

KENYA BUREAU OF STANDARDS



TENDER DOCUMENT

PROVISION OF VMWARE, UPGRADES AND SUPPORT SERVICES

KEBS/T003/2020/2021

KENYA BUREAU OF STANDARDS P.O.

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NAIROBI.

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Table of Contents

Section A	INVITATION TO TENDER	3
Section B	GENERAL INFORMATION	4
Section C	GENERAL CONDITIONS OF CONTRACT	16
Section D	SPECIAL CONDITIONS OF CONTRACT	21
Section E	TENDER FORMS AND PRICE SCHEDULES	27
Section F	TENDER SECURITY FORM	29
Section G	CONTRACT FORM	30
Section H	PERFORMANCE SECURITY FORM	31
SECTION I:	SELF DECLARATION THAT THE PERSON/ TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE	33
SECTION J:	NON-DEBARMENT DECLARATION	33

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SECTION A: INVITATION TO TENDER

RE-TENDER NO. KEBS/T003/2020/2021: PROVISION OF VMWARE, UPGRADES AND SUPPORT SERVICES.

Kenya Bureau of Standards (KEBS) invites eligible firms **Provision of VMware, Upgrades and Support Services for a period of three(3) years**

Tender documents detailing the requirements may be obtained from the **Procurement Office, KEBS Centre, Popo Road, Off Mombasa Road, Behind Bellevue Cinema Nairobi**, on normal working days **between 10.00 a.m and 4.00p.m upon payment of a non-refundable fee of 1,000** as indicated in the tender document, the amount is payable in cash or bankers' cheque **or be downloaded free from KEBS website: www.kebs.org.**

Completed tender documents in plain sealed envelopes clearly marked: **KEBS/T003/2020/2021: PROVISION OF VMWARE, UPGRADE AND SUPPORT SERVICES.** should be addressed and delivered to:

**THE MANAGING DIRECTOR,
KENYA BUREAU OF STANDARDS,
P.O. BOX54974 - 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 8TH September, 2020.**

Tender opening will be carried out immediately thereafter at the **KEBS Centre Conference Room A, Adm. Block, Ground Floor.**

Tenderers or their representatives are free to attend the tender opening.

Tenders must be accompanied by Bid Security of 2% of Total Tender Sum in form of specified in the tender document and shall be valid for one hundred and fifty (150) days from tender opening dated.

MANAGING DIRECTOR

Section B. General Information

Introduction

1. Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of goods by the intended completion date specified in the tender documents.
- 1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 59 of the 2015 Act.
- 1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and 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 the Procuring entity 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 for tenders.
- 1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2. Eligible Goods

- 2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.3 The origin of goods is distinct from the nationality of the tenderer.

3. Cost of Tendering

- 3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

The Tender Document

4. Contents

4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders.

- (i) Invitation for Tenders
- (ii) General information
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of Requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form

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

5. Clarification of Documents

5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderer that have received the tender document.

6. Amendment of Documents

6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, 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.

6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.

6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

Preparation of Tenders

7. Language of Tender

- 7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are 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.

8. Documents Comprising the Tender

- 8.1 The tender prepared by the tenderer shall comprise the following components:

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.
- (b) Documentary evidence established in accordance with paragraph 12 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 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) Tender security furnished in accordance with paragraph 14

9. Tender Form

- 9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

10. Tender Prices

- 10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.
- 10.2 Prices indicated on the Price Schedule shall be entered separately in the following manner:
- (i) The price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales

and other taxes already paid or payable.

- (ii) Charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination.

10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

11. Tender Currencies

11.1 Prices shall be quoted in the following currencies:

- (a) For goods that the tenderer will supply from within Kenya, the prices shall be quoted in Kenya shillings; and
- (b) For goods that the tenderer will supply from outside Kenya, the prices shall be quoted in US dollars or in another freely convertible currency.

12. Tenderers Eligibility and Qualifications.

12.1 Pursuant to paragraph 1 of section III, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph I of section III.

12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction:

- (a) That, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods;
- (b) That the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) 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, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

13. Goods' Eligibility and Conformity to Tender Document.

- 13.1 Pursuant paragraph 2 of this section, the tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods, which the tenderer proposes to supply under the contract.
- 13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which a certificate of origin issued at the time of shipment shall confirm.
- 13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:
- (a) A detailed description of the essential technical and performance characteristics of the goods;
 - (b) A list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
 - (c) A clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
- 13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

14. Tender Security

- 14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Invitation to tender.
- 14.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct, which would warrant the security's forfeiture, pursuant to paragraph 14.7
- 14.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency,

And shall be in the form of:

- a) Cash.

- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.

or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.

- 14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by the Procuring entity as nonresponsive, pursuant to paragraph 22.
- 14.5 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 14.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.

14.7 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
- (b) In the case of a successful tenderer, if the tenderer fails:
 - (i) To sign the contract in accordance with paragraph 30

Or

- (ii) To furnish performance security in accordance with paragraph 31.

15. Validity of Tenders

- 15.1 Tenders shall remain valid for **120 days** or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.
- 15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

16. Format and Signing of Tender

- 16.1 The Tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy

between them, the original shall govern.

- 16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. Written power-of-attorney accompanying the tender shall indicate the latter authorization. The person or persons signing the tender shall initial all pages of the tender, except for unamended printed literature.
- 16.3 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 initialed by the person or persons signing the tender.

17. Sealing and Marking of Tenders

- 17.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall:
- a) Be addressed to the Procuring entity at the following address:

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

Bear the tender no. **KEBS/T003/2020/2021: PROVISION OF VMWARE, UPGRADES AND SUPPORT SERVICES.** and the words: **"DO NOT OPEN BEFORE" 10.00 am on Tuesday 8TH September 2020.**

- 17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".
- 17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

18. Deadline for Submission of Tenders

- 18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 17.2 not later than **10.00 am on Tuesday 8th September, 2020** .

- 18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

Submission of Tenders

19. Opening of Tenders

19.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.00 am on Tuesday 8th September 2020** and in the following location:

**KENYA BUREAU OF STANDARDS OFF MOMBASA ROAD
POPO ROAD
BEHIND BELLEVUE CINEMA
CONFERENCE ROOM**

The tenderers' representatives who are present shall sign a register evidencing their attendance.

19.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.

19.3 The Procuring entity will prepare minutes of the tender opening.

20. Clarification of Tenders

20.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity 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.

20.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

21. Preliminary Examination

21.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

21.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail. 21.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

21.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

21.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

22. Evaluation and Comparison of Tenders

22.1 The Procuring entity will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 22.

22.2 The Procuring entity's evaluation of a tender will exclude and not take into account:

- (a) In the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- (b) Any allowance for price adjustment during the period of execution of the contract, if provided in the tender.

22.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

22.4 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 23.5 and in the technical specifications:

- (a) Delivery schedule offered in the tender;
- (b) Deviations in payment schedule from that specified in the Special Conditions of Contract;

(c) The cost of components, mandatory spare parts, and service;

(d) The availability in Kenya of spare parts and after-sales services for the equipment offered in the tender.

22.5 Pursuant to paragraph 23.4 the following evaluation methods will be applied:

(a) *Delivery schedule.*

The Procuring entity requires that the goods under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. Tenders offering deliveries longer than the procuring entity's required delivery time will be treated as non-responsive and rejected.

(b) *Deviation in payment schedule.*

Tenderers shall state their tender price for the payment of schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

(c) *Spare parts and after sales service facilities.*

Tenderers must offer items with service and spares parts back-up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers items without such back-up in the country, he must give documentary evidence and assurance that he will establish adequate back-up for items supplied.

23. Contacting the Procuring entity

23.1 Subject to paragraph 20, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

23.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

Award of Contract

24. Post-qualification

24.1 In the absence of pre-qualification, the Procuring entity will determine to its

satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

24.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 12.3, as well as such other information, as the Procuring entity deems necessary and appropriate.

25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

25. Award Criteria

25.1 Subject to paragraph 10, 23 and 28 the Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

26. Procuring entity's Right to Vary quantities

26.1 The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

27. Procuring entity's Right to Accept or Reject Any or All Tenders

27.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action.

28. Notification of Award

28.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.

28.2 The notification of award will constitute the formation of the Contract.

28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 30, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 14.

29. Signing of Contract

29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

29.2 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

30. Performance Security

30.1 Within thirty(30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

30.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

31. Corrupt Fraudulent Practices

31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Procuring entity: -

(a) Defines, for the purposes of this provision, the terms set forth below as follows:

- (i) "Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (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;
- (b) Will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (c) Will declare a firm ineligible, either indefinitely or for a stated period, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

31.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

Section C - General Conditions of Contract

1. Definitions

1.1 In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Contract" means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- (c) "The Goods" means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) "The Procuring entity" means the organization purchasing the Goods under this Contract.
- (e) "The tenderer" means the individual or firm supplying the Goods under this Contract.

2. Application

2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement of goods.

3. Country of Origin

3.1 For purposes of this Clause, "origin" means the place where the Goods were mined, grown, or produced.

3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

3.3 Patent Right's

The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

4. Standards

4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

5. Use of Contract Documents and Information

- 5.1 The Candidate shall not, without the Procuring entity'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 the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 5.1 above.
- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity.

6. Patent Rights

- 6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity's country.

7. Performance Security

- 7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.
- 7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
- 7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

8. Inspection and Tests

- 8.1 The Procuring entities or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

- 8.2 The inspections and tests may be conducted on the premises of the tenderer or its on the premises of the tenderer 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 the Procuring entity.
- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Procuring entity may reject the Goods, and the tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- 8.4 The Procuring entity's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Procuring entity or its representative prior to the Goods' delivery.
- 8.5 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9. Packing

- 9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.

10. Delivery and Documents

- 10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

11. Insurance

- 11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract

12. Payment

- 12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.
- 12.2 Payments shall be made promptly by the Procuring entity as specified in the contract.

13. Prices

- 13.1 Prices charged by the tenderer for Goods delivered and Services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

14. Assignment

- 14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent.

15. Subcontracts

- 15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

16. Termination for Default

- 16.1 The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part:

- (a) If the tenderer fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.
- (b) If the tenderer fails to perform any other obligation(s) under the Contract.
- (c) If the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

- 16.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner, as it deems appropriate, Goods similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar Goods.

17. Liquidated Damages

- 17.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed goods up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

18. Resolution of Disputes

- 18.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 18.2 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 require adjudication in an agreed national or international forum, and/or international arbitration.

19. **Language and Law**

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

20. **Force Majeure**

20.1 The tenderer shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

Section D. Special Conditions of Contract

1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.
2. General conditions of the contract clause 7.1-performance security.
The performance security shall be in the amount of 10% of the contract price and shall remain valid for **30 days** beyond the last date of installation and commissioning of the system.
3. Where the tender price is in foreign currency, the Exchange Rate will be as per Central Bank of Kenya exchange rate of Tender closing/opening date.

TERMS OF REFERENCE: PROVISION OF VMWARE LICENSE, UPGRADES AND SUPPORT SERVICES

1.0 Introduction and Background

The Kenya Bureau of Standards (KEBS) has remained the premier government agency for the provision of Standards, Metrology and Conformity Assessment (SMCA) services since its inception in 1974. Over that period its main activities have grown from the development of standards and quality control for a limited number of locally made products in the 1970s to the provision of more comprehensive Standards Development, Metrology, Conformity Assessment, Training and Certification services. With the re-establishment of the East African Community (EAC) and

Common Market for Eastern and Southern Africa (COMESA), KEBS activities now include participation in the development and implementation of SMCA activities at the regional level where it participates in the harmonization of standards, measurements and conformity assessment regimes for regional integration. KEBS operates the National Enquiry Point in support of the WTO Agreement on Technical Barriers to Trade (TBT).

KEBS has an existing virtualized environment running on VMware with five (5) Physical hosts at the primary site and One (1) Physical host at the Disaster recovery site running on VMware ESXi 6.5 Build Number 8294253 and VMware ESXi 5.5.0 Build Number 5230635 with vCenter Server 6.5 Standard Build 14836121 for vSphere Web Client Version 6.5.0.30000 Build 14836121. Due to growing business demands, an additional two (2) physical hosts are required to meet the needs.

Scope of Works

- 1) Renewal of back-to-back OEM vendor support of existing licenses and partner support for the current VMware environment for a period of 3 Years.
- 2) New licenses for VMware vSphere Enterprise Plus for 1 processor with 3 Year Basic Support for 2 Physical hosts (Four (4) CPUs) and Vrealize 8 with operations standard
- 3) The bidder will be responsible for upgrading VMware vCenter and ESXIs to Version 7.
- 4) The bidder will be responsible for upgrading VMware Site Recovery Manager to version 8 Standard.
- 5) The Bidder will be responsible for Knowledge transfer to ICT staff during upgrades.

In addition:

- a) Delivered solution must be compatible with KEBS existing infrastructure.
- b) In case any configurations are required to be done to ensure the proper function of the solution on KEBS existing infrastructure such as servers etc. - it is completely the sole and full responsibility of the bidder.
- c) It is completely the sole and full responsibility of the bidder to do the implementation and the configurations of new licenses.
- d) Bidders must quote for any costs required to be paid.
- e) The currently available infrastructure at the KEBS offices will be utilized. However, depending on the proposed technology, if an upgrade is required the same has to be quoted for by the bidder separately.

- f) Bidders must quote for any other component needed to make the solution complete that has not been captured. This should be indicated as an optional component.

Summary of existing virtualization setup:

Primary Site:

5 Hosts at Primary site running vSphere with Operations Management Enterprise Plus VMware vCenter Server Standard.

DR Site:

1 Host at DR site running vSphere with Operations Management Enterprise Plus

Hardware at both sites: Dell EMC VNX5400 with physical Recover point appliances.

Technical Compliance Evaluation: Bidder Response

No.	Item	Requirement	Bidders Comprehensive Response
1.	Partner Support Period	Three (3) Years	
2.	Required Support	VMware Production Support and Subscription	
3.	VMware Licences	Twelve (12) CPUs Licenses for VMware vSphere with Operations Management 7 Enterprise Plus for 1 processor for 3 years	
4.	vCenter Server	vCenter Server 7 standard	
5.	New VMware Licences	Four (4) CPUs Licenses for VMware vSphere with Operations Management 7 Enterprise Plus for 1 processor for 3 years	
6.	VMware Site Recovery Manager	VMware Site Recovery Manager for 3 years – To be upgraded to the latest version	
7.	Support Features	<ul style="list-style-type: none"> • Production Support and Subscription • Provision of Product Upgrades and Updates • Provision of Remote Support – 24x7 • Provision of Access to VMware Knowledge Base 	

2.0 EVALUATION CRITERIA

2.1 Stage 1: MANDATORY EVALUATION CRITERIA

(Required to proceed to the Technical Evaluation Stage):

No	Requirements	Indicate page submitted in the tender document
MR 1	Submit 1 (one) Original and 1 (one) copy of the tender document and be addressed as stated in the invitation to tender	
MR 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	
MR 3	Submit a copy of company's Valid Certificate of Registration Incorporation/Business name	
MR 4	Provide copy of the company's current KRA Tax Compliance Certificate (To be verified on the KRA TCC Checker)	
MR 5	Submit Valid CR 12 Form	
MR 6	Submit valid County Government Business Permit	
MR 7	Original Bid Bond of 2% of the Total tender sum and valid for 120 days from date of tender opening	
MR 8	Duly filled, signed and stamped Confidential Business Questionnaire	
MR 9	Duly completed Tender form signed and Stamped	
MR 10	Duly completed Anti-Corruption Declaration signed and stamped	
MR 11	Provide proof of authorization & Support by the manufacturers to sell/service the product (To be Verified)	
MR 12	Provide copies of audited accounts for the company for the last three years 2017 & 2018 & 2019	
MR 13	Submit with tender a valid certificate of registration with the ICT Authority.	
MR14	Duly completed signed and stamped NON-DEBARMENT Declaration Form	

Failure to provide any of the above-mentioned documents will lead to automatic disqualification of the firm at the mandatory evaluation stage. The bidders that will meet the mandatory requirements above will qualify to proceed to technical evaluation stage.

2.1: Stage 2: Technical Capacity Evaluation Stage

NO	Criteria Description	Weight
1	Bidder must be a VMware Authorized Partner Bidder to provide Manufacturer Authorization Form for confirmation (To be verified)	10
2	Three (3) Verifiable Reference sites where virtualization solutions using VMware has been commissioned. Provide atleast three (3) Contracts/LSO/LPO of provision of VMware services and support (10 marks each) To be verified	30
3	Submit Completion/Sign-Off certificates from the above Contracts (5 Marks each Completion/Sign-Off Certificates) To be verified	15
	KEY STAFF QUALIFICATIONS	
4	Project Manager (One Engineer) Qualifications – Bachelor's Degree in related field – provide Certificate (5 Marks) VMware Certified Professional 6 and above on vSphere Data Centre Virtualization Deploy i.e. (VCAP6-DCV), VCP6 -Network Virtualization Provide certificates (10 Marks)	5 10
5	The Partner must have the following qualifications for engineers: At least one (1) VMware Certified Professional 6 on vSphere/ Data Centre Virtualization and above i.e. (VCP6-DCV /VCP 6.5-DCV) And (1) VMware certified Instructor – VCI for training (5 Marks for Each Engineer) Provide certificates.	10
6	Bidders Must attach a Project Implementation Plan which must contain at least: (i) Detailed activities and milestones (ii) Timelines (iii) Resources required	12
7	Bidder must submit Draft SLA for support	8
	TOTAL	100

A pass score of 80 marks **(Mandatory and Technical Evaluation Stage)** and above qualifies for financial evaluation.

**Price Schedule**

Renewal of Existing Licenses (VMware Contract ID 415185901) & (Account Number 885354693) for 3 (Three) Years			
Description	Qty	Unit Cost	Total Cost in Kshs.
Production Support Coverage VMware vCenter Server 7 Standard for vSphere 7 (Per Instance) for 3 Years	1		
VMware vRealize 8 with Operations Standard for 1 processor with 3 Years Production Support and Subscription	12		
Production Support Coverage VMware vSphere 7 with Operations Management Enterprise Plus for 1 processor for 3 Years	12		
Production Support Coverage VMware Site Recovery Manager 8 Standard (25 VM Pack) for 3 years	1		
New Licenses			
Production Support Coverage VMware vCenter Server 7 Standard for vSphere 7 (Per Instance) for 3 Years	1		
VMware vRealize 8 with Operations Standard for 1 processor with 3 Years Production Support and Subscription	4		
VMware vSphere 7 Enterprise Plus for 1 processor with 3 Years Production Support and Subscription	4		
Partner Support for a period of 3 years	Lot		
SUB -TOTAL			
VAT			
TOTAL COST (3 Years)			

Financial evaluation**Tender will be awarded to the lowest financial evaluated bidder**



Section E. Tender Form and Price Schedules

(i) Form of Tender

Date: _____ Tender

Nº: _____

To:

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda

Nos..... *[Insert numbers]*,

The receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver..... *[Description of services]* In conformity with

the said tender documents for the sum

of..... *[Total tender amount in words and figures]*

2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to 10 percent of the Contract Price for the due performance of the Contract, in the form prescribed by

..... (Procuring entity).

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

5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

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

Dated this _____ day of _____ 2019_____.

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of _____



CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) whichever applied to your type of business.

You are advised that it is a serious offence to give false information on this form. Part 1

General

Business Name.....
Location of Business Premises
Plot No, Street/Road
Postal addressTel No. Fax Email.....
Nature of Business
Registration Certificate No.....
Maximum value of business which you can handle at any one time – Kshs.
Name of your bankers

	<p align="center">Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age..... Nationality.....Country of Origin..... Citizenship details</p>																				
	<p align="center">Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table><thead><tr><th>Name</th><th>Nationality</th><th>Citizenship details</th><th>Shares</th></tr></thead><tbody><tr><td>1.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>2.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>3.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>4.</td><td>.....</td><td>.....</td><td>.....</td></tr></tbody></table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																		
1.																		
2.																		
3.																		
4.																		
	<p align="center">Part 2 (c) – Registered Company</p> <p>Private or Public State the nominal and issued capital of company Nominal Kshs. Issued Kshs. Given details of all directors as follows</p> <table><thead><tr><th>Name</th><th>Nationality</th><th>Citizenship details</th><th>Shares</th></tr></thead><tbody><tr><td>1.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>2.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>3.</td><td>.....</td><td>.....</td><td>.....</td></tr><tr><td>4.</td><td>.....</td><td>.....</td><td>.....</td></tr></tbody></table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																		
1.																		
2.																		
3.																		
4.																		
	<p>Date..... Signature of Candidate.....</p>																				

Section F. Tender Security Form

Whereas..... *[Name of the tenderer]*
(Hereinafter called "the tenderer") has submitted its tender dated*[Date of submission of tender]* for the supply of.....
..... *[Name and/or description of the goods]*
(Hereinafter called "the Tender")..... KNOW
ALL PEOPLE by these presents that WE.....
Of..... Having our registered office at
..... (Hereinafter called "the Bank"), are bound
unto..... *[Name of procuring entity]* (Hereinafter called "the Procuring entity") in the sum of
.....
For which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____ 20____.

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
 - (a) Fails or refuses to execute the Contract Form, if required; or
 - (b) Fails or refuses to furnish the performance security, in accordance with the Instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[Signature of the bank]

Section G. Contract Form

THIS AGREEMENT made the _____ day of _____ 20____ between..... *[name of Procurement entity]* of..... *[Country of Procurement entity]* (Hereinafter called "the Procuring entity") of the one part and..... *[Name of tenderer]* of..... *[City and country of tenderer]* (Hereinafter called "the tenderer") of the other part:

WHEREAS the Procuring entity invited tenders for certain goods, viz.,..... *[Brief description of goods]* and has accepted a tender by the tenderer for the supply of those goods in the sum of..... *[Contract price in words and figures]* (Hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) The Tender Form and the Price Schedule submitted by the tenderer;
 - (b) The Schedule of Requirements;
 - (c) The Technical Specifications;
 - (d) The General Conditions of Contract;
 - (e) The Special Conditions of Contract; and
 - (f) The Procuring entity's Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer)

In the presence of _____



Section H. Performance Security Form

To:..... [Name of procuring entity]

WHEREAS. [Name of tenderer]

(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract

No. [Reference number of the contract] dated 20..... to
supply..... [Description
of goods] (Hereinafter called "the Contract").

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of..... [Amount of the
guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the tenderer 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 your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the ____ day of _____ 20_____.

Signature and seal of the Guarantors

[Name of bank or financial institution]

[Address]

[Date]



SECTION I: 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. KEBS/T003/2020/2021** for Provision of Vmware Upgrades and Support Services 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 the **KEBS** which is 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 hereinabove is true to the best of my knowledge information and
belief.

.....
(Title) (Signature)

(Date)

Bidder's Official Stamp



SECTION J: NON-DEBARMENT DECLARATION

We (insert the name of the company/ supplier).....declares and guarantees that no director or any person who has any controlling interest in our organization has been debarred from participating in a procurement proceeding.

Name.....Signature.....

Date.....

Company Seal/Business Stamp