

KENYA BUREAU OF STANDARDS



TENDER DOCUMENT

FOR

PROCUREMENT OF PROVISION OF HOTEL AND CONFERENCE FACILITIES-FRAMEWORK AGREEMENT

KENYA BUREAU OF STANDARDS

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KEBS/T001/2021/2022

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INTRODUCTION

The Kenya Bureau of Standards hereinafter abbreviated as 'KEBS' is interested in Framework contracts for the provision of Hotel and Conference facilities for use in various company events that include including meetings, luncheons and in house company training programmes.

KEBS desires quality service delivery throughout the contract period and by the agreed standards. This would allow KEBS to access quality hotel, conference and accommodation facilities as and when need arises.

It is KEBS's intent to establish a **Three (3)** year contract with the supplier based on a periodic review of quality service.

Prospective Suppliers shall note that KEBS expects the following:

1. Highly competitive pricing-
KEBS expects that by eliminating the costs associated with annual tendering and evaluation and by eliminating the Supplier's costs associated with both the preparation of annual tenders and the review of technical requirements, significant savings can be realized resulting in highly competitive pricing
2. Ongoing exchange of industry trends-
An ongoing exchange of industry trends would provide the opportunity to look at savings associated with the use of alternate services or specification revisions
3. Quality service-
KEBS expects that quality problems would be virtually eliminated by working with the Supplier.
4. Working together as a team to improve the supply process both technically and administratively-The entire supply process would be continually reviewed to provide for cost reduction and efficiency.

SECTION I - INVITATION TO TENDER

DATE: AUGUST 2021

TENDER NAME: THREE (3) -YEAR FRAMEWORK CONTRACT FOR PROCUREMENT OF PROVISION OF HOTEL AND CONFERENCE FACILITIES-FRAMEWORK AGREEMENT

TENDER NO: KEBS/T001/2021/2022

- 1.1 The Kenya Bureau of Standards hereinafter referred to as KEBS invites bids from eligible Tenderers for provision of Hotel and conferencing facilities companywide. Interested eligible candidates may obtain further information from and inspect the tender documents from the **Chief Manager- Supply Chain Office at KEBS Centre, Popo Road, Off Mombasa Road, Behind Bellevue Cinema Nairobi**. A complete tender document may be obtained
- 1.2 **Obtaining tender documents.**
- 1.2.1 Tender documents detailing the requirements may be obtained by interested candidates on normal working days **between 9.00 a.m. and 4. 00p.m upon payment of a non-refundable fee** of Kshs. 1,000 as indicated in the tender document, the amount is payable in cash or bankers' cheque **or be downloaded free from KEBS website:**
- 1.3 Submission of Tender documents

Completed tender documents in plain sealed envelopes clearly marked "KEBS/T001/2021/2022: **PROCUREMENT OF PROVISION OF HOTEL AND CONFERENCE FACILITIES-FRAMEWORK AGREEMENT.**

should be addressed and delivered to:

**THE MANAGING DIRECTOR,
KENYA BUREAU OF STANDARDS,
POPO ROAD OFF MOMBASA
ROAD
P.O. BOX 54974 - 00200
NAIROBI.**

Or be deposited in the Tender Box at **KEBS Centre Main Reception** marked "TENDER BOX" so as to be received on or before **10.00 am on Tuesday, 28th September 2021.**

Tender opening will be carried out immediately thereafter at the **KEBS Centre Conference Room**. Tenderers or their representatives are free to attend the tender opening.

- 1.4 **Prices**
Prices quoted should be inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings or a freely convertible currency in Kenya and shall remain valid for one hundred and eighty two (182) days from the closing date of the tender.
Please note that prices indicated should be inclusive of all Taxes and VAT (A detailed breakdown on the same to be indicated).
- 1.5 **Pre-bid meeting**
There will be no pre-bid meeting.

NB: All Tenderers Are Advised to Read Carefully This Tender Document in Its Entirety Before Making Any Bid

MANAGING DIRECTOR

SECTION II - TENDER SUBMISSION CHECKLIST

PART A – TENDER SUBMISSION: FINANCIAL AND NON FINANCIAL PROPOSALS

VOLUME I - FINANCIAL PROPOSAL

This order and arrangement must be adhered to while submitting the tender and shall be considered as the Tender Submission Format, Financial.

Tenderers shall Indicate Page Submitted in The Tender Document against each item indicating that they have provided it.

No.	Item	Indicate Page Submitted in The Tender Document
1.	Duly completed Tenderer information form filled, signed and Stamped	
2.	Duly completed certificate of independent tender determination form filled, signed and Stamped	
3.	Price schedule duly filled, signed and stamped by the tenderer.	
4.	The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document. (For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).	
5.	Any other document or item required by the Tender Document that is financial. (The Tenderer shall specify such other documents or items it has submitted)	

NOTE: All these will form part of evaluation criteria Under **Section VI-Evaluation Criteria**

VOLUME II - NON-FINANCIAL PROPOSAL

This order and arrangement shall be considered as the Tender Submission Format, Non-Financial.

Tenderers shall Indicate Page Submitted in The Tender Document against each item indicating that they have provided it.

No.	Item	Indicate Page Submitted in The Tender Document
1	Submit 1 (one) Original and 1 (one) copy of the tender document and be addressed as stated in the invitation to tender	
2	Bidding documents must be paginated. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1,2,3. . n) w h e r e n is the last page	
3	Duly completed self-declaration that the person/tenderer is not debarred in the matter of the public procurement and asset disposal Act 2015 form filled, signed and Stamped (FORM SD1)	
4	Duly completed Self Declaration that the person/tenderer will not engage in any corrupt or fraudulent practice form filled, signed and Stamped (FORM SD2)	
5	Duly completed Declaration and commitment to the code of ethics form filled, signed and Stamped	
6	Copy of Company or Firm's Registration Certificate	
7	Copy of Valid Tax Compliance Certificate	
8	Duly filled, signed and stamped Tenderer Eligibility Confidential Business Questionnaire Form	
9	Certificate of Confirmation of Directors and Shareholding (C.R. 12) or its equivalent for foreign tenderers	
10	Valid Business Permit/license	
11	Valid Certificates recognized in the Hotel and restaurant Industry operations	
12	Names with full contact as well as physical addresses of previous customers of similar services and required number of reference letters from previous customers	
13	Schedule of Requirements duly filled indicating services offered	
14	Human Resource Experience and Qualification Form	
15	Any other document or item required by the Tender Document that is non-financial. (The Tenderer shall specify such other documents or items it has submitted)	

NOTE: All these will form part of evaluation criteria Under **Section VI-Evaluation Criteria**

***NOTES TO TENDERERS**

1. Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan Registered Tenderers must provide a valid Tax Compliance Certificate.
2. All Kenyan Registered Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).
3. Foreign Tenderers must provide equivalent documents from their country of origin as regards Tax Compliance and PIN certificates OR statements certifying that the equivalent documentation is not issued in the Tenderer's country of origin. The Statement(s) that equivalent documentation is not issued by the Tenderer's country should be original and issued by the Tax authorities in the Tenderer's country of origin.
4. A non-financial document or item includes one that does not contain or reveal the tender price(s) of the services and the required audited financial statements.
5. A financial document or item includes one that contains all information on the tender price(s) of the services, and the required audited financial statements.

SECTION III - INSTRUCTIONS TO TENDERERS (ITT)

3.1 Definitions

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Date of Tender Document” shall be the **start date** specified on the KEBS tender document.*
- c) *“Day” means calendar day and “month” means calendar month.*
- d) *“KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“KENAS” wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*
- f) *“PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
- g) *Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- h) *“The Procuring Entity” means Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KEBS).*
- i) *“The Tenderer” means the person(s) submitting its Tender in response to the Invitation to Tender.*
- j) *Where there are two or more persons included in the expression the “Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- k) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- l) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*
- m) *KEBS’s “authorised person” shall mean its MD who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KEBS staff delegated with such authority.*
- n) *Citizen contractors-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
- o) *Local contractors- a firm shall be qualified as a local contractor if it is registered in Kenya.*

3.2 Eligible Tenderers

3.2.1 A tenderer is eligible to bid for this contract only if the tenderer satisfies the following criteria—

- (a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- (b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- (c) the tenderer, if a member of a regulated profession, has satisfied all the

- professional requirements;
- (d) the tenderer and his or her sub-contractor, if any, is not debarred;
- (e) the tenderer has fulfilled tax obligations;
- (f) the tenderer has not been convicted of corrupt or fraudulent practices;
- and
- (g) is not guilty of any serious violation of fair employment laws and practices.

In addition, this Invitation to Tender is open to all Tenderers eligible as described in the *Appendix to Instructions to Tenderers*.

Successful Tenderers shall supply the goods in accordance with this tender and the ensuing contract.

- 3.2.2 In addition the tenderer shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or sub-contractor has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.1 above.
- 3.2.5 Despite the provisions of section 3.2.3 and 3.2.4, a tenderer having a substantial or controlling interest shall be eligible to bid where—
 - (a) such tenderer has declared any conflict of interest; and
 - (b) performance and price competition for that good, work or service is not available or can only be sourced from that tenderer.
- 3.2.6 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.2.3 is also ineligible to participate in the tender. In addition,

a Cabinet Secretary shall include the President, Deputy President or the Attorney General of GoK.
- 3.2.7 Tenderers shall provide the qualification information statement that the Tenderer (including subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KEBS to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation to Tender.
- 3.2.8 Tenderers shall not be under declarations as prescribed at Section IX.
- 3.2.9 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section IX.
- 3.2.10 Those that are under the Declaration as prescribed at Section IX whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

3.3 Joint Venture

- 3.3.1 Tenders submitted by a joint venture of two or more firms, as partners shall comply with the following requirements: -
 - a) the Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
 - b) one of the partners shall be nominated as being lead contractor, and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners.

c) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows: -

(i.) for local bidders, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.

(ii.) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.

d) the lead contractor shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead contractor.

3.3.2 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.3.1 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).

3.3.3 A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

3.4 Cost of Tendering

3.4.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KEBS will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

3.5 Contents of the Tender Document

3.5.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -

- a) *Invitation to Tender*
- b) *Tender Submission Checklist*
- c) *Instructions to Tenderers*
- d) *Appendix to Instructions to Tenderers*
- e) *Schedule of Requirements*
- f) *Project Implementation Schedule*
- g) *Price Schedule for Services*
- h) *Evaluation Criteria*
- i) *General Conditions of Contract*
- j) *Special Conditions of Contract*
- k) *Tender Form*
- l) *Confidential Business Questionnaire Form*
- m) *Tender Security Form*
- n) *Self-declaration Forms*
- o) *Framework contract*
- p) *Performance Security Form*
- q) *Details of Service*
 - (i.) *General Requirements*
 - (ii.) *Specific Details of Services*

3.5.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

3.5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

3.6 Clarification of Documents

A prospective Tenderer requiring any clarification of the Tender Document may notify the Chief Manager Supply Chain in writing and ensure receipt is acknowledged at KEBS's Physical address indicated on the Tender Document. KEBS will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KEBS. Written copies of KEBS's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KEBS's tendering portal.

3.7 Amendment of Documents

3.7.1 At any time prior to the deadline for submission of Tenders, KEBS, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.

3.7.2 All prospective Tenderers that have registered in the portal for the Tender will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.

3.7.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KEBS, at its discretion, may extend the deadline for the submission of Tenders.

3.8 Language of Tender

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KEBS, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be accompanied by an accurate English translation of the relevant passages, in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

3.9 Documents Comprising the Tender

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and a Price Schedule completed in compliance with paragraphs 3.2, 3.10, 3.11 and 3.12.*
- b) *Documentary evidence established in accordance with paragraph 3.13 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.*

- c) *Documentary evidence established in accordance with paragraph 3.14 that the services and any ancillary thereto to be provided by the Tenderer conform to the tender documents, and,*
- d) *Tender Security furnished in accordance with paragraph 3.17*
- e) *A detailed list of previous customers as prescribed for similar services on tender and their contact addresses shall be submitted with the Tender for the purpose of reference, or for evaluation where the Details of Service so dictate.*
- f) *And all other documents indicated in Section II (Tender Submission Checklist)*

3.10 Tender Form

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the services to be performed, a brief description of the services, quantity (where applicable), and prices amongst other information required.

3.11 Tender Prices

- 3.11.1 The Tenderer shall indicate on the appropriate Price Schedule, the unit prices (where applicable) and total tender price of the services it proposes to provide under the contract.
- 3.11.2 Prices indicated on the Price Schedule shall be of all costs for the services including insurances, duties, Value Added Tax (V.A.T) and other taxes payable. No other basis shall be accepted for evaluation, award or otherwise.
- 3.11.3 Tender prices to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.
- 3.11.4 A price that is derived by a disclosed incorporation or usage of an international accepted standard formula shall be acceptable within the meaning of this paragraph.

3.12 Tender Currencies

- 3.12.1 For services that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Price Schedule of Services.
- 3.12.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. *(Please visit the Central Bank of Kenya website).*

3.13 Tenderer's Eligibility and Qualifications

- 3.13.1 Pursuant to paragraph 3.2, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the contract if its Tender is accepted.
- 3.13.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KEBS's satisfaction –
 - a) *that, in the case of a Tenderer offering to perform the services under the contract which the Tenderer is not the Principal, the Tenderer has been duly authorized by the Manufacturer, Principal or Producer to provide the services. The authorization shall strictly be in the form and content as prescribed in the Manufacturer's or Principal's Authorization Form in the Tender Document*
 - b) *that the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide the documents as specified in the Appendix to Instructions to*

Tenderers including a current Tax Compliance Certificate issued by the relevant tax authorities.

- c) that the Tenderer has the technical and production capability necessary to perform the contract.*
- d) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, spare parts and stocking obligations prescribed in the Conditions of Contract and or in the Details of Service.*
- e) that the Tenderer is duly registered and is a current member of a recognized body or institution accredited and or pertaining to that service.*

3.13.3 The Tenderer will furnish KEBS with a copy of the accreditation or recognition certificate as applicable. KEBS reserves the right to subject the certificate to authentication.

3.13.4 Tenderers with a record of unsatisfactory or default in performance obligations in any contract shall not be considered for evaluation or award. For the avoidance of doubt, this shall include any Tenderer with unresolved case(s) in its obligations for more than two (2) months in any contract.

3.14 Conformity of Services to Tender Documents

3.14.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document of all services that the Tenderer proposes to perform under the contract.

3.14.2 The documentary evidence of conformity of the services to the Tender Document

- a) duly completed Statement of Compliance to KEBS's Details of Service demonstrating substantial responsiveness of the service to those Details or, a statement of deviations and exceptions to the provisions of the Details of Service.*

3.14.3 For purposes of the documentary and other evidence to be furnished pursuant to sub-paragraphs 3.14.1, 3.14.2 and paragraph 3.15, the Tenderer shall note that standards for hotel and conferencing services, designated by KEBS in its Details of Service are intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards in its Tender, provided that it demonstrates to KEBS's satisfaction that the substitutions ensure substantial equivalence to those designated in the Details of Service.

3.15 Demonstration(s), Inspection(s) and Test(s)

3.15.1 Where required in the tender, all Tenderers shall demonstrate ability of performance of the required service in conformity with the Details of Services.

3.15.2 KEBS or its representative(s) shall have the right to inspect/ test the Tenderer's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include the quality management system. KEBS's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test.

3.15.3 KEBS shall meet its own costs of the inspection/ test. Where conducted on the premises of the Tenderer(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KEBS.

3.15.4 Demonstration, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests. This Report will be considered at time of evaluation and or award.

3.17 Tender Security

- 3.17.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the Appendix to Instructions to Tenderers. The Original Tender Security, in a clearly labelled envelop, shall be deposited in the on or before the opening date and time and receipt acknowledged by KEBS evidenced by a stamped copy.
- 3.17.2 The tender security shall be either one or a combination of the following: -
- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.
 - b) For Local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KEBS as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
 - c) For Foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KEBS as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
 - d) An original Guarantee by a deposit taking Microfinance Institution, Sacco Society, Youth Enterprise Development Fund or the Women Enterprise Fund, that is strictly in the form and content as prescribed in the Tender Security Form
- 3.17.3 The tender security is required to protect KEBS against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.17.10.
- 3.17.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee or a Standby Letter of Credit issued on behalf of local bidders, should be from a commercial bank licensed by the Central Bank of Kenya. A Tender Security in form of a Standby Letter of Credit issued on behalf of foreign bidders by foreign banks, should be confirmed by a commercial bank licensed by the Central Bank of Kenya.
- 3.17.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.17.6 KEBS shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KEBS. The period for response shall not exceed five (5) days from the date of KEBS's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.17.7 Any Tender not secured in accordance with this paragraph will be rejected by KEBS as non-responsive, pursuant to paragraph 3.26.
- 3.17.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -

- a) *the procurement proceedings are terminated*
- b) *KEBS determines that none of the submitted Tenders is responsive*
- c) *a contract for the procurement is entered into.*

3.17.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract, pursuant to paragraph 3.39 and furnishing an authentic Performance Security, pursuant to paragraph 3.40.

3.17.10 The Tender Security shall be forfeited –

- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
- b) *if the Tenderer fails to enter into a written contract in accordance with paragraph 3.39*
- c) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.40*
- d) *if the Tenderer fails to extend the validity of the tender security where KEBS has extended the tender validity period in accordance with paragraph 3.18.*

3.18 Validity of Tenders

3.18.1 Tenders shall remain valid for One Hundred & Eighty-two (182) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KEBS, pursuant to paragraph 3.23. A Tender that is valid for a shorter period shall be rejected by KEBS as non-responsive.

3.18.2 In exceptional circumstances, KEBS may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.17 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

3.19 Alternative Offers

Only main offers shall be considered, as alternative offers are not acceptable.

3.20 Preparation and Signing of the Tender

3.20.1 The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.

3.20.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons: -

- a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
- b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*

In either case above, the Power of Attorney shall accompany the Tender.

3.20.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.

3.20.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.

3.20.5 KEBS will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.20.

3.20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KEBS as non-responsive, pursuant to paragraph 3.26.

3.21 Deadline for Submission of Tenders

- 3.21.1 Tenders must be received by KEBS by the date and time specified in KEBS's tendering portal in PDF form.
- 3.21.2 KEBS may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.7, in which case all rights and obligations of KEBS and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

3.22 Modification and Withdrawal of Tenders

- 3.22.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KEBS prior to the deadline prescribed for submission of tenders.
- 3.22.2 No Tender may be modified after the deadline for submission of Tenders.
- 3.22.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KEBS extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KEBS extends the initial validity period.

3.23 Opening of Tenders

- 3.23.1 KEBS shall open all Tenders promptly at the date and time specified in the KEBS tender document and at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.23.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KEBS, at its discretion, may consider appropriate, will be announced at the opening.
- 3.23.3 At the Tender opening, tender prices, discounts, and such other details as KEBS, at its discretion, may consider appropriate will be read out.
- 3.23.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

3.24 Process to be Confidential

- 3.24.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.24.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KEBS notifies the successful bidder(s). In any event, official disclosure by KEBS of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3.24.3 Any effort by a Tenderer to influence KEBS or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

3.25 Clarification of Tenders and Contacting KEBS

- 3.25.1 To assist in the examination, evaluation and comparison of Tenders KEBS may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted.

- 3.25.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KEBS within five (5) days from the date of KEBS's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.
- 3.25.3 Save as is provided in this paragraph and paragraph 3.22 above, no Tenderer shall contact KEBS on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.
- 3.25.4 Any effort by a Tenderer to influence KEBS in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement may result in the disqualification of the Tenderer.

3.26 Preliminary Evaluation and Responsiveness

- 3.26.1 Prior to the detailed Technical and Financial evaluation, KEBS will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KEBS's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.26.2 KEBS will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section VI Evaluation Criteria.
- 3.26.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KEBS and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

3.27 Minor Deviations, Errors or Oversights

- 3.27.1 KEBS may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services set out in the Tender Document.
- 3.27.2 Such minor deviation -
3.27.2.1 shall be quantified to the extent possible,
3.27.2.2 shall be taken into account in the evaluation process, and,
3.27.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KEBS.
- 3.27.3 KEBS may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.28 Technical Evaluation and Comparison of Tenders

- 3.28.1 KEBS will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Details of Services set out in the Tender Document and as per the prescribed Evaluation Criteria.
- 3.28.2 The Operational Plan is a critical aspect of the Tender. KEBS requires that the Services shall be performed at the time specified in the Schedule of Requirements. KEBS's

evaluation of a tender will also take into account the Operational Plan proposed in the tender. Tenderers offering to perform longer than KEBS's required delivery time will be treated as non-responsive and rejected.

3.29 Financial Evaluation

- 3.29.1 The financial evaluation and comparison shall be as set out in the Summary of Evaluation Process. The comparison shall be
- a) of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the Services.
 - b) deviations in Payment Schedule from that specified in the Special Conditions of Contract
- 3.29.2 Where other currencies are used, KEBS will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.

3.30 Preferences

- 3.30.1 Subject to availability and realization of the applicable international or local standards, only such manufactured articles, materials or supplies wholly mined and produced in Kenya shall be subject to preferential procurement.
- 3.30.2 Despite the above provisions, preference shall be given to —
- (a) manufactured articles, materials and supplies partially mined or produced in Kenya or where applicable have been assembled in Kenya; or
 - (b) firms where Kenyans are shareholders.
- 3.30.3 The threshold for the provision under 3.30.2 (b) shall be above fifty-one percent of Kenyan shareholders.
- 3.30.1 In the evaluation of tenders, exclusive preference shall firstly be given to citizen contractors where the amount of the tender as evaluated is below Ksh. 500 Million in respect of works, goods and services.
- 3.30.2 Where a person is entitled to more than one preference scheme, the scheme with the highest advantage to the person shall be applied.
- 3.30.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued **and signed** by either the Registrar of Companies or Registrar of Business Names. This certificate must not be more than three (3) months old from the Date of the Tender Document. KEBS reserves the right to subject the certificate to authentication.

3.31 Debarment of a Tenderer

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

3.32 Confirmation of Qualification for Award

- 3.32.1 KEBS may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 3.32.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to paragraph 3.13 as well as confirmation of such other information as KEBS deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.
- 3.32.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KEBS will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

3.33 Award of Contract

- 3.33.1 KEBS will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.
- 3.33.2 Award will be done as indicated in the **Appendix to Instructions to Tenderers**.

3.34 Termination of Procurement Proceedings

- 3.34.1 KEBS may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 3.34.2 KEBS shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

3.35 Notification of Award

- 3.35.1 Prior to the expiration of the period of tender validity, KEBS shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.35.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.
- 3.35.3 Simultaneously, and without prejudice to the contents of paragraph 3.25, on issuance of Notification of Award to the successful Tenderer, KEBS shall notify each unsuccessful Tenderer.
- 3.38.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KEBS prior to the expiry of its stated validity period.

3.36 Signing of Contract

- 3.36.1 At the same time as KEBS notifies the successful Tenderer that its Tender has been accepted, KEBS will send the Tenderer the Contract Agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.
- 3.36.2 Within fourteen (14) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KEBS within that period of fourteen (14) days.

- 3.36.3 KEBS shall sign and date the Contract in the period between not earlier than fourteen (14) days from the date of notification of contract award. Further, KEBS shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.36.
- 3.36.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KEBS shall notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.36.5 Paragraph 3.33 together with the provisions of this paragraph 3.35 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.35.3.

3.37 Performance Security

- 3.37.1 Within fourteen (14) days of the date of notification of award from KEBS, the successful Tenderer shall furnish KEBS with a Performance Security which shall be either one or a combination of the following:
- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
 - b) For Local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KEBS as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
 - c) For Foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KEBS as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
- 3.37.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.37.3 The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.
- 3.37.4 KEBS shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KEBS. The period for response shall not exceed three (3) days from the date of KEBS's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- 3.37.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KEBS may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.37.6 Paragraph 3.35, 3.36 together with the provisions of this paragraph 3.37 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.37.5.

3.38 Corrupt or Fraudulent Practices

- 3.38.1 KEBS requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -
- a) *"Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of public official in the procurement process or in contract execution;*

b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KEBS, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KEBS of the benefits of free and open competition.*

3. 38.2 KEBS will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.

3. 38.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

No	ITT Reference Clause	Particulars of Appendix
1.	3.2.1 Eligible Tenderers	Tender is open to all local hotel and conference facilities service providers who are registered in Kenya.
2.	3.17 Tender Form	1) The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document.
3.	3.19 Tender Currencies	For avoidance of doubt, the currency of the tender must be in Kenya shillings local bidders
4.	3.13 Documents of evidence of eligibility and qualification	<i>Confidential Business questionnaire, copy of VAT Registration Certificate, Copy of PIN Registration certificate, KRA Tax Compliance certificate.</i>
5.	3.24 Tender security	<i>Not required in this tender.</i>
6.	3.25 Validity of Tenders	The Tender validity period: Must remain valid for 182 days after the Tender submission deadline
7.	3.27 Number of sets of and Tender format	The tender document shall be properly bound and paginated (each page of the tender submission must have a number and the numbers must be in chronological order), seal and submit two copies (one original and one copy) of the tender, clearly marking each “Original Tender” and “Copy of Tender,” as appropriate. The two shall then be sealed in an outer envelope marked with the words “Do Not Open Before” on or before Tuesday 28th September 2021 at 1000hrs (East Africa Time).
8.	3.20 Preparation and signing of the Tender	The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
9.	3.23 Opening of Tender	<p>A tender package or container that cannot fit in the tender box shall be received as follows:</p> <p>At the Main Reception, Kenya Bureau of Standards Centre, Off Mombasa Road, Behind Bellevue Cinema Nairobi.</p> <p>For <u>Tender submission purposes</u></p> <p>Completed tenders must be delivered to the address below:</p> <p>The Managing Director, Kenya Bureau of Standards, Popo Road Off Mombasa Road P.O. Box 54974 – 00200 Nairobi.</p>

		<p>Or be deposited in the TENDER Box at KEBS Centre Main Reception marked “TENDER BOX” so as to be received on or before 10.00 am on TUESDAY 28TH SEPTEMBER 2021.</p> <p>The Tender opening shall take place at:</p> <p>Kenya Bureau of Standards, Popo Road off Mombasa Road P.O. Box 54974 - 00200 Nairobi.</p> <p>Tender opening will be carried out immediately thereafter at the KEBS Centre Conference Room. Tenderers or their representatives are free to attend the tender opening. At 10.00 am on TUESDAY 28TH SEPTEMBER 2021.</p>
10.	3.41 Cost of tendering	<p>Cost of tendering</p> <p>The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KEBS will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.</p>
11.	3.42 Award of contract	<p><i>This shall be a framework contract and service providers shall offer rates of service, the services shall be as and when required, Each service provider is urged to offer the best rate in the market. All those who shall meet the mandatory requirements and the Technical requirements shall be awarded. Targeting a minimum of seven (7) service providers in each region as per section 114(1)(c) of the PPAD Act 2015.</i></p>
12.	3.6 Clarification of Tender	<p>Clarification of tender document</p> <p>A prospective tenderer requiring any clarification of the tender document may notify KEBS in writing through;</p> <ol style="list-style-type: none"> 1. procurement@kebs.org 2. info@kebs.org 3. ndinyaj@kebs.org 4. pnganga@kebs.org <p>Clarification of tenders requested by the tenderer must be received by KEBS not later than seven (7) days prior to the deadline for closing of tenders.</p> <p>KEBS shall reply to any clarifications sought by the tenderer within three (3) working days excluding weekends of receiving the request to enable the tenderer to make timely submission of its tender.</p> <p>Price for the Hard Copy of the Tender document will be charged Kshs.1000.00. soft copies downloaded will be issued free of charge from KEBS website at www.kebs.org</p>

SECTION IV - SCHEDULE OF REQUIREMENTS

Part A - Brief Schedule of Services Required

TENDER NO. KEBS/T001/2021-2022: FOR PROCUREMENT OF HOTEL AND CONFERENCE SERVICES COMPANYWIDE.

This tender covers the procurement of hotel and conference services companywide. The tender Hotel services shall be for a period 3-years contract framework.

The contract entails provision of the following:

No	Description			
1.	Provision of Accommodation	Bed and breakfast per person	Full Board per person	Half Board per person
2	Provision of Conference	Per person Full Day/Per person	Half a day per person	Public Address System & LCD
3	Provision of Eatery Services Only	Breakfast per person Only	Buffet Lunch per person Only	Buffet Dinner per person Only
4	Category of Hotel (Star Levels)			

The table above gives the minimum specifications for services to be provided. The tenderer is required to provide the clause by clause response to the specifications. The evaluation and award shall be based on responsiveness and compliance with the evaluation criteria (preliminary, technical and financial)

CATEGORY OF HOTEL (STAR LEVEL)-TICK WHERE APPLICABLE

One Star	Two Star	Three Star	Four Star	Five Star	Other (Indicate)

INDICATE COUNTY OF OPERATION

COUNTY (e.g. Nairobi county, Kilifi County)	
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SECTION V - PRICE SCHEDULE FOR SERVICES

NO	DESCRIPTION	DETAILS	Unit Cost Kshs VAT Excl.	Unit Cost Kshs VAT Inclusive	Total Cost Kshs (VAT Inclusive)
1.	Provision of Accommodation services	a) Full Board per person			
		b) Bed and Breakfast only per person			
		c) Half Board per person			
2.	Provision of Conference facilities	a) Full Day per Person <i>(Inclusive of Water, two teas, Lunch, Writing Materials)</i>			
		b) Half day per person <i>(Inclusive of Water, two teas, Lunch, Writing Materials)</i>			
	Related Additional Services	Public Address System per day			
		LCD(Projector) per day			
		Printing Services			
		<ul style="list-style-type: none"> • Color • Black & White 			
	Provision of Eatery facilities only	Buffet Lunch only per person per day			
		Buffet Dinner Only Per Person per day			
		Full Breakfast only per person per day			

NOTE*

- For any service omitted, please indicate, and provide details on the price schedule.
- If you are a Group of Hotels and have different rates for different Branches, please provide a price schedule for each hotel in your group.
- Clear identify whether bidding as Group of hotels or individual hotel.
- Please indicate the county of operation.

SECTION VI - EVALUATION CRITERIA

Evaluation of duly submitted tenders will be conducted along the following stages: -

6.1 Part 1 - Preliminary Evaluation Under Paragraph 3.28 of the ITT. These are mandatory requirements. This shall include confirmation of the following: -

6.1.1 Submission of Declaration Form(s) duly completed and signed.

6.1.2 Submission and considering Tender Form duly completed and signed.

6.1.3 Submission and considering the following: -

6.1.4.1 For Local Tenderers

a) Company or Firm's Registration Certificate

b) PIN Certificate.

c) Valid Tax Compliance Certificate.

6.1.4.2 For Foreign Tenderers

a) Company or Firm's Registration Certificate

b) PIN Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.

c) Valid Tax Compliance Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.

6.1.5 That the Tender is valid for the period required.

6.1.6 Submission and considering the Confidential Business Questionnaire: -

a) Is fully filled.

b) That details correspond to the related information in the bid.

c) That the Tenderer is not ineligible as per paragraph 3.2 of the ITT.

6.1.7 Submission and considering the Certificate of Confirmation of Directors and Shareholding CR12 if any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common as per paragraph 3.2 and 3.41 of the ITT.

Tenders will proceed to the Technical Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under Paragraph.

6.2 Part II - Technical Evaluation Criteria Under Paragraph 3.30 of the ITT.

6.2.1 Submission of Catalogues and/or Brochures.

6.2.2 Submission of a copy of accreditation certificate for hospitality sector or membership of a recognized or accredited organization.

6.2.3 List of previous customers.

6.2.4 Schedule of Requirements duly filled indicating service offered

6.2.5 Category of Hotel (Star Levels).

Tenders will proceed to the Financial Stage only if they qualify in compliance with Part II above, Technical Evaluation under Paragraph

6.3 Part III – Financial Evaluation Criteria Under Paragraph 3.31 of the ITT. These are mandatory requirements.

6.3.1 This will include the following: -

- a) *Confirmation of and considering Price Schedule duly completed and signed.*
- b) ** Checking submission of audited financial statements required which must be those that are reported within eighteen (18) calendar months of the date of the tender document.*
(For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).
- c) *Conducting a financial comparison, including conversion of tender currencies into one common currency,*
- d) *Taking into account the cost of any deviation(s) from the tender requirements,*
- e) *Considering information submitted in the Confidential Business Questionnaire against other information in the bid including: -*
 - a) *Declared maximum value of business*
 - b) *Shareholding and citizenship for preferences where applicable*

6.4 The Successful Tenderer shall be the one whose tender is responsive and compliance with the evaluation criteria (preliminary, technical and financial)

***NOTES: -**

1. For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).
2. Total tender value means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the services it offers to provide.
3. For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original.

SECTION VII – GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KEBS's guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

7.1 Definitions

In this contract, the following terms shall be interpreted as follows: -

- a) *“Day” means calendar day and “month” means calendar month.*
- b) *“The Contract” means the agreements entered into between KEBS and the Contractor, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“The Contract Price” means the price payable to the Contractor under the contract for the full and proper performance of its contractual obligations.*
- d) *“The Services” means services or art thereof to be provided by the Contractor and includes all of the materials and incidentals, which the Contractor is required to perform and provide to KEBS under the contract.*
- e) *“The Procuring Entity” means The Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KEBS).*
- f) *“The Contractor” means the individual or firm providing the services under this contract or his/ her/ its permitted heir(s), personal representative(s), successor(s) or permitted assign(s) where the context so admits. For the avoidance of doubt this shall mean the successful Tenderer(s) pursuant to the tender.*
- g) *Wherever used in the contract, “performance” shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the services have been performed in accordance with the Contract and where KEBS does not signify its approval to the Contractor, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*
- h) *Supplier Rating Performance Scheme (SPRS) means the continuous evaluation of the Supplier's performance of the contract based on the parameters of timely delivery, quality of service, frequency of communication, timely response, innovation, dispute resolution.*

7.2 Application

These General Conditions shall apply to the extent that provisions of other parts of the contract do not supersede them.

7.3 Standards

The Services supplied under this contract shall conform to the standards mentioned in the Details of Service.

7.4 Supplier Performance Rating Scheme

- 7.4.1 KEBS shall use a Supplier Performance Rating Scheme (SPRS) to measure the annual performance of the Supplier's obligations and its conduct of the contract.

- 7.4.2 The Scheme will be updated periodically commencing with the date of execution of the contract by both parties. KEBS shall provide the Supplier with a copy of the SPRS report.
- 7.4.3 KEBS shall consider the Supplier's overall performance at the end of the performance period.
- 7.4.4 At the request of either party, the parties shall discuss and conclude deliberations on the annual SPRS report. At any such meetings and/or for the purposes of the deliberations, KEBS Supply Chain – Procurement Department shall appoint the Chairperson as well as the Secretariat.

7.5 Use of Contract Documents and Information

- 7.5.1 The Contractor shall not, without KEBS's prior written consent, disclose the contract, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KEBS in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract.
- 7.5.2 The Contractor shall not, without KEBS's prior written consent, make use of any document or information enumerated in clause 7.5.1 above.
- 7.5.3 Any document, other than the contract itself, enumerated in clause 7.5.1 shall remain the property of KEBS and shall be returned (including all copies) to KEBS on completion of the Contractor's performance under the contract if so required by KEBS.

7.6 Patent Rights

The Contractor shall indemnify KEBS against all third-party claims of infringement of patent, trademark, or industrial design rights arising from provision of the services or any part thereof.

7.7 Performance Security

- 7.7.1 Within fourteen (14) days of the date of the notification of contract award, the Contractor shall furnish to KEBS the Performance Security which shall be either one or a combination of the following:-
- a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
 - b) Confirmed Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the successful Tenderer. Certain mandatory conditions of the LC shall be as prescribed in the Performance Security Form (LC) in the Tender Document.
- 7.7.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 7.7.3 The Performance Security shall be the sum of ten percent (10%) of the contract price. It shall be in the currency of the contract price.
- 7.7.4 Failure of the Contractor to furnish the Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KEBS may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 7.7.5 The proceeds of the Performance Security shall be payable to KEBS as compensation for any loss resulting from the Contractor's failure to comply with its obligations in accordance with the contract without KEBS being required to demonstrate the loss it has suffered.
- 7.7.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Contractors.
- 7.7.7 KEBS shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Contractor to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KEBS. The period for response shall not exceed three (3) days from

the date of KEBS's query. Should there be no conclusive response by the Bank within this period, such Contractor's Performance Security may be deemed as invalid and the Contract nullified, unless information to the contrary is received by KEBS two (2) days before the expiry of the Contractor's Tender Security.

- 7.7.8 Subject to the provisions of this contract, the Performance Security will be discharged by KEBS and returned to the Contractor not earlier than thirty (30) days following the date of completion of the Contractor's obligations under the contract, including any warranty obligations, under the contract.

7.8 Inspection and Tests

- 7.8.1 KEBS or its representative(s) shall have the right to inspect and/or to test the services to confirm their conformity to the contract specifications. KEBS shall notify the Contractor in writing in a timely manner, of the identity of any representative(s) retained for these purposes. Such visit and or inspection/ test shall in no way prejudice KEBS's rights and privileges.
- 7.8.2 In appropriate circumstances, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests.
- 7.8.3 The inspections and tests may be conducted in the premises of the Contractor or its subcontractor(s). If conducted on the premises of the Contractor or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KEBS.
- 7.8.4 Should any inspected or tested services fail to conform to the specifications, KEBS may reject the Service(s), and the Contractor shall either replace or remedy the rejected services or make alterations necessary to meet specification requirements free of cost to KEBS.
- 7.8.5 KEBS's right to inspect, test and where necessary, reject the services after provision shall in no way be limited or waived by reason of the services having previously been inspected, tested and passed by KEBS or its representative(s) prior to the services performance / delivery.
- 7.8.6 For the avoidance of doubt, any acknowledgement by KEBS on the Contractor's or sub-contractor's document shall not be conclusive proof or evidence of satisfactory performance without duly authorized approval by KEBS.
- 7.8.7 Nothing in this clause 7.7 shall in any way release the Contractor from any warranty or other obligations under this Contract.

7.9 Packaging and Labelling

- 7.9.1 Where applicable, the Contractor shall provide such packaging of the material and equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.
- 7.9.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Contract and particular Order.
- 7.9.3 The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.
- 7.9.4 The materials and equipment shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.
- 7.9.5 The Contractor shall enclose a packing list in each package and all documents relating to the Order shall show the Tender reference number and name against the items or package indicating the supplier or supplier's agent as the consignee.

7.10 Delivery and Documents for Materials/ Equipment

7.9.1 Where applicable, delivery of the materials/ equipment shall be made by the Contractor to the place and in accordance with the terms specified by KEBS in its Schedule of Requirements or as may be otherwise indicated.

7.9.2 The Contractor shall notify KEBS of the full details of the delivered materials/ equipment by delivering the materials/ equipment with a full set of the following documents: -

- a) *Contractor's invoice showing the materials/ equipment description, quantity, unit price and total price*
- b) *Delivery note*
- c) *Packing list identifying contents of each package*

7.10.3 It is the responsibility of the Contractor to ensure that the delivery documents are received by KEBS at the designated delivery point at the time of delivery.

7.10 Insurance

7.11.1 The Contractor shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services under the contract.

7.11.2 The Contractor shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KEBS*) indemnify and keep indemnified KEBS against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

7.12 Payment

7.12.1 Payments shall be made promptly by KEBS and shall not be less than thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents or as otherwise prescribed in the contract.

7.12.2 Payment shall primarily be through KEBS's cheque or Real Time Gross Settlement (*RTGS*) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KEBS, shall form part of the documents to be presented to KEBS before any payment is made.

7.12.3 A Contractor who requests for a Letter of Credit (*hereinafter abbreviated as LC*)—

- a) *Shall meet the LC bank charges levied by its bank while KEBS shall meet the LC bank charges levied by its bank.*
- b) *Any extension and or amendment charges and any other costs that may result from the Contractor's delays, requests, mistakes or occasioned howsoever by the Contractor shall be to the Beneficiary's account.*
- c) *The maximum number of extensions and amendments shall be limited to two (2).*
- d) *Notwithstanding sub-clause 7.11.3 (a), should the Contractor require a confirmed LC, then all confirmation and any other related charges levied by both the Contractor's and KEBS's bank shall be to the Beneficiary's account.*
- e) *The LC shall be opened only for the specific Order within the validity period of the contract.*
- f) *LCs shall be partial for partial performance or full for whole performance as per the contract.*

g) *The Contractor shall be required to submit a proforma invoice for each lot*

for use in the placement of order and opening of the LC. The proforma invoice shall be on total all-inclusive costs basis.

h) *A copy of the Performance Security, stamped and certified as authentic by KEBS, whose expiry date should not be less than sixty (60) days from the LC expiry date, shall form part of the documents to be presented to the Bank before any payment is affected.*

7.12.4 KEBS shall have the sole discretion to accept or decline any Contractor's payment request through Letters of Credit without giving any reason for any decline.

7.13 Interest

Interest payment by KEBS is inapplicable in the contract.

7.14 Prices

7.14.1 Subject to clause 7.14 herein below, prices charged by the Contractor for services performed under the contract shall be fixed for the period of the contract with no variations.

7.14.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

7.15 Variation of Contract

KEBS and the Supplier may vary the contract only in accordance with the following: -

- a) *the quantity variation of services shall not exceed twenty percent (20%) of the original contract quantity.*
- b) *The cumulative value variation shall not exceed twenty five percent (25%) of the original contract value.*
- c) *the quantity variation must be executed within the period of the contract.*

7.16 Assignment

The Contractor shall not assign in whole or in part its obligations to perform under this contract, except with KEBS's prior written consent.

7.17 Subcontracts

7.17.1 The Contractor shall notify KEBS in writing of all subcontracts awards under this contract if not already specified in the tender. Such notification, in the original tender or obligation under the Contract shall not relieve the Contractor from any liability or obligation under the Contract.

7.17.2 In the event that an award is given and the contract is sub-contracted, the responsibility and onus over the contract shall rest on the Contractor who was awarded.

7.18 Termination of Contract

7.18.1 KEBS may, without prejudice to any other remedy for breach of contract, by written notice sent to the Contractor, terminate this contract in whole or in part due to any of the following: -

- a) *if the Contractor fails to perform any or all of the services within the period(s) specified in the contract, or within any extension thereof granted by KEBS.*
- b) *if the Contractor fails to perform any other obligation(s) under the contract.*

- c) *if the Contractor, in the judgment of KEBS has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*
- e) *if the Contractor becomes insolvent or bankrupt*
- f) *if the Contractor has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking or assets, or if the Contractor suffers any other analogous action in consequence of debt.*
- g) *if the Contractor abandons or repudiates the Contract.*

7.18.2 In the event that KEBS terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered or not rendered, and the Contractor shall be liable to KEBS for any excess costs for such similar services and or any other loss PROVIDED that the Contractor shall not be so liable where the termination is for convenience of KEBS.

7.18.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.

7.18.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

7.19 Liquidated Damages

Notwithstanding and without prejudice to any other provisions of the contract, if the Contractor fails to perform any or all of the services within the period specified in the contract, KEBS shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to 0.5% of the performance price per day of delay of the delayed due services up to a maximum of ten percent (10%) of the performance price of the delayed due services.

7.20 Warranty

7.20.1 Where applicable, the Contractor warrants that the Services provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Contractor further warrants that any materials/ equipment provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Contractor that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.

7.20.2 This warranty will remain valid for the period indicated in the special conditions of contract after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract.

7.20.3 KEBS shall promptly notify the Contractor in writing of any claims arising under this Warranty.

7.20.4 Upon receipt of such a notice, the Contractor shall, with all reasonable speed, remedy the defective services without cost to KEBS.

7.20.5 If the Contractor having been notified, fails to remedy the defect(s) within a reasonable period, KEBS may proceed to take such remedial action as may be necessary, at the Contractor's risk and expense and without prejudice to any other rights which KEBS may have against the Contractor under the contract.

7.21 Resolution of Disputes

- 7.21.1 KEBS and the Contractor may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 7.21.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may resort to resolution before a recognized local forum for the resolution of disputes.

7.22 Language and Law

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

7.23 Waiver

Any omission or failure by KEBS to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Contractor shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KEBS's powers and rights as expressly provided in and as regards this contract.

7.24 Force Majeure

- 7.24.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:
- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
 - b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*
 - c) *rebellion, revolution, insurrection, military or usurped power & civil war;*
 - d) *riot, commotion or disorder except where solely restricted to employee's servants or agents of the parties;*
 - e) *un-navigable storm or tempest at sea.*
- 7.24.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the contract is entered into by the parties.
- 7.24.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.
- 7.24.4 Upon the occurrence of any circumstances of *force majeure*, the Contractor shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Contractor shall notify KEBS of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The Contractor shall not take any such steps unless directed so to do by KEBS.
- 7.24.5 If the Contractor incurs additional costs in complying with KEBS's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KEBS and added to the contract price.

7.24.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty-one (21) days then, notwithstanding that the Contractor may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the contract shall terminate.

SECTION VIII – SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KEBS's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KEBS if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

No.	GCC Reference Clause	Particulars of SCC
1.	7.11.1 Terms of Payment	<i>Payment shall be thirty (30) after submission of all relevant documents to this service.</i>

SECTION IX - TENDERING FORMS

TENDER FORM

Date:

Tender No.

**To: Kenya Bureau of Standards,
P.O. Box 54974 – 00200
Nairobi, Kenya.**

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer to perform, deliver, install and commission *(the latter two where applicable)* *(insert services description)* in accordance and conformity with the said tender document and in particular the Schedule of Prices that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by KEBS.
4. We agree to abide by this Tender for a period of..... days **(Tenderer please indicate validity of your Tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Designation of duly authorised person signing the Tender

Stamp or Seal of Tenderer

***NOTES:**

1. KEBS requires a validity period of at least One Hundred & Eighty two (182) days.
2. This form must be duly signed, stamped and/or sealed.

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

General and Specific Details

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

Name in full _____ Age _____
Nationality _____ Country of Origin _____
Citizenship _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent)

Issued Kenya Shillings (Equivalent)

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the 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	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.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

f) Certification

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

Full Name

Title or Designation

(Signature)

(Date)

ii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

_____ [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, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name _____

Title _____

Date _____

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

iii) SELF-DECLARATION FORMS

FORM SD1

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

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

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

.....

.....

..... (Title)

..... (Signature)

..... (Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I, (person) on behalf of (***Name of the Business/ Company/Firm***)

declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal 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.....
.....

iv) APPENDIX1-FRAUDANDCORRUPTION

(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 sub section (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 tender to whom was awarded contract, or a member of the group of tenders 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.

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:

- a) 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
- b) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- c) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

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

- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub- contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Act and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹For 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 rendering, 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.

2. TENDERER INFORMATION FORM

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

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

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 ITT4.6 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.

SUBCONTRACTORS

(INFORMATION TO BE PROVIDED BY THE TENDERER)

As per the requirements of Clause 7.23 of General Conditions of Contract, following is a list of subcontractors and the portions of the Work to be subcontracted:

[illegible]

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 inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of _____ under Request for Tenders No. _____ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to 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 onor before that date.

[signature(s)]

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

TENDER-SECURING DECLARATION FORM

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

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

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

To:.....[insert complete name of Purchaser] I/We,

the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I / we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation (s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or(ii) fail or refuse to furnish he 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

TENDERERS QUALIFICATION WITHOUT PRE-QUALIFICATION

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

10 FORM ELI -1.1

Tenderer Information

Form

Date: _____

ITT No. and title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6, documents establishing: <ul style="list-style-type: none">• Legal and financial autonomy• Operation under commercial law• Establishing that the Tenderer is not under the supervision of the Procuring Entity
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM ELI -1.2

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

Date: _____

ITT No. and title: _____

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

FORM CON –2**Historical Contract Non-Performance, Pending Litigation and Litigation History**

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria

☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.

☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

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

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

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

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

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	

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

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

☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
Year of award	Outcome as percentage of Net Worth	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Financial Situation and Performance

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. _____ and title: _____

Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

Sources of Finance

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

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

Financial documents

The Tenderer and its parties shall provide copies of financial statements for _____ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor3.1. The financial statements shall:

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

Attached are copies of financial statements¹ for the _____ years required above ; and complying with the requirements

²If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

Average Annual Construction Turnover

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

		Annual turnover data (construction only)	
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

FORM FIN-3.3: Financial Resources

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

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

1. 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

:	<i>name of successful Tenderer]</i>
ss:	<i>address of the successful Tenderer]</i>
act price:	<i>contract price of the successful Tender]</i>

- 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.]

f Tenderer	Tender price	Evaluated Tender price (if applicable)
<i>[insert name]</i>	<i>Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>

iii). How to request a debriefing

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

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

Provide the contract name, reference number, name of the 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

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

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

Attention:.....*[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 Stand still Period and received by us before the Stand still 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 or complaints@ppra.go.ke)

v). Standstill Period

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

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

The Standstill Period may be extended as stated in Section 4 above. If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (Procuring Entity)

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... 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 of20.....

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 duly signed

Authorized Signature:.....

.....

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract

4. FORM OF CONTRACT [Form

head paper of the Procuring Entity] **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]

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 subsection commits an offence;
 - 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
 - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
 - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement:-
 - a) shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontractor for the 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.
 - 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
 - 7) If a person contravenes subsection (1) with respect to a conflict of interest described in 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.
- 2.3 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
 - a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or

indirectly, of anything of value to influence improperly the actions of another party;

- ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “obstructive practice” is:
 - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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]*

Tender Name and Identification:..... *[Insert identification*

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

_____ pages

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> 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 Procuring Entity
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

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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.

Price Schedule Forms

*[The tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

A - PERFORMANCE SECURITY FORM (BANK GUARANTEE)

(To Be Submitted On Bank's Letterhead)

Date:

**To: Kenya Bureau of Standards,
P.O. Box 54974 – 00200
Nairobi, Kenya.**

WHEREAS.....(hereinafter called “the Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated(*insert Supplier's date of Tender taken from the Tender Form*) to supply(*description of the goods*) (hereinafter called “the Contract);

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Supplier a guarantee;

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

This guarantee is valid until theday of.....20....

EITHER

SEALED with the)
COMMON SEAL)
of the said **BANK**)
)

thisday)
)
of20....)
in the presence of :-)

BANK SEAL

_____))
 _____))
 and in the presence of:-))
 _____))
 _____))

OR

SIGNED by the **DULY AUTHORISED**
REPRESENTATIVE(S)/ ATTORNEY(S) of
 the **BANK**

 Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

 Signature(s) of the duly authorised person(s)

NOTES TO SUPPLIERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KEBS. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*
2. *KEBS shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KEBS. The period for response shall not exceed five (5) days from the date of KEBS's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*
3. ***The issuing Bank should address its response or communication regarding the bond to KEBS at the following e-mail address – "procurement @ KEBS.co.ke"***

B - PERFORMANCE SECURITY (LC)

Mandatory Conditions that should appear on the Performance Security (LC).

Form of Documentary credit - “Irrevocable Standby”

Applicable rules - “Must be UCP Latest Version” i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

Place of expiry - At the counters of the advising bank.

The SBLC should be available – “By Payment”

Drafts should be payable at - “SIGHT”

Documents required -

1. Beneficiary’s signed and dated statement demanding for payment under the letter of credit no..... (*Insert LC No.*) as.....(*Name of Applicant*) (hereinafter called the “Supplier”) indicating that the “Supplier” has defaulted in the performance and adherence to and performance of the contract between the Beneficiary and the Supplier.
2. The Original Letter of Credit and all amendments, if any.

Additional Conditions -

1. All charges levied by any bank that is party to this documentary credit are for the account of the Applicant.
2. (Include) that there should be no conditions requiring compliance with the specific regulations or a particular country’s laws and regulations.

Charges - All bank charges are for the account of the Applicant.

Confirmation instructions – (See notes below)

NOTES TO SUPPLIERS AND BANKS

1. *Please note that should the Performance Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KEBS. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the tender and Contract.*
2. *KEBS may seek authentication of the Performance Security (LC) from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KEBS. The period for*

response shall not exceed three (3) days from the date of KEBS's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security (LC) may be deemed as invalid and the Contract nullified.

- 3. *The issuing bank should address its response or communication regarding the bond to KEBS at the following e-mail address – "procurement@ KEBS.co.ke"***
- 4. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.***