduits: The Bidder shall install, terminate and connect up all cable and conduits as per drawings and cable schedule.	
2	All Cables shall be FRLS (Fire Retardant Low Smoke) type.	
3	Prior to laying of conduits/channels, the Bidder shall get approved the lay out indicating the route, number and size of channels, location of junction/ inspection/ pull boxes/ electrical panels, size and location of switch boxes, point outlets and other details. These layouts shall be approved by the NCPB representative, then only work should be started.	
4	The drawings shall be strictly followed except where obvious interference occurs. In such cases, the routing shall be changed as directed and / or approved by NCPB representative	
5	The system of wiring shall consist of single/multi core PVC insulated stranded copper conductor wires of suitable rating in metallic channels. All wiring shall be hidden in the access flooring, false ceiling for wiring done from the top and concealed in other areas.	
6	Cable Laying: Cable shall generally be installed in ladder type; site fabricated / pre- fabricated trays except for some short run in rigid /flexible conduit for protection or crossing.	
7	Cable Tag & Marker: Each cable shall be tagged with numbers	
8	Cables shall be tagged at entrance and exit from any equipment and junction box.	
9	The location of cable joints, if any, shall be clearly indicated with cable marker with an inscription 'cable-joint'.	
10	Cable Termination: The termination and connection of cables shall be done strictly in accordance with manufacturer's instruction, drawings and /or as directed by NCPB representative	
11	Channels/M.S. conduits, electrical panels and wirings, switches and sockets etc. shall conform to industry and K E B S Standards for approved by NCPB representative.	
12	Electrical system shall be 'intelligent' type to enable their integration and monitoring by BMS	
13	Earthing of the equipment, Surge protector, including supply of earthing materials, if earthing provided is technically not suitable, etc. Earthing system shall be in accordance with IS: 3043-1966 Code of Practice for Earthing.	
14	Lightening arrester and any other electrical safety measures, if required.	
15	The resistance from any part of the lightning protection system to earth shall not exceed 1 ohm.	
16	All the cabling is to be routed properly below false floor.	
17	All the electrical panels, switches boxes, sockets, wires, etc. required for Center to be provided. All fittings should conform to Industry and Kenya Bureau Standards (KEBs).	

## 9. Civil & Masonry Work

This shall include partitioning for the Data center room, electrical/battery room, operator room, levelling, dismantling, and repairing civil structures as required and / or as directed by NCPB representative.

Bidders should attach their proposed design for the entire data center.

## 10. Modular Data Centre

1. MODULAR DATA CENTER. MINIMUM SYSTEM SPECIFICATION		Bidder Response
Item	Description	Bidder response
Dimension (H×W×D mm)	2000×(600-7400)×1350	
Power system	380/400/415Vac, 50Hz, 3Ph+N+PE	
Maximum cabinet capacity quantity for a module	12	
Power supply	380/400/415Vac, 50/60Hz, 3Ph+N+PE	
Quantity of IT cabinets	3 Server Cabinets, 1 Network Cabinet, 2 Power cabinet Smart Cabinets with 9" Touch panel LCD	
Maximum load per rack	7Kw	
Aisle containment	The entire system can support cold and hot aisle containment to prevent dust and noise. In addition, the cooling efficiency can be improved and the PUE can be reduced.	
IT cabinet weight	Static load 1500kg, Dynamic load 1000kg	
Auto Sensing	Temperature Sensors, Water Leak Sensors and Door sensors Integrated into the system	
Management	System Management for cooling, PDU and UPS	
Operating Temperature	-20°C to +45°C	
Manufacturer's authorization letter	Manufacturer authorization letter you are able to implement and maintain the solution.	
<b>MANUFACTURERS PRODUCT SPECIFICATION SHEET MUST BE ATTACHED.</b>		
2. COOLING SYSTEM MINIMUM SPECIFICATIONS		
Item	Description	Bidder response
Power System	220/230/240Vac, 50Hz, 1Ph+N+PE	
Cooling Mode	Air-cooled (horizontal air flow)	
Total cooling capacity	12.5kW	
Configuration	2+1	
Air Volume	2600m³/h	
Installation	Rack mounted	
Air Supply Mode	Front supply, rear return (in-row cooling)	
Fan Type	EC Fan	
<b>2.1 OUT DOOR CONDENSER</b>		

Maximum operating current	24A	
Fan quantity	1	
Dimensions (W x D)	1057 mm x 339 mm x 966 mm	
Net weight/Gross	83 kg/99 kg	
Protection level	IPX4	
Maintenance	Quarterly maintenance inclusive of labor, service parts, oil and gas (Attach Service Level Agreement (SLA))	
Support & Maintenance	Three (3) Years Manufacturer's Support Maintenance and (1) year local service level agreement (SLA) for onsite and remote support. Proposal document for SLA must be provided.	
Certification	Manufacturer must be ISO9001 certified, and the product must be CE, REACH & RoHS certified.	
MANUFACTURERS PRODUCT SPECIFICATION SHEET MUST BE ATTACHED.		
<b>3. MODULAR DATA CENTER: POWER SUPPLY &amp; DISTRIBUTION UNIT</b>		
Item	Description	Bidder response (NC/FC) (FC/NC)
Input Power	Single	
UPS Capacity	20KvA	
Working Model	N+1, total two sets of 20KVA UPS	
Input power factor	Full load > 0.99, Half load > 0.98	
Output power	0.9	
Rated output	380/400/415Vac. 50/60Hz, 3Ph+N+PE	
Output	8 x C40 A/1P MCB+8 x C40 A/2P MCB	
Efficiency	≥ 95%	
Maintenance & Support	Three (3) Years Manufacturer's Support Maintenance and (1) year local service level agreement (SLA) for onsite and remote support. Proposal document for SLA must be provided.	
<b>4. MODULAR DATA CENTER: CABINETS MINIMUM SPECIFICATIONS</b>		
Item	Technical Specifications	Bidder response
Quantity	Two (2) Network Cabinets and Three (3) Server cabinets	
Color	Black (PANTONE426C/RAL9005)	
Material	High-intensity class A carbon cold rolled steel plate and zinc-coated steel plate	
Air channel	Front and rear air channels	
Installation space	The distance between the front and rear mounting bars can be adjusted by the step of 25 mm. Positions behind the cabinet are reserved for installing two rPDUs.	
Installation mode	Installed on a concrete floor, a base, or an ESD floor	

Door opening mode	The front door and rear door are all single doors, front door is double-layer glass doors.	
Protection level	IP20	
Standard	IEC 60297-2, ANSI/EIA RS-310-D	
Dimensions	2000mm×600mm×1350mm	
Standard	42U	
<b>5. MODULAR DATA CENTER: MONITORING SYSTEM MINIMUM SPECIFICATIONS</b>		
Item	Description	
Monitoring System	Local mobile phone APP, SMS alarm, Web access, centralized management for multiple DCs	
	Monitoring screen: Use a 10-inch LCD color touchscreen to manage all power and environment parameters in the module.	
FE Port	WAN_1-2, LAN_1-2	
DO output dry	DO_1-2	
Temperature and humidity	Detects the environment temperature and humidity within the module.	
Water leak age monitoring:	Detects water leak age near a water source in the module.	
Door sensor	Door status sensor, door access control system.	
Smoke monitoring:	Monitors smoke concentration in a module in real-time.	
UPS monitoring	Monitors the UPS main input voltage, UPS bypass input voltage, UPS output voltage, UPS output current, UPS output frequency, UPS module output current, battery voltage, and charge/discharge current.	
Precision air conditioner monitoring:	Monitors and diagnose the air conditioner operating status in an all-round and real-time manner, and monitors the operating status and parameters of components, such as compressors, fans, heaters, humidifiers, dehumidifiers,	
Facial recognition	Facial recognition can be used to log in without a PAD password.	
eLight	eLight is related to alarm signals, which can be used to remind O&M person to quickly determine the severity of an alarm. For example: Red indicates a critical alarm, orange indicates a major alarm, yellow indicates a minor alarm, gray indicates an alarm, and no alarm indicator is off.	
intelligent lock	Supports intelligent lock and can be associated with firefighting system. When the temperature exceeds the threshold, the door can be automatically opened for heat dissipation.	
Reporting	All monitoring information is reported to the management platform over the standard SNMP interface. Device information can be viewed using an app on a mobile device in real time to support mobile operation	

Support & Maintenance	Three (3) Years Manufacturer's Support Maintenance and (1) year local service level agreement (SLA) for onsite and remote support. Proposal document for SLA must be provided.	
Training	Training for 3 officers at Manufacturer's premises. The vendor will cater for the training cost (Training fees and Materials)	<i>Specify the training center</i>
MANUFACTURERS PRODUCT SPECIFICATION SHEET MUST BE ATTACHED		
<b>5. MODULAR DATA CENTRE POWER ACCESSORIES</b>		
Bidder shall propose and quote for all the necessary accessories as per your survey report.		

### **MAINTENANCE.**

Maintenance for installed system shall be carried out for twelve (12) months post commissioning.

### **ADMINISTRATIVE AND REPORTING FRAMEWORK**

The contractors will be responsible to the Chief Executive Officer of NCPB, through the appointed Project Manager, on all matters of the project. The contractor will work closely with the NCPB technical and IT staff.

### **DELIVERABLES**

1. Inception Report giving a detailed understanding of the assignment.
2. A detailed Project plan in a Gantt chart with the resource requirements schedule.
3. Weekly status reports.
4. Training for the administrators.
5. Installed and commission the data centre with its associated accessories.
6. Final project hand over report

#### **1. Training, Completion and Commissioning**

- 7.1. The bidder shall be expected to provide a comprehensive training for the entire solution to at least six (6) IT administrators for a period of not less than 2 weeks.
- 7.2. Training shall be provided in two 3-hour sessions to ensure that all interested parties can attend.
- 7.3. The bidder shall provide a training proposal and materials including the curriculum and a training timetable
- 7.4. Upon installation and completion; the bidder must carry out tests and record the test results in two soft copies (FLASH-DISK) showing cable types and components used. All components must be tested after which a Completion Certificate shall be issued. The test should state the following:
  - 7.4.1. Number of outlets
  - 7.4.2. Type of cables used
  - 7.4.3. Date completed
  - 7.4.4. Type of Warranty certificates specifying start and expiry dates
  - 7.4.5. Connectivity and bandwidth tests
- 7.5. In addition, an "as-built" package must be submitted with the following information
  - 7.5.1. Updated floorplans
  - 7.5.2. Wire/cable routing schematic
  - 7.5.3. Horizontal cable test results and summaries
  - 7.5.4. Fiber Backbone test results and summaries
  - 7.5.5. Wireless Topology schematic

## 2. Documentation

The bidder shall avail two hard copy documentation books to the client detailing the layout, the devices used and all the components used in the system which must include all information for future references and maintenance purposes to be used by technicians who will be manning the network service workmanship. In particular, the documentation must be structured to contain the following:

- a) Synopsis of the cabling (primary and secondary)
- b) Charts for distribution and highlights showing details of the components installed
- c) A detailed map of socket layouts in soft copies on FLASH-DISKS should be availed
- d) Upon installation and completion; the bidder must carry out tests and record the test results in two soft copies (FLASH-DISK) showing cable types and components used. All components must be tested after which a Completion Certificate shall be issued. The test should state the following:
  - i. Number of outlets
  - ii. Type of cables used
  - iii. Date completed
  - iv. Type of Warranty certificates specifying start and expiry dates
  - v. Connectivity and bandwidth tests
- e) In addition, an "as-built" package must be submitted with the following information
  - i. Updated floorplans
  - ii. Wire/cable routing schematic
  - iii. Horizontal cable test results and summaries
  - iv. Fiber Backbone test results and summaries
  - v. Wireless topology schematic

## 3. Schedule of Works

- a. It is expected that the Supply, Installation, Testing and Commissioning of the network infrastructures shall be completed no later than **120 days** following the signing of the Contract. The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Procuring Entity's Representative, and complete them by the Intended Completion Date.
- b. Within seven days after Site possession date, the bidder shall submit to the Procuring Entity's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works. Bidders shall be required to submit phased schedules of their works showing critical activities proceeding with minimal interruptions. The Bidder is expected to adhere to these schedules with minimal variations as may be agreed with the client to ensure continuity of critical operations.
- c. The Bidder shall guarantee Installation completions and the Commissioning of completed works within the specified period agreed as indicated in the schedule. Upon deciding that the Work is complete the Contractor shall request the Procuring Entity's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed. The Procuring Entity shall take over the Site and the Works within seven days.
- d. Procuring Entity's Representative issuing a Certificate of Completion. If the Bidder fails to adhere to his schedule of works to complete installations and commission the completed works within the specified period, the Bidder may be required to pay liquidation damages to the client.



#### **4. Damage to existing equipment**

Damages attributable to the Bidder or the Bidder's agents and/or assignees to any of the existing equipment or systems will be repaired or replaced by the client at the expense of the bidder as specified in the bid document. The costs associated with such repairs and/or replacements shall be borne by the Bidder fully on a cost-plus basis.

#### **5. Bidder's Responsibilities**

The bidder shall do the work with due care and diligence and in accordance with the contractual agreement terms as signed in the contract and in strict adherence to best industry practices.

#### **6. Warranty and Support**

- a) The Bidder shall be required to give a warranty of fifteen (15) years for structured cabling infrastructure. The Bidder shall warrant that all the work installations and equipment are free from defects and if any defect is discovered; then the Bidder shall take immediate action to replace the damaged device as required during the warranty period.
- b) The Bidder shall be required to give a warranty of three (3) years for all active devices
- c) The support and maintenance period for the entire LAN and data centre infrastructure shall be one (1) year
- d) Origin of the hardware should be indicated in the proposed solution and at the price schedule

#### **7. Acceptance**

The client's acceptance will be based on visual inspection and satisfaction of the works done during installation, cable route layouts, trunking made, connections made, hardware and other works done well within the project period as well as the technical tests carried out to ensure that they fully passed after project completion. Acceptance will only be sanctioned after all technical tests have been ascertained to be in order, true and in visual control certified by the technical team on the works done by the bidder in strict compliance with the contractual terms.

#### **8. Technical Bid**

Bidders shall submit offers that comply with the requirements of the bidding documents that include the basic technical design as indicated in the Drawings and Specifications. Bidders wishing to offer technical alternatives to bidding document requirements must submit bids that comply with bidding requirements, which include basic technical designs, drawings and Specifications.

In addition to submitting the basic bid, the bidder shall provide all information necessary to complete evaluation alternatives that include technical specifications, breakdown of prices, proposed installation methods and other relevant details. Only bidders with technical alternatives with best solutions conforming to basic technical requirements shall be considered.

The Client reserves the right to accept or reject any variation, deviation or alternative technical proposal. Variations, deviations and alternative technical proposals in excess of the needed requirements of the bid documents resulting in unsolicited benefits to the Client will not be considered in bid evaluations.

The technical proposal must contain the following:

- a) Details of technical specifications and performance characteristics of items and components to be supplied
- b) All materials and other supplies incorporated in the work installations must be new, unused and of most recent or current models. This should incorporate all recent improvements in design and materials.
- c) The bidder's proposed methodology and implementation must include a draft



implementation schedule in form of a Gantt chart indicating completion within required 120days.

- d) The detailed proposed network layout diagrams for proposed solutions showing the position of data points, cable and trunking path, floor cabinet position, Backbone network layout diagram and overall topology of how rooms are interconnecting with each other.
- e) Details of experience and past performance of the bidder on similar works done within the past five (5) years detailing the works and other contractual commitments.
- f) Qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site indicating the role each will play.
- g) Any form/attachment that is required must be completed.
- h) Additional information deemed appropriate may be provided.

## **REQUIREMENTS FOR THE INSTALLATION, CONFIGURATION AND COMMISSIONING OF NCPB NETWORK INFRASTRUCTURE (LAN)**

### **1. Technical Requirements**

### **2. Background/Introduction**

In order to meet its strategic objective, NCPB is continuously expanding and upgrading its systems and process to meet the changing need of the organization. This therefore, is to seeking a competent supplier for provision of a upgrade of HQ LAN and Replacement of Active component.

#### **Current Local Area Network**

The Local Area Network (LAN) at NCPB HQ is served by a common Metal trunking. The active network components are 10/100 switches, 10/100/1000 switches the inactive components are a combination of Cat 5 cabling subsystem

### **3. SCOPE OF WORK**

1. Local Area Network: The scope of the project shall include supply, installation, configuration, testing and commissioning of the following components:
  - a. Active Equipment: Aggregation Switch, Access Switches, and
  - b. Passive Equipment: Horizontal Cabling Subsystem, Fiber Backbone Cabling Systems.
  - c. Installation of network cabinets, Uninterruptable power supply (UPS) and powering the cabinets.
2. Wireless Local Area Network: The scope of the project which shall include supply, installation, configuration, testing and commissioning of the following components:
  - a. Wireless Controller with remote administration to enforce and manage security
  - b. Wireless Access Points
  - c. Provide a system to monitor and manage the wireless access network.
3. Connect and integrate to the existing WAN and installation of the necessary equipment to enable seamless connectivity in all NCPB branches.
4. Connect and integrate the existing LAN to the new installed network and ensure the entire network have the same VLAN setup.
5. Clean Power: The scope of the project shall include supply, installation, configuration, testing and commissioning of the following components:
  - a. 40 KVA UPS
  - b. Installation of clean power points
6. The scope of the project which shall include supply, installation, configuration, testing and commissioning of the following components at the Data Centre:
  - a. Data centre switches and Routers

#### 4 Overview of the Infrastructure

- 4.1. This document provides adequate details and criteria for the design of this technology network system with the aim of providing clients' offices with complete integrated network infrastructure. The purpose of this infrastructure is to provide a functional solution for a comprehensive technology network system including required network cabling, components and devices.
- 4.2. The cabling infrastructure will provide facilities for connecting to a wide range of heterogeneous devices, which may include but not limited to computers, network management devices, audio/video communication devices, security and access control systems, wireless access points. The cabling system should be based on an open architecture that will provide multiple compatibility, interoperability, scalability and efficient adaptability to changes in physical layouts and relocations where a number of data points are anticipated. The proposed location for the network cabinets, data points and wireless access point in the NCPB facilities are as shown on the floor plans attached. Bidders shall be expected to provide network designs as part of tender response and the final design shall be approved during the implementation of the project.
- 4.3. The bidder shall supply all components necessary to complete the installation, configuration, testing and commissioning of the integrated Local Area Network (LAN).
- 4.4. Fiber shall be used for the LAN Backbone (LAN) and for interconnecting all network Cabinets
- 4.5. Where there is an already functioning LAN the bidder shall connect the newly done LAN to the existing one. Newly installed Aggregation switch shall be the connection point in the existing LAN. Optic fibre shall be the used for this connection
- 4.6. NCPB will provide the VLANs allocation, IP addressing scheme and information on point- to- point connectivity between the HQ and WAN.
- 4.7. The bidder shall be responsible for the installation of the technology network system as required in the Tender Document
- 4.8. Bidders should pay particular attention to Section V of this document, which specifies the desired scope and installation practice that requires strict adherence.
- 4.9. The solution is required to support secure communication, scalability, reliability and simple network management. The entire network shall have a consistent architecture to reduce the total cost of network ownership for on-going support and maintenance, component and interface management, scalability, relocations, security, redundancy and training. All the structured cabling subsystem components for each solution must be from the same manufacturer.
- 4.10. The Local Area Network shall link this head quarter to other NCPB branches across the country. Static and/or dynamic IP addressing and sub netting shall be used to realize Virtual Local Area Network (VLAN) within the LANs and use of Layer 3 (routing) with the NOFBI wide area network. All active components used in the network must be able to facilitate management of the network from a central point and from remote locations.
- 4.11. Fiber shall be used for the LAN Backbone (LAN) and for interconnecting all network Cabinets.
- 4.12. Where there is an already functioning LAN the bidder shall connect the newly done LAN to the existing one. Newly installed Aggregation switch shall be the connection point in the existing LAN. Optic fibre shall be the used for this connection.
- 4.13. NCPB will provide the VLANs allocation, IP addressing scheme and information on point- to- point connectivity between the HQ and WAN.

- 4.14. The layer 3 routing protocols (OSPF, ISIS, BGP) shall be used between the HQ and the WANPOP
- 4.15. All the active components used in LAN MUST integrate seamlessly.
- 4.16. The Bidder must provide lightening surge protectors and grounding of the active equipment.
- 4.17. The bidder must provide Manufacturer Authorization Form in the format specified for active devices, Cabling system and UPS. See attached Manufacturer Authorization Form format.
- 4.18. Bidder shall ensure the wireless access point cover all the service points.

## 5. General installation practice

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1.	The Bidder shall be required to install cabling in accordance with International Structured Cabling System and designs. Each subsystem will be implemented using F/UTP Category 6A cabling compliant with components to be deployed in accordance with ANSI/TIA/EIA-568-C2 and ISO/IEC 11801 CLASSE standards requirements.		
2.	All network components must be Earthed as indicated in the general specifications of this document, the local regulations in force and the manufacturer's recommendations.		
3.	All routing layout for cable paths must consider fiber optic cable with minimum radius of curvature to be supported by the existing facilities in order not to interfere with access to maintenance activities.		
4.	All cabling infrastructure should make provisions aspects for possible future extensions.		
5.	All adapters must be compatible with the transmission capacities of the equipment to which they connect.		
6.	All cables and connectors must be labelled with permanent indelible ink mark labels at destination of each and every termination point.		
7.	Horizontal and backbone cables shall be labelled at each end. The cable or its label shall be marked with its identifier.		
8.	A unique identifier shall be marked on each faceplate to identify it as connecting hardware.		
9.	Each port on the face plate shall be labelled with its identifier		
10.	The bidder shall be required to comply with the manufacturer's recommended installation practices.		
11.	The network should be capable of carrying data, voice and video. QOS should be considered as part of installation and configuration of the network.		
12.	All active LAN equipment should be from the same manufacturer for seamless integration, management and maintenance		
13.	The Wireless infrastructure should provide High performance, conform with IEEE 802.11a/b/g/ac/ax in 2.4 GHz and 5 GHz bands.		

14	The Wireless infrastructure should have three (3) VLANs (Management VLAN, Service VLAN and Guest VLAN)		
15	The proposed architecture should be based on centralized controller within AP deployment. Encryption / decryption of packets should be performed at the wireless controller.		
16	AP and Controller should communicate in an encrypted tunnel to ensure end to end security of user information and should support onboard DHCP server		
17	Wireless System should be IPv6 ready (RFC 2460 Internet Protocol version). Should support AP-Controller Communication over IPv6		
18	Dynamic load balancing to automatically distribute clients to the least loaded channel and AP; load balancing must not require any client specific configurations or software		
19	The proposed Wireless solution should support WPA/WPA2/ WPA3/TKIP security		
20	The proposed Wireless solution should support Authentication methods that include such as 802.1x, Mac-address authentication		
21	The proposed Wireless solution should support firewall policy enforcement based on user roles.		
22	<p>The bidders must enclose together with their submitted bids brochures detailing technical Literature and specifications of the active and passive components of the structured cabling system. The brochures shall be used to evaluate the suitability of these components. Any bid submitted without the highlighted brochures shall be considered technically non-responsive, and shall be subsequently be disqualified.</p> <ol style="list-style-type: none"> <li>1) Aggregation Switch</li> <li>2) Access Switches</li> <li>3) Wireless Access Points</li> <li>4) Wireless Controller</li> <li>5) Self-Cooling Cabinet with power solution</li> <li>6) Network Cabinets</li> <li>7) UPS</li> <li>8) Face Plates and Modules</li> <li>9) Galvanised Trunking</li> <li>10) F/UTP CAT 6Acable</li> <li>11) Fiber</li> <li>12) HDPE Ducts</li> </ol>		

## LAN Overview & Installation Practice

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1	The LAN installation shall consist of a star topology with horizontal F/UTP subsystem originating from switches and terminating with RJ45 sockets. For each data point, a patch cord of appropriate length with RJ45 connectors at both ends will be required to connect the information point to the network interface adapter.		
2	Good cable management practice must be adhered to and proper color-coding used for easy identification.		
3	The Main Distribution Facility (MDF) shall be located on an already identified room by the client.		
4	The location for HDFs (Horizontal Distribution Facility) on each building floor will be located on an already identified rooms by the client.		
5	High-speed Fiber Optic Uplink Backbone cable will be used to link building blocks and floors to the main distribution facility location.		
6	Cables traversing between building blocks shall be through the trench that shall be 1.5meters deep and must be installed in ducts that complies with or is part of approved infrastructure plan.		
7	Cables must be run in the trunking (s) within building wall and surface pathways. This must be galvanised metal trunking installations.		
8	The Bidder will be responsible for supplying all materials and components that are necessary to complete the installation of the structured cabling system.		
9	The horizontal cabling shall include outlets and consolidation or transition points, connectors, mechanical terminations and patch cords that compose horizontal cross-connect. Cables shall be routed in new wall ducts and terminated on patch panels and other data outlets as specified in accompanying sketch diagrams.		
10	A Galvanised Metal trunking of 150mm by 50mm dimensions with two compartments must be installed. One will be used for data cables and the other for any other utility service		
11	The bidder shall be responsible for pulling, terminating and testing all circuits installed and each cable shall be assigned a unique cable number.		

## Horizontal Cabling

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	The primary media for horizontal cabling will be 4-pair Foiled Unshielded Twisted Pair (F/UTP) that must meet or exceed ANSI/TIA/EIA-568-C2 and ISO/IEC 11801 CLASS EA standards requirements.		
2.	F/UTP Category 6A or higher quality cables must be used.		
3.	Each room to be networked shall have wall plates installed and each outlet terminated with 8-pin modular jacks (RJ-45) and shall be flash with trunking.		
4.	Each designated network interface/ port will have capacity to support at least 1GEthernet.		
5.	Cables shall be required to move through metal trunking firmly when pulled.		
6.	Cables installed between faceplates and patch panel shall not exceed recommended distance of 90meters.		
7.	Cables shall not be crushed using cable ties.		
8.	Cable conduits must not be overfilled. Trunking and cable ways must be sized to 2.5 times the requirement of the current installation.		
9.	No distortion due to kinks, sharp bends or excessive hauling tension shall be allowed.		
10.	Cables shall be run in a manner eliminating any possibility of strain on the cable itself or on the terminations		
11.	Bending radii shall not be less than eight times the overall cable diameter.		
12.	The manufacturers hauling tension shall not be exceeded.		
13.	All cable ties and fixings shall be tightened to support the cable loom without distortion of the cable sheath.		
14.	All cables must pass through trunking and should not be seen from outside		
15.	There shall be no splicing of installed cables. Intermediate cross-connects and transition points are not allowed.		
16.	All user-area patch cords shall be at least 3-metre in length. However, 5-metre patch cords shall also be provided as indicated in the BoQ All patch cords must be shielded F/UTP		
17.	Cabinet Patch cords being used to connect patch panel and the access switch shall be 1meter shielded F/UTP		
18.	Data outlets shall be flash mounted on the metal trunking.		
19.	All user-area patch cords and cabinet patch cords will be supplied to match the total number of data outlets.		
20.	The contractor shall pull two cables for each faceplate and terminate both cables.		
21.	The contractor shall ensure that existing power sockets are mounted on the metal trunking.		
22.	The Contractor may combine two or more blocks to form one LAN segment to leverage on the active devices. This should be shown clearly in the proposed bidder's design.		
23.	The combined blocks LAN segment F/UTP cables shall not be more than 90M from the active equipment to the data point.		

24	Where there is a combined blocks LAN segment, 110mm HDPE ducts shall be used to interconnects the blocks and outdoor F/UTP cables shall be used. The HDPE shall pass through a trench that is 1.5meters deep.		
25	Cables entry between the blocks shall be not more than 0.5M from the ground and the outer cover shall be galvanized metallic trunk.		
26	Except for the patch cords used to connect NICs to the RJ45 sockets, all patch cords must be labelled at each extremity with soft PVC indelible marking. For all other components, the label type should be of stiff plastic PVC.		

### Backbone Cabling

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1.	The primary media for backbone cabling shall be fiber optic.		
2	For Backbone cables interconnecting between buildings, telecommunication rooms, equipment rooms and entrance facilities shall be installed in star topology		
3.	Multimode fiber optic cable (62.5/125 micron) will be used.		
4.	Fibre optic cable shall have a core/cladding diameter on nominal 850nm and 1300nm optical wavelength.		
5.	The fiber optic cable shall have a minimum of eight (8) strands.		
6.	All strands must be terminated at each end of the fiber cable whether used or not.		
7.	All optical fiber components and installation practices shall meet applicable building and safety codes requirements and shall provide well organized cable installation management in accordance with the manufacturer's guidelines		
8.	Fiber optic cables running through risers must be protected by PVC conduits to protect them from interferences from other bidders providing other services in future		
9.	All fiber optic backbone links will be terminated at the identified MDF room as per the physical topology design.		
10.	All fiber interfaces for uplink must use relevant transceivers.		

### Patch Panels



No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1.	All patch panels must conform to ANSI/TIA/EIA568 B.		
2.	All Patch Panels must be shielded		
3.	Patch panels must be equipped with shielded RJ45 Category 6A sockets contacts with capacity of 24 ports as needed.		
4	Each Data Patch Panel shall be identified alphabetically from the top of the cabinet. The number of the cabinet should be used for identification on a 1 to 24-way panel. e.g., A-a-01 means Block A patch panel a point no 1.		
5.	Fiber Optic patching shall be done from the floor cabinets or cabinet housing optic boxes/ panels as well as the optic electronic equipment.		
6.	Fiber Optic patch panel (ODF) shall have a sliding tray		
7.	All patch panels, including fiber optic patch panels must be rack mounted.		
8.	All patch panels must be earthed to provide electrical safety to users in future and screening to prevent electromagnetic radiations.		
9.	Fiber optic patch panels shall be used for distribution and management of fiber optic cable, Provision of fiber splicing, termination, management and storage in one unit.		
10.	Fiber optic patch panels will be connected as per the number of strands terminated at each location.		
11.	Each Fiber optic patch panel should be fully loaded with adapters, pigtails, splice trays and other required accessories.		

**Routers.:** There shall be two types of routers. Type 1 is for branches and type 2 for HQ.

#### Branch Router

Feature	Specification	Bidders Response FC /PC/NC	Reference to Support Response
IP and IP services	Routing Information Protocol Versions 1 and 2 (RIPv1 and RIPv2) Generic Routing Encapsulation (GRE) Spanning Tree Protocol Layer 2 Tunneling Protocol (L2TP) Layer 2 Tunneling Protocol Version 3 (L2TPv3) Network Address Translation (NAT) Dynamic Host Configuration Protocol (DHCP) Dynamic Domain Name System (DNS) Access control Lists (ACLs) IPv4 and IPv6 Multicast Open Shortest Path First (OSPF) Border Gateway Protocol (BGP) Intermediate System Intermediate System (ISIS)		

Feature	Specification	Bidders Response FC /PC/NC	Reference to Support Response
Quality of Service (QoS)	DiffServ mode, MPLS QoS, priority mapping, traffic policing (CAR), traffic shaping, congestion avoidance, congestion management, MQC (traffic classifier, traffic behavior, and traffic policy), hierarchical QoS, Smart Application Control (SAC)		
Interfaces	2x1G WAN Ports 8x1G RJ-45 Ports 1x10GE sfp+ 4 combo Ports		
Throughput	Aggregate throughput – 2Gbps		

### HQ Router

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	The console interface of a router can connect to an operation terminal for onsite configuration.		
2.	8xGE electrical interface (10/100/1000Mbit/s autosensing) transmits and receives services at 10Mbit/s, 100Mbit/s, or 1000Mbit/s and should also support WAN. <ul style="list-style-type: none"> <li>Standards compliance: IEEE802.3</li> </ul> Aggregate Throughput 1Gbps		
3.	2xGE optical interface can transmit and receive service traffic at 100Mbit/s or 1000Mbit/s. Should also be able to support WAN. <ul style="list-style-type: none"> <li>Standards compliance: IEEE 802.3</li> </ul>		
4.	A USB 2.0 interface Standards compliance: USB 2.0 <ul style="list-style-type: none"> <li>Working mode: Host</li> </ul>		

### Uninterruptable Power Supply

There shall be three types of UPS in this set;

- I. Ups in the floor cabinets shall be 3000VA
- II. Ups in the MDF shall be 6000VA
- III. UPS for clean power in the existing and newly extended network points in the new areas shall be 40KVA

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1.	The UPS installed in the floor/block cabinet shall be 3000VA for the 18U cabinet, rack mountable, SMART signalling and line interactive.		
2.	The UPS installed in the MDF shall be 6000VA for the cabinet, rack mountable, SMART signalling and line interactive		
3	The UPS installed for clean power points shall be 40KVA, SMART signalling and line interactive		
4.	The installed UPS must have a warranty of one (1) year		

### **Distribution Switch**

1.	The Switch should support L3 network virtualization end to end. The features supported shall include but not limited to VLANIF, static, vlans, OSPF v3, ACLs. Describe any additional features required to support this.		
2.	The Switch must be able to integrate with the existing infrastructure		
3.	The Switch should support Software Defined Networking & Automation based on open Standards and only use certified protocols to allow interoperability with other vendors supporting the same standards. The switch to include N1 license package		
4.	The Switch should ensure that the network is Scalable to guarantee the support for future remote sites, applications, users, traffic, technologies without the need for major forklifts, upgrades, or restructuring.		
5.	The proposed network solution should be based on perpetual licensing. Annual or periodical licensing of any features is not allowed		
6.	The Aggregation switch is expected to have GE/10GE/40GE optical ports to provide high performance rates to handle all the traffic generated across the campus and applications and must be fiber based switches.		
7.	The Switch should support a minimum of 600 Gbps switching capacity		
8.	The Switch should have the following interfaces: At least 20 x GE SFP ports, 4 x 10GE SFP+ ports, 6 x 40GE QSFP+ ports		
9.	The Switch should support IEEE 802.1 Q VLAN encapsulation, at least 4000 VLANs and Jumbo Frames		

10	The Switch should support multicast routing protocol PIM-SM and PIM-DM		
11	All ports on the Backbone switches shall support full Quality of Services without any additional hardware / software		
12	The switch should have redundant power supply		
13	The switch should have a 3 years Warranty		

### LAN Switch

There shall be two types of LAN switches (Type 1, 2).Type 2 shall be in the server room/data centre while Type 3 shall be in the branches.

### Advanced Access Switch

No.	Item	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	<b>Downlink Ports Capacity</b>	48 ports full POE+		
2.	<b>Uplink Ports Capacity</b>	4x 10G fixed uplinks		
3.	<b>Switching Capacity</b>	At least 176 Gbps		
4.	<b>Forwarding rate</b>	125 Mpps		
5.	<b>MAC Address Table Size</b>	64K entries		
6.	<b>Stacking</b>	Supports stacking of up to 9 stacked devices with stacking bandwidth of 80Gbps		
7.	<b>Jumbo Frames</b>	Supports Jumbo Frames		
8.	<b>Security</b>	MAC address authentication, 802.1X		
9.	<b>Switch fundamentals</b>	Support for Layer 2, Routed Access (RIP, OSPF PBR, PIM, Multicast, VLAN, VRRP, PBR, 802.1X)		
10.	<b>Automation</b>	Support for NETCONF, RESTCONF, YANG, TELEMETRY		
11.	<b>IP Routing</b>	16,000 IPv4, 8,00 IPv6 routing entries		
12.	<b>Switching</b>	Layer 3		
13.	<b>Cooling Units</b>	Fixed redundant		
14.	<b>Power Supply Unit</b>	1000W		

15.	<b>Compliant Standards</b>	IEEE, IETF standards		
16.	<b>Manageable</b>	Yes		
17.	<b>Operating temperature</b>	Normal operating temperature* and altitudes:-5°C to +45°C, up to 5000 feet (1500m)-5°C to +40°C, up to 10,000 feet (3000m)* Minimum ambient temperature for cold start is 32°F (0°C)		
18.	<b>Safety compliance</b>	IEC 60950-1 <input type="checkbox"/> EN 60950-1/A11/A12 <input type="checkbox"/> UL 60950-1 <input type="checkbox"/> CSA C22.2 No 60950-1 <input type="checkbox"/> AS/NZS 60950.1 <input type="checkbox"/> CNS 14336-1 <input type="checkbox"/> IEC60825-1 <input type="checkbox"/> IEC60825-2		
19.	<b>Manufacturer OEM support</b>	Proof of manufacturers authorization support is required		
20.	<b>Installation &amp; Configuration</b>	Must be delivered, installed, configured & commissioned		
21.	<b>N1 Licensing</b>	At least 3year term N1 iMaster NCE license		
22.	<b>Warranty</b>	Manufacturer back to back one (1) Year		

#### HQ Access Switch

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	The switches for horizontal cabling must support at least 1000Mbps auto sensing		
2.	The switches must be rack mountable in standard racks and should therefore be attached to the backbone using appropriate Transceivers.		
3.	The switches must be able to integrate with the existing infrastructure		
4.	The Switch should support Software Defined Networking & Automation based on open Standards and only use certified protocols to allow interoperability with other vendors supporting the same standards.		
5.	The network should be Scalable to guarantee the support for future remote sites, applications, users, traffic, technologies without the need for major forklifts, upgrades, or restructuring.		
6.	The proposed network solution should be based on perpetual licensing. Annual or periodical licensing of any features is not allowed		

7.	The switches should have full PoE+ capability		
8.	The switches should have 48x1000Mbps ports with 4 SFP+ interface slots accepting 1/10G transceivers.		
9	The switches should have switching capacity of at least 176 Gbps		
10.	The switches should have at minimum 512 MB DRAM		
11.	The switches should support intelligent stacking and must be supplied with the required accessories (stack adapters and power cables)		
12.	The switches should support IEEE 802.1 Q VLAN encapsulation.		
13.	The switches should support auto-sensing for Ethernet ports for uplink connections		
15.	The switches should have 3 Year warranty		

### Branch Access Switch

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	The switches for horizontal cabling must support at least 1000Mbps auto sensing		
2.	The switches must be rack mountable in standard racks and should therefore be attached to the backbone using appropriate Transceivers.		
3.	The switches must be able to integrate with the existing infrastructure		
4.	The Switch should support Software Defined Networking & Automation based on open Standards and only use certified protocols to allow interoperability with other vendors supporting the same standards.		
5.	The network should be Scalable to guarantee the support for future remote sites, applications, users, traffic, technologies without the need for major forklifts, upgrades, or restructuring.		
6.	The proposed network solution should be based on perpetual licensing. Annual or periodical licensing of any features is not allowed		
7.	The switches should have full PoE+ capability		
8.	The switches should have 24 port x1000Mbps ports with 4 SFP+ interface slots accepting 1G transceivers.		
9	The switches should have switching capacity of at least 104 Gbps		
10.	The switches should have at minimum 512 MB DRAM		

11.	The switches should support intelligent stacking and must be supplied with the required accessories (stack adapters and power cables)		
12.	The switches should support IEEE 802.1 Q VLAN encapsulation.		
13.	The switches should support Jumbo Frames		
14.	The switches should have 3 Year warranty		

**Note:** The bidder shall be required to do an independent survey to ascertain the actual number of switches required for Client's offices, bill of materials provided is just a guide.

### Wireless LAN Network

A bidder shall propose a wireless LAN which shall meet the following minimum technical specifications for Access Points and Wireless Controller.

#### Wireless Indoor Access Points

No.	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
1.	Access Points should be at least MIMO 4x4 802.11ac Wave2		
2.	Access Point should be 802.11ax ready		
3.	Access Point should have built-in smart antennas		
4.	It should support POE+		
5.	Access Points should have 2x1000 Ge LAN ports		
6.	Radios should support auto channel and power selection based on surrounding Wi-Fi conditions		
7.	Access Points should have the ability to load balance users between APs in the same area.		
8.	The Access Points should support hidden SSIDs		
9.	The Access Points should support portal authentication		
10.	It should have 3 Year warranty.		

**Wireless Access Point Controller:** A bidder shall propose wireless controller which shall meet the following minimum technical specifications

No	Technical Specifications	Bidders Response FC /PC/NC	Reference to Support Response
<b>Requirements</b>			
1.	It should be available as an appliance and should be rack mountable (1U)		
2.	It should support at least 256AP licenses		
3.	Multi-layered security: 802.1x/MAC/Portal authentication, rouge detection and suppression. Controller should also support application-based policy control technologies, including traffic blocking, traffic limit, and priority adjustment policies		



4.	The controller should supports traffic classification based on the combination of the L2 protocol header, IP 5-tuple, and 802.1p priority		
5.	The wireless controller should have at least two (2x10G) SFP+ uplinks+10xGE interfaces		
6.	It should support guest management and captive web portal		
7.	Airtime fair scheduling to improve channel access for particular SSIDs		
8.	Should support authenticated client devices to roam securely from one access point to another, within or across subnets, without any perceptible delay during re association		
9.	The Access Point Controller should support remote Web access, network performance and configuration		
10.	It should have 3 Year warranty		

### Bill of Materials

**NOTE:** The bill of materials is just an estimate; the bidder is required to carry out a survey in order to get actual material required and provision for them in the quote. The client is not liable for any omission.

NO.	Description	Unit of Measurement	Qty
1	CAT 6A Cable	No	135
2	Modules	No	549
3	Face Plates	No	280
4	1 Meter Patch Cords	No	549
5	3 Meter Patch Cords	No	549
6	24 Port Patch Panel	No	4
7	48 Port Cat 6 A Patch Panel		11
8	1U Cable manager	No	26
9	42U Cabinet	Lot	1
10	Galvanized Metallic Trunking 150 by 100 mm	Lot	200
11	22U Cabinet	No	5
12	Indoor outdoor Multimode 8 core Fiber Cable	lot	1000
13	24-port Fiber Optic Sliding Drawer (Blank)	No	3
14	Simplex SC Pigtail 3 metre	No	20
15	Single Splicing Sleeve 60mm type	No	20
16	SC Duplex Adaptors	No	24
17	Fiber Patch panels	No	5
18	SFP Transceivers	No	20
19	Blanking's	No	8
20	Duplex Patch cord LC-SC Multimode 3 mtr	No	20
21	Installation Accessories	No	1
22	48 Port Access Switches	No	11
23	24 Port Access Switches (For 10 Branches)	No	17
24	Routers (For 11 branches)	No	11
25	24 Port Aggregation Switch	No	2
26	Wireless Access Controller	No	1
27	Indoor Wireless Access Points	No	18

28	Outdoor Wireless Access Points	No	15
29	Rack Mountable /Tower UPS 6.0 KVA	No	2
30	Rack Mountable UPS 3.0 KVA	No	8
31	Free standing UPS 40KVA	No	1
32	Fiber splicing	No	48
33	Training for 5 users	lot	Lot
34	Civil Works-Pulling, Termination, Labelling, documentation and testing of horizontal and backbone cabling	lot	Lot
35	Installation Charges for active devices and configuration, testing and hand over	lot	Lot
36	Data Centre Implementation Cost (Bidder to Provide a detailed breakdown of the BOQ)	Lot	Lot

## SECTION IV - TENDERING FORMS

### 1 FORM OF TENDER

#### INSTRUCTIONS TO TENDERERS

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

**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 for 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 tenderers (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 of our Tender, excluding any discounts offered in item (f) below is:  
  
Option 1, in case of one lot: Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]; or  
  
Option 2, in case of multiple lots: (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
- f) **Discounts:** The discounts offered and the methodology for their application are:
  - i) The discounts offered are: [Specify in detail each discount offered.]

- ii) The exact method of calculations to determine the net price after application of discounts are shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 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;
- (h) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- i) **One Tender per tenderer:** We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture 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 service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the 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.

- (a) **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.
- (f) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - Self-Declaration of the Tenderer – 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 tenderer:** \*[insert complete name of the tenderer]

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

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

\_\_\_\_\_ [insert complete title of the person  
 signing the Tender]

**Signature of the person named above:** \_\_\_\_\_ [insert

signature of person whose name and capacity are shown above] **Date**

**signed** \_\_\_\_\_ [insert date of signing] **day of**

\_\_\_\_\_ [insert month], \_\_\_\_\_ [insert year]

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

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

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

Instruction to Tenderer

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

a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (postal and physical addresses, email, and telephone number) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (postal and physical addresses, email, and telephone number) of state which stock exchange	

### **General and Specific Details**

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

Name in full \_\_\_\_\_ Age \_\_\_\_\_  
 Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_  
 Citizenship \_\_\_\_\_

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

	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.

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

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

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

ii) Conflict of interest disclosure

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



7	Tenderer has a close business or family relationship with a professional staff of the 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>Tenderer has a close business or family relationship with a Professional staff of the Procuring Entity who would be involved in the implementation or supervision of the 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 Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

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

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

\_\_\_\_\_

\_\_\_\_\_

*(Signature)*

*(Date)*

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

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

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

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

## SELF-DECLARATION FORMS

### FORM SD1

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

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

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

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

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

Witness

Name

.....

Sign.....

Date.....



## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

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

### 2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (no. 33 of 2015) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
  - 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  - 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the 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 tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefit of free and open competition.

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

- 
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 service provider, 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.*

## TENDERER INFORMATION FORM

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

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

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

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

1. Tenderer's Name: ..... *[insert Tenderer's legal name]*
2. In case of JV, legal name of each member ..... *[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration: ..... *[insert actual or intended country of registration]*
4. Tenderer's year of registration: ..... *[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration..... *[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information  
Name:..... *[insert Authorized Representative's name]*  
Address..... *[insert Authorized Representative's Address]*  
Telephone ..... *[insert Authorized Representative's telephone/fax numbers]*  
Email Address: ..... *[insert Authorized Representative's email address]*
7. Attached are copies of original documents of ..... *[check the box(es) of the attached original documents]*  
☐ 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 Tenderer 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 tenderers 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. TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

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

1. Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5. Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6. Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i>  Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i>  Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i>  <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 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 there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above and before that date.

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

## FORMAT OF TENDER SECURITY [Option 2-Insurance

**Guarantee]**TENDER GUARANTEE No.: \_\_\_\_

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

Sealed with the Common Seal of the said Guarantor this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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

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

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

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

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

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Seal]

## TENDER-SECURING DECLARATION FORM

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

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

Submission]

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

To.....[insert complete name of

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

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

Signed:.....  
.

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

Name:  
.....

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

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

Seal or stamp

## SCHEDULE FORMS

[The Tenderer shall fill in these Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Activity Schedules** shall coincide with the List of Non-Consulting Services specified in the Procuring Entity's Requirements.]

### FINANCIAL BID

<b>Date:</b> _____, <b>ITT No:</b> _____, <b>Alternative No:</b> _____					
<b>Page N°</b> _____ <b>of</b> _____					
NO.	Location	Description	Lead time	Grand Total	
				Kshs	Cts
1	NCPB HEAD	Provision of modular data center			
2	OFFICE	upgrade of Local Area Network (LAN)			
<b>GRAND TOTAL</b>					



## NOTIFICATION OF INTENTION TO AWARD

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

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

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

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

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

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

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

**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 Tenderer**

<b>Name:</b>	
<b>Address:</b>	
<b>Contract price:</b>	

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

<b>Name of Tenderer</b>	<b>Tender price</b>	<b>Evaluated Tender price (if applicable)</b>

### iii). How to request a debriefing

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

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

**Attention**.....[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

Provide the contract name, reference number, name of the Tenderer, 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 Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required 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**

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

.....APPLICANTAND

.....RESPONDENT (Procuring Entity)

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

#### REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address P. O. Box  
No..... Tel. No.....Email....., hereby request the Public Procurement Administrative Review  
Board to review  
the whole/part of the above mentioned decision on the following  
grounds , namely:1.

2.

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

2.

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

---

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 Service Provider]

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

Authorized Signature: .....

.....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract

#### 4 FORM OF CONTRACT

[Form head paper of the

Procuring Entity] **LUMP SUM**

##### REMUNERATION

This CONTRACT (herein after called the "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 Service Provider] (hereinafter called the "Service Provider").

**[Note:** In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: "... (herein after called the "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 Service Provider's obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (herein after called the "Service Provider").]

##### WHEREAS

- a) The Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the "Services");
- b) the Service Provider, having represented to the 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 Service Provider'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 Service Provider shall be as set forth in the Contract, in particular:
  - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and

b) The Procuring Entity shall make payments to the Service Provider 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 service provider)

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

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

.....[name of member]

.....[Authorized Representative]

..... [name of member]

.....[Authorized Representative]



**NATIONAL CEREALS AND PRODUCE BOARD**

**SITE VISIT FORM**

No.	Area/ Site visited	Tenderer's Remarks ( confirmation of visit)

This is to certify that the named bidder visited the station and has been shown all the sites/ areas in the HeadOffice/Region as required in the tender document.

NCPB REP: Name:.....Signature: .....Date: .....

Official Stamp

CONTRACTOR'S REP: Name:.....Signature:.....Date:.....

Official Stamp

## **PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS**

## SECTION VI - GENERAL CONDITIONS OF CONTRACT

### A. General

#### Provisions

#### Definitions

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

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) "Completion Date" means the date of completion of the Services by the Service Provider 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 Service Provider'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 Service Provider
- 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 Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- m) "Party" means the Procuring Entity or the Service Provider, as the case maybe, and "Parties" means both of them;
- n) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part there of;
- o) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- p) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider 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 Service Provider to the Procuring Entity
- s) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of

Activities included in the Service Provider's Tender.

- t) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- 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 are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the 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 Service Provider 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 Service Provider shall permit and shall cause its sub contract or/and sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

## 1.7 Taxes and Duties

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

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

### 2.1 Effectiveness of Contract

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

### 2.2 Commencement of Services

#### 2.2.1 Program

Before commencement of the Services, the Service Provider shall submit to the Procuring Entity for approval a Program showing the general methods, arrangements order and timing for all activities. The Services shall be carried out in accordance with the approved Program as updated.

#### 2.2.2 Starting Date

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

### 2.3 Intended Completion Date

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

### 2.4 Modification

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

#### 2.4.1 Value Engineering

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

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the 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 Service Provider shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in to (d) above, the amount to be paid to the Service Provider 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 Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.6 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 Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through

(d) Of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations

under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;

- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the 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 Service Provider**

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

## **2.6.3 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 Service Provider:

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

# **3 Obligations of the Service Provider**

## **3.1 General**

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the 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 Service Provider Not to Benefit from Commissions and Discounts.**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor to the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure



that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

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

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

### 3.2.3 Prohibition of Conflicting Activities

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

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' 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 Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

- 3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the 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 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider 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 Service Provider 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 Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider 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 Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

### 3.8 Liquidated Damages

#### 3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the 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 Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

#### 3.8.2 Correction for Over-payment

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

#### 3.8.3 Lack of performance penalty

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

### 3.9 Performance Security

The Service Provider shall provide the Performance Security to the 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 Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party

with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### **3.11 Sustainable Procurement**

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

## **4 Service Provider's Personnel**

### **4.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the 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 Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the 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 Service Provider 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 Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

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

### **5.1 Assistance and Exemptions**

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

### **5.2 Change in the Applicable Law**

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

### **5.3 Services and Facilities**

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

## 6 Payments to the Service Provider

### 6.1 Lump-Sum Remuneration

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

### 6.2 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 service provider shall be paid performance incentive compensation as set 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:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

### 6.4 Terms and Conditions of Payment

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

### 6.6 Price Adjustment

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

$$P_c = A_c + B_c \text{ Lmc} / \text{Loc} + C_c \text{ Imc} / \text{loc}$$

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 at and  $L_{oc}$  is the index prevailing 28 days before Tender opening for labor; both in the specific currency "c".

$l_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $l_{oc}$  is the index prevailing 28 days before Tender opening for 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 Service Provider'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 Service Provider 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 Service Provider 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 Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider 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 Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.

- c) If the Service Provider 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 Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

## **8 Settlement of Disputes**

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

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

**8.1.2** If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the 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 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 Contract 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 Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

**9.2** The Adjudicator shall be paid by the hour at the rate **specified in the 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 Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

## SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement 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 <b><i>The Chartered Institute of Arbitrators (Kenya)</i></b>
1.1(w)	Project Manager is: <b>Director Corporate Services</b>
1.1(e)	The contract name is: <b>Provision of modular data center at head office and upgrade of local area network</b>
1.1(h)	The Procuring Entity is: <b>National Cereals and Produce Board</b>
1.1(m)	The Member in Charge is <b>N/A</b>
1.1(p)	The Service Provider is: _____
1.4	<p>The addresses are:</p> <p>Procuring Entity:</p> <p>The Employers address is:</p> <p>The Director General, National Cereals and Produce Board (NCPB), P.O. Box 30586 - 00100 <u>NAIROBI</u></p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email address _____</p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity:</p> <p>The Employers address is:</p> <p>The Director General, National Cereals and Produce Board (NCPB), P.O. Box 30586 - 00100 <u>NAIROBI</u></p> <p>For the Service Provider: _____</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 Starting Date for the commencement of Services is <b>14 Days after Contract Signing</b>
2.3	The Intended Completion Date is <b>24 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 Service Provider 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>

<b>3.2.3</b>	Activities prohibited after termination of this Contract are: <b>N/A</b>
<b>3.4</b>	The risks and coverage by insurance shall be: N/A
<b>3.5(d)</b>	The other actions are <b>N/A</b>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>3.7</b>	Restrictions on the use of documents prepared by the Service Provider are: <b>N/A</b>
<b>3.8.1</b>	The liquidated damages rate is N/A per day The maximum amount of liquidated damages for the whole contract is N/A percent of the final Contract Price.
<b>3.8.3</b>	The percentage % of Contract Price to be used for the calculation of Lack of performance
<b>5.1</b>	The assistance and exemptions provided to the Service Provider are: As Stated in the Schedule of Requirements
<b>6.2(a)</b>	The amount in Kenya Shillings_____.
<b>47.1</b>	The Service Provider shall provide Performance Security of <b>10%</b> of the Tender Sum in the form of an Unconditional Bank Guarantee.
<b>6.5</b>	Payment shall be made on a monthly basis within 30 days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within 30 days in the case of the final payment. The interest rate is - N/A -
<b>6.6.1</b>	Price adjustment is N/A in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are - N/A - (a) For local currency: - N/A - A <sub>L</sub> is _____ B <sub>L</sub> is _____ C <sub>L</sub> is _____ L <sub>mc</sub> and L <sub>oc</sub> are the index for Labor from _____ I <sub>mc</sub> and I <sub>oc</sub> are the index for _____ from _____ (b) For foreign currency - N/A - A <sub>F</sub> is _____ B <sub>F</sub> is _____ C <sub>F</sub> is _____ L <sub>mc</sub> and L <sub>oc</sub> are the index for Labor from _____ I <sub>mc</sub> and I <sub>oc</sub> are the index for _____ from _____
<b>7.1</b>	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 - N/A -

<b>9.1</b>	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.....

<b>Number of GCClause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
	<b>City/Town.....</b> <b>Email.....</b> <b>Telephone.....</b>
	<b>Signature of Tenderer..... Date .....</b>

## **SECTION VIII - CONTRACT FORMS**

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

**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 aftercalled "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  
sumbeing 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, suchrequest to be presented to the Guarantor before the expiry of the  
guarantee."

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

**Note: All italicized text (including footnotes) is for use in preparing this form and shall be  
deletedfrom 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 tenderers 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 Tenderers, arrange for a Contract between such Tenderer, 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



### FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of Employer] **Date:**  
\_\_\_\_\_ [Insert date of issue]

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words) is to be made against an advance payment guarantee.
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) upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a) has used the advance payment for purposes other than the costs of mobilization in respect of the goods; or
  - b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been  
Certified for payment, or on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, 2\_\_\_\_ whichever is earlier.  
Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request \_\_\_\_\_ to be presented to the Guarantor before the expiry of the guarantee.

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

