# COUNTY GOVERNMENT OF KITUI

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## MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

## TENDER NO: CGOKTI/MLHUD/005/2024-2025

**TENDER NAME: PURCHASE OF LAND FOR CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY WARD OFFICES -KIVOU WARD**

**DATE ISSUED: THURSDAY, 19TH JUNE, 2025**

## CLOSING DATE: MONDAY 30TH JUNE 2025

## CLOSING TIME: 12:00 Noon

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**TENDER DOCUMENTS FOR - FOR PURCHASE OF IMMOVABLE ASSETS/ PROPERTY**

1) NAME AND CONTACT ADDRESSES OF PROCURING ENTITY

County Government of Kitui Ministry of Lands, Housing and Urban Development PO BOX 33, **Kitui.**

2) Invitation to Tender (ITT) No. **CGOKTI/MLAUD/005/2023-2024**

3) Tender Name. **PURCHASE OF LAND FOR CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY WARD OFFICES -KIVOU WARD**

# INVITATION TO TENDER

## PROCURING ENTITY: COUNTY GOVERNMENT OF KITUI
## CONTRACT NAME AND DESCRIPTION: PURCHASE OF LAND FOR CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY WARD OFFICES -KIVOU WARD

*1.* The *County Government of Kitui* invites sealed tenders for the Purchase Of Land for Construction of member of county assembly ward offices -Kivou Ward

**2.** Tendering will be conducted under open competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers/Land Owners.

**3.** Qualified and interested tenderers/Land Owners may obtain further information and inspect the Tender Documents during office hours ***9:00 Am*** *to* ***5:00 Pm*** at the address given below.

**4.** A complete set of tender documents may be obtained free of charge by downloading in the website www.kitui.go.ke or **Public Procurement Information Portal www.tenders.go.ke** interested tenders. Tender documents obtained electronically will be free of charge.

**5.** Tendered documents may be viewed and down loaded for free from the website www.kitui.go.ke . Tenderers who download the tender document must forward their particulars immediately to procurement@kitui.go.ke to facilitate any further clarification or addendum.

**6.** Completed tenders must be delivered to the address below on or before **Monday** of **30th June, 2025**. Electronic Tenders **will not** be permitted.

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

**8.** Late tenders will be rejected.

**9.** The addresses referred to above are:

## A. Address for obtaining further information

1) Name of Procuring Entity. **County Government of Kitui**

**Ag. Director Supply Chain Management Services**

PO Box 33-90200 Kitui

**Email:** procurement@kitui.go.ke

2) Physical address for hand Courier Delivery to an office or Tender Box at the Ground floor of the Governor's **Administration Block Savanni road Opposite Kitui Central, CDF Offices**

v **B.** **Address for Submission of Tenders.**

1) Name of Procuring Entity: County Government of Kitui

2) Postal Address (include designation of Officer to be attentional) **PO BOX 33-90200-Kitui**

3) Physical address for hand Courier Delivery to an office or Tender Box – Ground floor of the **Governor's Administration Block Savanni road Opposite Kitui Central, CDF Offices**

**C.** **Address for Opening of Tenders.**

1) Name of Procuring Entity: County Government of Kitui

2) Physical address for the location (City, Street Name, Building, Floor Number and Room)

**PO Box 33-90200-Kitui**

Governor's Administration Block Savanni road Opposite Kitui Central, CDF Offices

CHIEF OFFICER
**LANDS, HOUSING AND URBAN DEVELOPMENT**

**Checklist**

| No. | Items | Tick Where Applicable |
|---|---|---|
| | Dully Filled Form of Tender | |
| | Dully Filled Tender's Eligibility- Confidential Business Questionnaire Form | |
| | Certificate of Independent Tender Determination | |
| | Dully filled self-declaration forms (SD 1 and SD 2) | |
| | Dully filled Declaration and commitment to the code of ethics | |
| | Price Schedule form | |
| | Schedule of requirement dully filled indicating property offered | |
| | Power of attorney for Tender's authorized representative | |
| | Certified copy of Tittle Deed and Current Search certificate | |
| | Copy(s) of ID (s) and Personal Identification Number (KRA Pin) | |
| | Any other document required to be submitted in the tender document | |

# PART 1 - TENDERING PROCEDURES



## SECTION I -INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1. Scope of Tender

1.1 The Procuring Entity as define in the TDS invites tenders for offer for sale land as specified in Section V, Schedule of Requirements. The name of the Procuring Entity identification and reference number of this Tender Document are **specified in the TDS.**

#### 2. Definitions

2.1 Throughout this tendering document: the term "in writing" means communicated in written form (e.g. by mail, e-mail, including if specified in the TDS, distributed or received through the electronic-procurement system used

by the Procuring Entity) with proof of receipt; if the context so requires, "singular" means "plural" and vice versa; "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

## 3. Fraud and Corruption

3.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

3.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal land/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

3.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all the firms together with this tender document all information that would in that respect give such firm any un fair competitive advantage over competing firms.

3.4 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit he Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

## 4. Eligible Tenderers

4.1 A Tenderer may be a firm that is a private entity, or a state-owned enterprise or institution. Tenderers shall be the legal owner of the property being offered for sale and the property offered shall be legally registered in their names. Tenderer shall provide evidence of such ownership and registration. A firm that is a Tenderer can participate in more than one Tender, depending on the items being offered for sale.

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

4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

i) Directly or in directly controls, is controlled by or is under common control with another Tenderer; ii) or iii) receives or has received any direct or indirect subsidy from another Tenderer; or has the same – representative or ownership as another Tenderer; or has a relationship with another Tenderer, directly or through common third parties, that put sit in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or

iv) any of its affiliates participated as a consultant in the preparation of the design nor technical specifications of the works that are the subject of the Tender; or

v) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or

vi) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the ITT 2.1 that it provided or were

provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

vii) has a close business or family relationship with a professional staff of the Procuring Entity (or of the project implementing agency, who:

i) are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or

ii) Would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

4.4 A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract

4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case maybe.

4.6 Firms, individuals and offered properties may be in eligible if their countries of origin(a)as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of property or contracting for supply of property or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

4.7 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

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

## 5. Eligible Properties

5.1 In this particular document, tenderers shall mean and refer to owners of real property (land and sea), meaning landed property on which immovable assets may be attached.

5.2 All the properties and Related Services to be offered under the Contract shall be in any country that is eligible in accordance with ITT 3.4.

5.3 Any property may be considered in eligible if it has construction items, or works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human being s and to the environment shall not be eligible for procurement.

# B. Contents of Tendering Document

## 6. Sections of Tendering Document

6.1 The tendering document consist of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1 - Tendering Procedures
Section I - Instructions to Tenderers (ITT)
Section II - Tendering Data Sheet (TDS)
Section III - Evaluation and Qualification Criteria
Section IV - Tendering Forms

PART 2 - Supply Requirements
Section IV - Schedule of Requirements

PART 3 - Contract
Section V- General Conditions of Contract (GCC)
Section VI - Special Conditions of Contract (SCC) Section VII
- Contract Forms

6.2 The Invitation to Tenders Notice, issued by the Procuring Entity is not part of this tendering document.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

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

## 7. Clarification of Tendering Document and Pre-Tender Conference

7.1 A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders with in a period specified in the **TDS**. The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 6.3, including description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT 7 and ITT 21.2.

7.2 The Procuring Entity shall specify in the TDS if a pre-tender conference will be held, when and where. The Tenderer's designated representative is invited to attend a pre-tender conference. The purpose of the conference will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the TDS before the meeting.

7.4 Minutes of the pre-tender conference, including the text of the questions asked by Tenderer sand the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.5. Minutes shall not identify the source of the questions asked.

7.5 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the Pre-Tender conference at the web page identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender conference shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 7 and not through the minutes of the Pre-Tender conference. Nonattendance at the pre-Tender conference will not be a cause for disqualification of a Tenderer.

## 8. Amendment of Tendering Document

8.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.

8.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 7.1.

8.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 22.2.

## C. Preparation of Tenders 9. Cost of Tendering

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

## 10. Language of Tender

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

## 11. Documents Comprising the Tender

11.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 12;

b) Price Schedules: completed in accordance with ITT 12 and ITT 14;

c) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.3;

d) Qualifications: documentary evidence in accordance with ITT 17 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;

e) Tenderer Eligibility: documentary evidence in accordance with ITT 17 establishing the Tenderer eligibility to tender;

f) Eligibility of Properties Offered: documentary evidence in accordance with ITT 16, establishing the eligibility of the Property to be sold by the Tenderer;

g) Conformity: documentary evidence in accordance with ITT 16 and 38, that he Properties are conform to the tendering document; and

h) Any other document required in the TDS.

11.2 The Tenderer shall serialize page so fall tender documents submitted.

## 12. Form of Tender and Price Schedules

12.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

12.2 The Tenderer should note that the Procuring Entity will indicate the type of property required and locations where such property should be located. A tenderer can submit as many tenders as there are such properties in the stated locations that the tenderer wishes to offer. In the case of land, the acreage of land stated in the Schedule of Requirements can be plus or minus the percentage specified in the TDS.

12.3 Each item on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Tenderers may quote for one or more of the items on the Schedule of Requirements. Tenders will be evaluated and awarded on basis of property items.

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

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

**13. Alternative Tenders**

13.1 There will be no alternative tenders. Every offer item will be considered as a tender on its own.

## 14. Tender Prices and Discounts

14.1 Tenders are being invited for individual Properties not lots. The discounts quoted by the Tenderer in the Form of Tender and in the Price, Schedules shall be for individual contracts.

14.2 Prices quoted by the Tenderer shall be fixed and not subject to variation on any account.

## 15. Currencies of Tender and Payment

15.1 The currency (ies) of the Tender and the currency (ies) of payments shall be the same. The Tenderer shall quote in the currency of the country in which the property is located unless otherwise specified in the TDS.

15.2 The Tenderer may express the Tender price in any currency. If the Tenderer wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than two foreign currencies.

## 16. Documents Establishing the Eligibility and Conformity of the Offered Properties

16.1 To establish the conformity of the Properties offered to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Properties offered conform to the technical specifications and standards specified in Section VI, Schedule of Requirements.

16.2 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical characteristics of the Properties offered, demonstrating substantial responsiveness of the Properties offered to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VI, Schedule of Requirements.

## 17. Documents Establishing the Eligibility and Qualifications of the Tenderer

17.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section III, Tendering Forms.

17.2 The Tenderer shall include documentary evidence to show that the Tenderer owns the properties offered and that has all the required registration papers of the property.

17.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the

Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

17.4 The purpose of the information described in ITT 6.2 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

17.5 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to owner ship and control which information on any changes to the information which was provided by the tenderer underITT6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

17.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.

17.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

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

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

17.9 If a tenderer submits information pursuant to these requirements that is in complete, in accurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT16.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## 18. Period of Validity of Tenders

18.1 TendersshallremainvalidfortheTenderValidityperiodspecifiedintheTDS.TheTenderValidityperiodstarts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, its hall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 18.3.

## 19. Tender Security

19.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS. In this case a Tender-Securing Declaration or a Tender Security shall be for each item. Alternatively, a tenderer may aggregate all the Items tendered for and provide one Tender-Securing Declaration or a Tender Security in the required amounts, as the case may be.

19.2 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security shall be a demand bank guarantee in any of the following forms at the Tenderer option:

i) cash; ii) a bank guarantee; iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or

iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.

19.3 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section III, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for 60 days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

19.4 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

19.5 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46.

19.6 The Tender Security shall be returned/release as promptly as possible

a) The procurement proceedings are terminated;

b) The procuring entity determines that none of the submitted tenders is responsive;

c) A bidder declines to extend the tender validity.

d) Once the successful Tenderer has signed the Contract and furnished the required Performance e) Security.

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

a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension there to be provided by the Tenderer; or

b) if the successful Tenderer fails to:

i) sign the Contract in accordance with ITT 45; or ii) Furnish the

transfer documents of the property.

19.8 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA that PPRAdebarstheTendererfromparticipatinginpublicprocurementasprovidedinthe law.

19.9 A tenderer shall not issue a tender security to guarantee itself.

## 20. Format and Signing of Tender

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it “ORIGINAL.” In addition, the Tenderer shall submit copies of the Tender, in the number

specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

20.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. Then amend position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## D. Submission and Opening of Tenders 21. Sealing and Marking of Tenders

21.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes: in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and in an envelope or package or container marked "COPIES", all required copies of the Tender; and if alternative Tenders are permitted in accordance with ITT 13, and if relevant: in an envelope or package or container marked "ORIGINAL – ALTERNATIVE TENDER", the alternative Tender; and in the envelope or package or container marked "COPIES-ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- bear the name and address of the Procuring Entity.
- bear the name and address of the Tenderer; and
- bear the name and Reference number of the Tender.

21.2 If an envelope or package or mentor premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

## 22. Deadline for Submission of Tenders

22.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified in the TDS. When so specified in the TDS, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

22.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT7, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the dead line shall thereafter be subject to the deadline as extended.

## 23. Late Tenders

23.1 The Procuring Entity shall not consider any Tender that arrives after the dead line for submission of Tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned un opened to the Tenderer.

## 24. Withdrawal, Substitution, and Modification of Tenders

24.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be: prepared and submitted in accordance with ITT 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

24.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned un opened to the Tenderers.

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

## 25. Tender Opening

25.1 Except abs in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the TDS in the presence of Tenderers' designated representatives who chooses to attend any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 22.1, shall be as specified in the TDS.

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

25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

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

25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.

25.6 Only Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules re to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the TDS.

25.7 The Procuring Entity shall neither discuss the merits of any Tender no reject any Tender (except for late Tenders, in accordance with ITT 23.1).

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

a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;

b) The Tender Price, per lot (contract) if applicable, including any discounts; c) Any alternative Tenders;

d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

25.9 The Tenderers 'representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to all Tenderers upon request.

# E. Evaluation and Comparison of Tenders

## 26. Confidentiality

26.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 40.

26.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.

26.3 Notwithstanding ITT 26.2, from the time of Tender opening to the time of Contract signature, if any Tenderer wishes to contact the Procuring Entity on any matter related to the tendering process and award, it should do so in writing.

## 27. Clarification of Tenders

27.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 31.

27.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## 28. Deviations, Reservations, and Omissions

28.1 During the evaluation of Tenders, the following definitions apply:

- "Deviation" is a departure from the requirements specified in the Tendering document;
- "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
- "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

## 29. Determination of Responsiveness

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

29.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that: if accepted, would:

i) Affect in any substantial way the scope, quality, or performance of the Property specified in the ii) Contract; or iii) Limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or

iv) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

29.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 16 and ITT 17, in particular, to confirm that all requirements of Section IV (Schedule of Requirements) have been met without any material deviation or reservation, or omission.

29.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 30. Non-conformities, Errors and Omissions

30.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformity in the Tender.

30.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with their quest may result in the rejection of its Tender.

30.3 Provided that a Tender is substantially responsive, the Procuring Entity shall have no recourse to rectify any quantifiable nonmaterial non-conformities related to the Tender Price.

## 31. Correction of Arithmetical Errors

31.1 This tender is based on unit parcels of Immovable Properties and does not require checking for arithmetical errors. However, if there is a difference between the entries of unit price in figures and words, price in words shall prevail.

31.2 Tenderers shall be requested to accept correction of such difference. Failure to accept the correction in accordance with ITT 30.1, shall result in the rejection of the Tender.

## 32. Conversion to Single Currency

32.1 For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted in a single currency as specified in the **TDS**.

**33. Margin of preference and Reservations**

33.1 No Margin of Preference and Reservations shall be allowed in this tender.

## 34. Evaluation of Tenders

34.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be: a) Substantially responsive to the tendering document; and

b) The lowest evaluated price.

34.2 Price evaluation will be done for Items specified in the **TDS**; and the Tender Price as quoted in accordance with ITT14.To evaluate a Tender, the Procuring Entity shall consider the following:

a) price adjustment for correction of arithmetic errors in accordance with ITT 30; excluding provisional sums and contingencies, if any;

b) price adjustment due to discounts offered in accordance with ITT 13.2;

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31;

d) price adjustment due to quantifiable non material non-conformities in accordance with ITT 29.3; and

e) any additional evaluation factors specified in the **TDS** and Section III, Evaluation and Qualification Criteria.

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

34.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 33.2. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

34.5 The Procuring Entity's evaluation of a Tender will include and consider all taxes and levies payable on transfer of property.

34.6 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted. These factors shall be specified in the TDS and shall be expressed in monetary terms to facilitate comparison of Tenders. Any additional criteria and methodologies to be used shall be as specified in ITT 33.2 (e).

## 35. Comparison of Tenders

35.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be based on total cost including all transfer costs as indicated in ITT 33.5.

## 36. Abnormally High Tenders

36.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

36.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

36.3 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, be for ere tendering.

## 37. Qualification of the Tenderer

37.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderers that have submitted substantially responsive tenders that meet the qualifying criteria based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 17.

37.2 Upon an affirmative determination that eligible Tenderer shave submitted substantially responsive tenders, the Procuring Entity shall (in accordance with ITT 34) proceed with physical inspection of the properties offered in all the responsive tenders to confirm their conformity to the Procuring Entity's requirements. If any of the tenders fails to meet the Procuring Entity's requirements, the Procuring Entity shall declare it non-responsive and remove it from the list of the Evaluated Tenderers.

## 38. Confirmation of the responsiveness of the offered properties

38.1 Upon establishing a tender that meets the Procuring Entity's requirements, pursuant to ITT 34.2, the Procuring Entity will engage one or two qualified real estate Expert Firms available in the country of the property (*one or two private real estate valuers or firms depending on the size, value and complexity of the property, selected by the Procuring Entity and agreed with the Seller*) to make a detailed inspection of the offered property and prepare:

i) A report confirming its conformity with the Procuring Entity's requirements and itemizing things that the Tenderer would need to attend to prior to the finalization of the sale agreement; and

ii) A commercial valuation of the property; the expert shall confirm with the Country's Lands Office that the valuation arrived at is close to the listed commercial value of the said property.

38.2 Based on the report, the Procuring Entity shall identify a responsive Lowest Evaluated Tenderer and the commercial value of tendered property, which commercial value shall form a basis for price analysis/consideration.

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

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

# F. Negotiations and Award of Contract

## 40. Invitation to Negotiate a Contract

40.1 Prior to the expiration of the Tender Validity Period or any extension thereof, pursuant to ITT35.2, the Procuring Entity shall invite the identified Lowest Evaluated Tenderer to negotiate a contract.

## 41. Negotiations

41.1 The negotiations will be held at the place indicated in the TDS with the Tenderer's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Tenderer. The Procuring Entity will constitute a team to negotiate a contract, which team shall include representation from the Expert Firm(s) referred to in ITT 34.1.

41.2 The negotiations shall start with discussions of the scope of the offered property, its conformity to the Procuring Entity's requirements, and the items that would need to be attended to before the contract is signed. These discussions shall not substantially alter the original scope of the Procuring Entity's requirements. The items that would need to be attended to before the contract is signed should not be so extended as to render the scope of the property different from the Procuring Entity's requirements.

41.3 The financial negotiations include the clarification of the tax liabilities in the Country where the property is located and how it should be reflected in the Contract, including a determination of who will bear the cost of each tax item. They will include the process of dealing with any loans, credits, charges, tenancy agreements and

caveats imposed on the property to free it before handover to the Procuring Entity. The negotiations are concluded with a review of the draft Contract, which then shall be initialed by the Procuring Entity and the Tenderer.

41.4 The Procuring Entity shall prepare minutes of negotiations that are signed by the Procuring Entity and the Tenderers' authorized representative.

## 42. Award of Contract

42.1 The Procuring Entity shall award the Contract to the Tenderer offering the Lowest Evaluated Tender, subject to negotiations in accordance with ITT 37. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be: a) Most responsive to the tendering document; and

b) Prior to the award of contract Kitui County Government Official Valuer will do the valuation report on the land which will guide the evaluation committee

c) The Evaluated Tenderer with whom the Procuring Entity has concluded negotiations pursuant to ITT 37.

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

43.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter in to a Contract / Notification of award to all tenderers which shall contain, at a minimum, the following information:

a) The name and address of the Tenderer submitting the successful tender;
b) the Contract price of the successful tender;
c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
d) the expiry date of the Standstill Period; and
e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;

## 44. Standstill Period

44.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

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

**45. Debriefing by the Procuring Entity** 45.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

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

## 46. Letter of Award

46.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 44.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

## 47. Signing of Contract

47.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

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

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

## 48. Signing of Contract

48.1 Within twenty-eight (28) days of conclusion of contract negotiations, the successful Tenderer shall sign, date, and return it to the Procuring Entity for signature and distribution.

## 49. Publication of Procurement Contract

49.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

a) Name and address of the Procuring Entity;

b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;

c) The name of the successful Tenderer, the final total contract price, the contract duration.

d) Dates of signature, commencement and completion of contract;

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

49.2 All acquisitions of building or public land with or without buildings shall be notified to the National Treasury or relevant county treasury.

## 50. Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS.**

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

# Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| **A. General** | |

| | |
|---|---|
| ITT 1.1 | The Procuring Entity is: **COUNTY GOVERNMENT OF KITUI**<br>The reference number of the Invitation for Tenders is: **CGOKTI/MLAUD/005/20232024**<br>The name of the Contract is: **PURCHASE OF LAND FOR CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY WARD OFFICES -KIVOU WARD** |
| ITT 7.1 | For Clarification of Tender purposes only, the Procuring Entity's address is:<br><br>**Ag. HEAD OF SUPPLY CHAIN MANAGEMENT SERVICES**<br>**PO BOX 33-90200**<br>**KITUI**<br>EMAIL: **procurement@kitui.go.ke**<br>**TO REACH THE ENTITY NOT LATER THAN 4 DAYS BEFORE CLOSING**<br><br>The Procuring Entity shall publish its response at the website www.kitui.go.ke and www.tenders.go.ke |
| ITT 7.2 | A pre-tender conference **WILL NOT BE HELD** |

| | |
|---|---|
| ITT 7.3 | The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than **(4) Days before closing date** |
| ITT 7.5 | The Procuring Entity shall publish Minutes of the Pre-Tender conference at the website **N/A** |
| **B. Contents of Tendering Document** | |
| **C. Preparation of Tenders** | |
| ITT 11 (h) | The Tenderer shall submit the following additional documents in its Tender: a. Copy of Title deed<br>b. Current Search Certificate<br>c. Estate Agents to attach Letters of Authority to sell from Respective owners d. Copy(s) of IDs and PIN |
| ITT 12.2 | The acreage of land stated in the Schedule of Requirements can be plus or minus _____ percentage of the specified acreage. **N/A** |
| ITT 15.1 | The Tenderer shall quote in **KENYA SHILLINGS (KSHs)** |
| ITT 18.1 | The Tender validity period shall be **210 Days**. |
| ITT 19.1 | A *Tender Security* **SHALL NOT BE** required. |
| ITT 20.1 | In addition to the original of the Tender, the number of copies is: *[insert number of copies]* **(1) one** |
| ITT 20.3 | The written confirmation of authorization to sign on behalf of the Tenderer shall consist of **Power of Attorney Commissioned by Commissioner of Oaths** where a person other than the owner is signing. This authorization shall be attached to the Tender |

| | |
|---|---|
| **D. Submission and Opening of Tenders** | |
| ITT 22.1 | For Tender submission purposes shall only **be done Manually (hand delivery** of **post mail) in sealed envelopes** |
| **ITT Reference** | **PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS** |
| | The deadline for Tender submission is:<br>Date: **30th June 2025** Time:<br>**12:00 Noon** |
| ITT 25.1 | The Tender opening shall take place at:<br><br>Postal Address: **PO Box 33-90200-Kitui**<br>Physical Address: **Governor's Administration Block Savanni road Opposite Kitui Central, CDF Offices**.<br>Date: **30th June 2025**<br>Time: **12:00 Noon** |
| ITT 25.6 | The Form of Tender and Price Schedules shall be initialed by _____ *[insert number]* representatives of the Procuring Entity conducting Tender opening. _____ *[Insert procedure: Example: Each Tender shall be initialed by all representatives and shall be numbered, any modification to the unit or total price shall be initialed by the Representative of the Procuring Entity, etc.]* |
| **E. Evaluation and Comparison of Tenders** | |
| ITT 32.1 | The evaluation and comparison the currency shall be **Kenya Shillings.** |
| ITT 32.2 | The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: **Kenya Shillings**<br><br>The source of exchange rate shall be: **The Central Bank in Kenya**<br><br>The date for the exchange rate shall be*:* **Tender Opening Date** |
| ITT 34.2 | Price evaluation will be done for the following items:<br>**Per acres and should be within the range of market valuation and will be guided by report from official County Valuator.** |
| ITT 34.2 (e) | The additional evaluation factors shall be _____ |
| ITT 41.1 | The negotiations will be held at _____ (*specify the City, location and Country)* |
| ITT 41.3 | The negotiated contract price shall not exceed the Market value of the Commercial Value of the property provided by the Experts or by the Country's Lands Office, whichever is lower. |

| F. Award of Contract | |
|---|---|
| ITT 50.1 | The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website www.ppra.go.ke.<br>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:<br>For the attention: **Ag. Director Supply Chain Management Services** Procuring Entity:<br>**County Government of Kitui**<br>**PO Box 33-90200**<br>**Kitui**<br>Email address: procurement@kitui.go.ke<br>In summary, a Procurement-related Complaint may challenge any of the following:<br>the terms of the Tendering Documents; and the Procuring Entity's decision to award the contract. |

# SECTION III - EVALUATION AND QUALIFICATION CRITERIA

## 1. General Provision

1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use the Standard Tender Evaluation Report for Goods and Works for evaluating Tenders.

1.3 EvaluationandcontractawardCriteria-theProcuringEntityshallusethecriteriaandmethodologieslistedinthis Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

## 2 Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender

Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

## EVALUATION CRITERIA STAGE 1. PRELIMINARY EVALUATION

| S/No. | **Mandatory Requirement** | **Yes/No** |
|---|---|---|
| **1.** | Copy of Title Deed as proof of ownership | |
| **2.** | Copy of a current official search Certificate | |
| **3.** | Where the land is registered in more than one name, proof of authority to act from co-owners should be attached (sworn Affidavit) | |
| **4.** | Copy of National ID card both sides | |
| **5.** | Copy of a PIN Certificate | |
| **6.** | Must serialize/paginate the tender document and all attachments sequentially | |
| **7.** | Must submit the price schedule in the format provided | |
| **8.** | Must fill, sign and stamp the Form of tender | |
| **9.** | Must fill, sign and stamp Tenders eligibility- confidential n business questionnaire | |
| **10.** | Must fill, sign and stamp the Certificate of independent tender determination | |
| **11.** | Must fill, sign and stamp self-declaration forms;<br>Forms SD1 & SD2<br>Declaration and Commitment to the Code of Ethics | |
| | **RESPONSIVENESS (FAIL/PASS)** | |

STAGE 2: TECHNICAL EVALUATION

| **S/NO** | **TECHNICAL REQUIREMENT** | **BIDDER'S RESPONSE (YES OR NO)** |
|---|---|---|
| 1. | **Location**<br>Within 1Km radius of Ikuuni Market | |
| 2 | **Accessibility**<br>Parcel of land is accessible by road | |

| | | |
|---|---|---|
| 3 | Land parcel is undeveloped | |
| 4. | Title deed has no encumbrances (The land must be free from disputes, court orders, caveat, court injunctions or any other inhabitations) | |
| 5. | Land has a gentle gradient free from flooding wetland, forest or biodiversity of great environmental importance | |
| | **RESPONSIVENESS (FAIL/PASS)** | |

## STAGE 3. FINANCIAL EVALUATION

a) The County government of Kitui shall, prior to the award of tender, carry out **due diligence** of the parcel(s) to check conformance of the technical requirements.

b) Technically responsive parcels shall be valued by an expert from the County government of Kitui and a valuation/inspection report prepared which shall form basis of price negotiations (If necessary).

c) The County government of Kitui shall appoint a team to conduct price negotiations with the lowest evaluated tenderer and a report prepared which shall form basis of price negotiations.

d) The team shall then prepare a report which shall be signed by both parties and will form the basis of award of the tender. **3 Tender Evaluation (ITT33)**

Price evaluation: in addition to the criteria listed in ITT 33.2 (a) – (e) the following criteria shall apply: a) Any additional evaluation factors as per ITT 33.2 (d) specified as follows:

---

b) Prepare a detailed inspection report and a commercial value of tendered properties pursuant to ITT32.

c) Conduct negotiations with the Lowest Evaluated Tenderer pursuant to ITT39 and40.

*4 Multiple Contracts*

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and the lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

### OPTION1

i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

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

## OPTION2

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

# SECTION IV - TENDERING FORMS

## FORM OF TENDER (Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

### *INSTRUCTIONS TO TENDERERS*

*i) All italicized text is to help the Tenderer in preparing this form.*

*ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*

*iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (n) below.*

**Date of this Tender submission**:.....*[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]*

To: ..... *[Insert complete name of Procuring Entity]*

a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);

b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT3;

c) **Tender/Proposal-Securing Declaration**: We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT3.6;

d) **Conformity:** We offer to sell in conformity with the Tendering Document and in accordance with the Schedule of Requirements the following Properties [*insert the Schedule of Properties offered and their Prices*];

## SCHEDULE OF PROPERTIES AND TENDERED PRICES

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| **Property Item N** | **Description of Property** | **Location of Property** | **Land Acreage offered** | **Land Acreage required** | **Price and Currency** | **Discount offered (if any)** |
| *No 1* | | | | | | |
| No 2 | | | | | | |
| No 3 | | | | | | |

e) **Discounts:** The discounts offered and the methodology for their application are:

i) The discounts offered are: [*Specify in detail each discount offered.*] ii) The exact method of calculations to determine the net price after application of discounts are shown below: [*Specify in detail the method that shall be used to apply the discounts*];

f) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

g) **Commissions, gratuities, fees**: We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: [*insert complete name of each Recipient, its full address, there as on for which each commission or gratuity was paid and the amount and currency of each*

*such commission or gratuity*].

| Name of Recipient | Address | Reason | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

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

h) **Binding Contract:** We understand that this Tender shall constitute a binding contract between us, until negotiations have been concluded and a formal contract is prepared and executed.We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

i) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest Tender or any other Tender that you may receive; and

j) **Fraud and Corruption:** We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

k) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

l) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Suppliers, Contractors and Service Providers, copy available from_(*specify website*) during the procurement process and the execution of any resulting contract.

m) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

n) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

i) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict to interest.

ii) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers. iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

iv) declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

o) **Read and understood**: Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in "Appendix1-Fraud and Corruption" attached to the Form of Tender.

Name of the tenderer: *[*insert complete name of the tenderer*]

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

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

Signature of the person named above: ..... [*Insert signature of person whose name and capacity are shown above*]

Date signed..... [*Insert date of signing*] day of..... [*Insert month*], [*insert year*]

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

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

## 1) TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

(a) 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 | Name of the Tenderer | |
| 3 | Full Address and Contact Details of the Tenderer. | Country<br>City<br>Location<br>Building<br>Floor<br>Postal Address<br>Name and email of contact person. |
| 4 | Reference Number of the Tender | |
| 5 | Date and Time of Tender Opening | |
| 6 | Current Trade License No and Expiring date | |
| 7 | Maximum value of business which the Tenderer handles. | |
| 8 | | |

**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.

| | Names of Director | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

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

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 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 controls, is 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 such Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the 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 correct.

Full Name_____

Title or Designation_____

_____ _____

*(Signature)* *(Date)*

## 2) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the under signed, 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]*

## (3) 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 I V of the Act.
3. THAT what is deposed to here in above is true to the best of my knowledge, information and belief.

…… …… …… (Title) (Signature) (Date)

Bidder's 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 herein above is true to the best of my knowledge information and belief.

…… …… …… (Title) (Signature) (Date)

Bidder's Official Stamp

# DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

## (4) APPENDIX 1 – FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### Purpose

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

### Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

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

(1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

(2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;

(3) Without limiting the generality of the subsection (1) and (2), the person shall be

(a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
(b) if a contract has already been entered into with the person, the contract shall be voidable;

(4) The voiding of a contract by the 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 subcontract or for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontract or appointed shall meet all the requirements of this Act.

(6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the 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.

(8) 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 for the 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 attempt s 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 in to 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 authorities 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 off act 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 award[1] 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 Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring

i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] 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 in to 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 there of as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic form at) deemed relevant for the investigation/audit, and making copies there*

*of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visit's; and obtaining third party verification of information.*

***The Tenderer shall complete this form and submit with Tender***

SCHEDULE OF REQUIREMENTS (to be completed by Tenderer)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| **Property Item N** | **Descriptio n of Property** | **Locations of Property** | **Land (minimum Acreage required)** | **Land (minimum Acreage offered)** | **Minimum facilities (required)** | **Minimum facilities (Offered)** | **Ownership Certificate Attached (YE/NO) if Yes Describe** |
| No 1 | Land for construction on of ward offices for members of the County AssemblyKivou Ward | Kivou Ward within 1Km radius of Ikuuni Market | *0.5(Acres)* | | • Land is located as stated above<br>• Land parcel is accessible<br>• Land parcel Undeveloped<br>• Tittle deed has no encumbrances (Copy of Current Official Search)<br>• Land is on stable ground<br>• Attached a certified copy of National ID<br>• Attached a certified copy of PIN certificate<br>• Provided a contact address, Telephone number(s) and postal address | | |

*Note: Tender shall complete Columns 5, 7 and 8 and submit with tender.*

## PRICE SCHEDULE FORM

*[The list of Property Items in the Price Schedules shall coincide with the List of Property Items specified by the Procuring Entity in the Schedule of Requirements. This form shall be same as the on the Form of Tender]*

## SCHEDULE OF PROPERTIES AND TENDERED PRICES

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| **Property Item N** | **Description of Property** | **Location of Property** | **Land Acreage offered** | **Land Acreage required** | **Price and Currency /1** | **Discount offered (if any)** |
| *No 1* | | | | | | |
| No 2 | | | | | | |
| No 3 | | | | | | |

**Notes:** *All columns should be completed by the Tenderer and included in the Procuring Entity except Column6and7 will be completed by the Tenderer.*

## 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]*

| |
|---|
| 1. Tenderer's Name *[insert Tenderer's legal name] or full name of person tendering* |
| 2. Tenderer's actual country of registration: *[insert actual or intended country of registration]* |
| 3. Tenderer's year of registration: *[insert Tenderer's year of registration]* |
| 4. Tenderer's Address in country of registration: *[insert Tenderer's legal address in country of registration]* |
| 5. Tenderer's Authorized Representative Information Name: *[insert Authorized Representative's name]*<br>Address: *[insert Authorized Representative's Address]*<br>Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*<br>Email Address: *[insert Authorized Representative's email address]* |
| 6. Attached are copies of original documents of *[check the box(es) of the attached original documents]*<br>☐ 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 3.1.<br>☐ Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.7. |

| |
|---|
| 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

**Beneficiary:**_____

**Request for Tenders No:**_____

**Date:**_____

**TENDER GUARANTEE No.:**_____

**Guarantor:** _____

1. We have been informed that__(here in after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here 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 on or before that date.

_____

*[signature(s)]*

***No***

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

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

**TENDER GUARANTEE No.:**

1. Whereas …… [*Name of the tenderer]* (hereinafter called "the tenderer") has submitted its tender dated …… [*Date of submission of tender]* for the …… *[Name and/or description of the tender]* (hereinafter called "the Tender") for the execution of under Request for Tenders No. ("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [**Name of Insurance Company**] having our registered office at …… (hereinafter called "the Guarantor"), are bound unto ……... [*Name of Procuring Entity*] (hereinafter called "the Procuring Entity") in the sum of …… (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

   Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

| | |
|---|---|
| *[Date ]* | *[Signature of the Guarantor]* |
| *[Witness]* | *[Seal]* |

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

# TENDER - SECURING DECLARATION FORM {r 46 and 155(2)}

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

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

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

.....[insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

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

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:

   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or

   b) Thirty days after the expiration of our Tender.

4. I / We understand that if I am /we are / in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that' submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: ……..…...……..

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

Name: ……..

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

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

*Seal or stamp*

# PART 2 - SCHEDULE OF REQUIREMENTS

# SECTION IV - SCHEDULE OF REQUIREMENTS

## Notes for Preparing the Schedule of Requirements

1. The Schedule of Requirements shall be included in the Tendering Document by the Procuring Entity, and shall cover, at a minimum, a description of the Property (ies) required.

2. The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section III. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT40.1.

## LIST OF PROPERTIES

List and number each required Property and provide full descriptions of the main features of the property. These features shall include physical location (of where the required property should be) and full descriptions of the properties in terms of such items as acreage, soil conditions, access size of buildings, floor areas, facilities, finishes, etc. Care should be taken not to be too restrictive as to limit competition and or availability. If there are more than one location where the Property could be located, these locations should be listed against each property. Where the required property is a building, the Procuring Entity shall indicate minimum acreage it should occupy. The Tenderer can offer as many Items as possible, even though the Procuring Entity will purchase only the required quantity. The list of the Items is then summarized on the Table below (Schedule of Requirements). *The Examples given on the Schedule of Requirements below should not be in the final Tender Document.*

SCHEDULE OF REQUIREMENTS (to be completed by the Procuring Entity (except Columns 5, 7 and 8)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| **Property Item N** | **Description of Property** | **Locations of Property** | **Land (minimum Acreage required)** | **Land (minimum Acreage offered)** | **Minimum facilities (required)** | **Minimum facilities (Offered)** | **Ownership Certificate Attached (YE/NO) if Yes Describe** |
| No 1 | Land for construction of ward offices for Members of the county AssemblyKivou Ward | Kivou Ward within 1Km radius of Ikuuni Market | *0.5(Acres)* | | • Land is located as stated above<br>• Land parcel is accessible • Land parcel Undeveloped<br>• Tittle deed has no encumbrances (Copy of Current Official Search)<br>• Land is on stable ground<br>• Attached a certified copy of National ID<br>• Attached a certified copy of PIN certificate<br>• Provided a contact address, Telephone number(s) and postal address | | |

***Note:*** *The Document for Tender shall not have the examples.*

*Tenderer shall complete Columns 5, 7 and 8 and submit with tender.*

# PART 3 – CONDITIONS OF CONTRACT

## SECTION V - GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

a) "Contract" means the Contract Agreement entered into between the Procuring Entity and the Seller, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.

c) "Contract Price" means the price payable to the Seller as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract. d) "Day" means calendar day.

e) "Completion" means the fulfillment of the sale agreement by the Seller in accordance with the terms and conditions set forth in the Contract.

f) "GCC" means the General Conditions of Contract.

g) "Property" means all of the immovable assets (lands and buildings) that the Seller is required to sell to the Procuring Entity under the Contract.

h) "Procuring Entity" means the Entity purchasing the property as specified in the SCC. "SCC" means the Special Conditions of Contract.

i) "Seller" means the person, private or government entity, or a combination of the above, who's Tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.

## 2. Contract Documents

Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

## 3. Fraud and Corruption

3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions, policies and procedures as set forth in Laws of Kenya.

3.2 The Procuring Entity requires the Seller to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## 4 Interpretation

**Singular and plural** -If the context so requires it, singular means plural and vice versa.

**Entire Agreement**- The Contract constitutes the entire agreement between the Procuring Entity and the Seller and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect there to made prior to the date of Contract.

**Amendment**- No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

**Non-waiver** -Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

**Any waiver-**of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

**Severability**-If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

## 5 Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Seller and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature

that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the English Language, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Seller shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Seller.

## 6 Joint Venture, Consortium or Association

If the Seller is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

## 7 Eligibility

The Seller shall have the nationality of an eligible country. A Seller shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. Al l properties to be sold under the Contract shall be located in Eligible Countries.

## 8 Notices

Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt. A notice shall be effective when delivered or on the notice's effective date, whichever is later.

**9 Governing Law**

The Contract shall be governed by and interpreted in accordance with the laws defined in the TDS.

## 10 Settlement of Disputes

10.1 The Procuring Entity and the Seller shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute a rising between them under or in connection with the Contract.

10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, the neither the Procuring Entity or the Seller may give notice to the other party of its intention to commence arbitration, as here in after provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after completion of the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC**.

10.3 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Seller any monies due to the Seller.

## 11 Inspections and Audit by the Procuring Entity

11.1 The Seller shall keep accurate and systematic accounts and records in respect of the properties in such form and details as will clearly identify relevant time changes and costs.

11.2 The Seller shall permit the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by

the Procuring Entity. The Seller's attention is drawn to Sub-Clause 3.1 which provides, *inter alia*, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to a determination of ineligibility. **12 Scope of the property sale**

The Property to be sold shall be as specified in the Schedule of Requirements.

## 13 Delivery and Documents

Subject to GCC Sub-Clause 33.1, the completion of the contract (handover of the transfer documents to the Procuring Entity for property registration) shall be not more than the period specified ion the TDS after completion of Negotiations and signing of the contract.

## 14 Seller's Responsibilities

The Seller shall hand over of the Property in accordance with GCC Clause12, and the completion of the contract as per GCC Clause13.

## 15. Contract Price

Prices charged by the Seller for the Property under the Contract shall vary from the prices quoted by the Seller in its Tender, given the tender price will be subject to negotiations.

## 16. Terms of Payment

16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.

16.2 The Seller's request for payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Property to be sold and the documents submitted pursuant to GCC Clause13 and upon fulfillment of all other obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Seller, and after the Procuring Entity has accepted it.

16.4 The currencies in which payments shall be made to the Seller under this Contract shall be those in which the Tender price is expressed.

16.5 In the event that the Procuring Entity fails to pay the Seller any payment by its due date or within the period set forth in the **SCC**, the Procuring Entity shall pay to the Seller interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

## 17 Taxes and Duties

17.1 The taxes to be paid by the Procuring Entity and the Seller shall be specified in the **SCC**.

17.2 If any tax exemptions, reductions, allowances or privileges may be available to the Seller, the Procuring Entity shall use its best efforts to enable the Seller to benefit from any such tax savings to the maximum allowable extent.

**18 Performance Security**

No performance Security is envisaged, but if required, it shall be as specified in the **SCC**.

## 19 Copyright

The copyright in all documents and other materials containing data and information furnished to the Procuring

Entity by the Seller herein shall remain vested in the Seller, or, if they are furnished to the Procuring Entity directly or through the Seller by any third party, including sellers of materials, the copyright in such materials shall remain vested in such third party

## 20 Confidential Information

20.1 The Procuring Entity and the Seller shall keep confidential and shall not, without the written consent of the other partyhereto,divulgetoanythirdpartyanydocuments,data,orotherinformationfurnisheddirectlyorindirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Seller may furnish to its Agents such documents, data, and other information it receives from the Procuring Entity to the extent required for the Agent to perform its work under the Contract, in which event the Seller shall obtain from such Agent an undertaking of confidentiality similar to that imposed on the Seller under GCC Clause 20.

20.2 The Procuring Entity shall not use such documents, data, and other information received from the Seller for any purposes un-related to the contract. Similarly, the Seller shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.

20.3 TheobligationofapartyunderGCCSub-Clauses20.1and20.2above,however,shallnotapplytoinformation that:

a The Procuring Entity or Seller need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall de disclosed in the **SCC**;

b now or hereafter enters the public domain through no fault of that party; c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## 21 Insurance

The Seller shall be responsible for insurance against incidental damage of the Property prior to transfer to the Procuring Entity and the Procuring Entity shall be responsible for insurance against incidental damage of the Property after receipt of the transfer documents.

## 22 Liquidated Damages

Except as provided under GCC Clause 32, if the Seller fails to deliver the transfer documents of the property by the Date(s) within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the contract price for month or part thereof of delay until actual the transfer documents of the property, up to a maximum deduction of the percentage specified in the **SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35. **23 Warranty and Patent Indemnity**

If there are any warranties or patent indemnities required under this contract, they will be specified in the **SCC**.

## 24 Change in Laws and Regulations

Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, or der or by law having the force of law is enacted, promulgated, abrogated, or changed in Kenya or the country of the Seller, that subsequently affects the completion date or the Contract Price, then such completion date o Contract Price shall be correspondingly increased or decreased, to the extent that the Seller has there by been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price negotiations where applicable, in accordance with GCC Clause15.

## 25 Force Majeure

25.1 The Seller shall not be liable for forfeiture of its Performance Security (if applicable), liquidated damages, 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.

25.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Seller that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Seller. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

25.3 If a Force Majeure situation arises, the Seller shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Seller shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## 26. Change Orders and Contract Amendments

26.1 The Procuring Entity may shall not at any time order the Seller through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract.

26.2 Prices to be charged by the Seller that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Seller for similar services.

## 27. Value Engineering

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

i) The proposed change(s), and a description of the difference to the existing contract requirements;

ii) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs the Procuring Entity may in cur in implementing the value engineering proposal and iii) A description of any effect(s) of the change on performance / functionality.

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

a Accelerates the delivery period; or b Reduces the Contract Price or

the life cycle costs to the Procuring Entity; or c Improves the quality, efficiency or

sustainability of the property; or

d Yields any other benefits to the Procuring Entity, without compromising the necessary functions of the property.

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

A reduction of the Contract Price; the amount to be paid to the Seller shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or

An increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Seller shall be the full increase in the Contract Price.

27.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

## 28 Extensions of Time

28.1 If at any time during performance of the Contract, the Seller should encounter conditions impeding timely delivery of the Property pursuant to GCC Clause 13, the Seller shall promptly notify the Procuring Entity in writing of the delay, it's likely duration, and its cause. As soon as practicable after receipt of the Seller's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Seller's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

28.2 Except in case of Force Majeure, as provided under GCC Clause 25,a delay by the Seller in the performance

of its Delivery and Completion obligations shall render the Seller liable to the imposition of liquidated damages pursuant to GCC Clause 22, unless an extension of time is agreed upon, pursuant to GCCSubClause28.1.

## 29 Termination for Default

The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Seller, may terminate the Contract in whole or in part:

a if the Seller fails to deliver the Property within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 28;

b if the Seller fails to perform any other obligation under the Contract; or c if the Seller, in the judgment of the Procuring Entity has engaged in Fraud and Corruption in competing for or in executing the Contract. **30 Termination for Insolvency.**

The Procuring Entity may at any time terminate the Contract by giving notice to the Seller if the Seller becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Seller, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity

**31 Termination for Convenience.**

The Procuring Entity, by notice sent to the Seller, may terminate the Contract at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Seller under the Contract is terminated, and the date upon which such termination becomes effective.

## 32 Assignment

Neither the Procuring Entity nor the Seller shall assign their obligations under this Contract, except with prior written consent of the other party.

# SECTION VI - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics].*

| **Number of GC Clause** | **Amendments of, and Supplements to, Clauses in the General Conditions of Contract** |
|---|---|
| GCC 1.1(h) | The Procuring Entity is: *[Insert complete legal name of the Procuring Entity]* |

| | |
|---|---|
| GCC 8.1 | For notices, the Procuring Entity's address shall be:<br>Attention: *[ insert full name of person, if applicable]*<br>Postal address (full postal address)<br>Physical Address (full Location Address- *insert city, street name, Building named floor number, room number)*<br>Telephone: *[include telephone number, including country and city codes]*<br>Electronic mail address*: [insert e-mail address, if applicable]* |
| GCC 10.2 | The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:<br><br>*[The Tendering document should contain one clause to be retained in the event of a Contract with a foreign Seller and one clause to be retained in the event of a Contract with a Seller who is a national of Kenya. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the Tendering document.*<br>*"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Seller and clause 10.2 (b) shall be retained in the case of a Contract with a national of Kenya"]*<br><br>*(a) Contract with foreign Seller:*<br>*[For contracts entered into with foreign sellers, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Procuring Entity may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]*<br><br>*If the Procuring Entity chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:*<br><br>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.<br><br>*If the Procuring Entity chooses the Rules of ICC, the following sample clause should be inserted:*<br><br>GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.<br><br>*If the Procuring Entity chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:*<br><br>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. |

| **Number of GC Clause** | **Amendments of, and Supplements to, Clauses in the General Conditions of Contract** |
|---|---|

| | |
|---|---|
| | *If the Procuring Entity chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:*<br><br>GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.<br><br>*(b) Contracts with Seller who is a national of Kenya:*<br><br>In the case of a dispute between the Procuring Entity and a Seller who is a national of Kenya, the dispute shall be referred to arbitration in accordance with the laws of Kenya. |
| GCC 16.1 | *Sample provision*<br><br>GCC 16.1—The method and conditions of payment to be made to the Seller under this Contract shall be as follows:<br><br>(i) Advance Payment: Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Property is transferred to the Procuring Entity.<br><br>(ii) Final payment of ninety (90) percent of the Contract Price of the Property on receipt of duly executed property transfer forms: within _____ *(insert number)* days. The bank guarantee shall then be released. |
| GCC 16.5 | The payment-delay period after which the Procuring Entity shall pay interest to the seller shall be *[insert number]* days.<br><br>The interest rate that shall be applied is *[insert number] %* |
| GCC 17.1 | The taxes to be paid by the Procuring Entity and the Seller are:<br>(*specify)* _____<br>_____ |
| GCC 18 | A Performance Security *[ insert "shall" or "shall not" be required]*<br><br>*[If a Performance Security is required, insert "the amount of the Performance Security shall be: [insert amount]*<br><br>*[The amount of the Performance Security is usually expressed as a percentage of the Contract Price. The percentage varies according to the Procuring Entity's perceived risk and impact of non-performance by the Seller. A 10% percentage is used under normal circumstances]*<br>If required, the Performance Security shall be in the form of: *[insert "a Demand Guarantee" or" a Performance Bond"]*<br><br>If required, the Performance security shall be denominated in *[insert "a freely convertible currency acceptable to the Procuring Entity" or "the currencies of payment of the Contract, in accordance with their portions of the Contract Price"]*<br><br>Discharge of the Performance Security shall take place:<br>_____ |

| | |
|---|---|
| GCC 20.3 | The Procuring Entity and/or or Seller shall share information with following arms of Government or other bodies:<br>_____<br>_____ |

| **Number of GC Clause** | **Amendments of, and Supplements to, Clauses in the General Conditions of Contract** |
|---|---|
| GCC 22 | The liquidated damage shall be: [*insert number]* % per Month<br><br>The maximum amount of liquidated damages shall be: *[insert number]* % |
| | |
| GCC 23 | If there are any warranties or patent indemnities required under this contract, they will be provided as follows:<br>_____<br>_____ |
| GCC 27.3 | If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Seller shall be ___% (insert appropriate percentage.<br><br>The percentage is normally up to 50%) of the reduction in the Contract Price. |

# SECTION VII - CONTRACT FORMS

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

## FORM No1: NOTIFICATION OF INTENTION TO NEGOTIATE

This Notification of Intention to Negotiate shall be sent to the responsive and Lowest Evaluated Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

---

## FORMAT

1. For the attention of Tenderer's Authorized Representative 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]*

   *[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.]*

2. Date of transmission: ..... *[Email]* on..... *[Date](Local time)*

   This Notification is sent by *(Name and designation)* _____

   _____

3. Notification of Intention to Commence Negotiations Procuring Entity: ..... *[insert*

   *the name of the Procuring Entity]* ITT Reference Number: ..... *[insert*

   *Number]* Contract title: ..... *[insert the name of the contract]* Country:

   ..... *[insert country where ITT is issued]*

   This Notification of Intention to negotiate a contract notifies you of our decision to commence negotiations with you on the above contract. The negotiations will be held at _____from (*date and time*) _____and will go on till completion.

4. Please confirm your availability to commence the negotiations and let us know the names, designations and addresses (postal, email and telephone number) of your representative sat the negotiations. The negotiations will be conducted in accordance with ITT40.

5. 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:_____

# Form 2: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) Notification of Intention to Award

Procuring Entity: ..... *[Insert the name of the Procuring Entity]* Project: .....

*[Insert name of project]*

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.

**1)** The successful Tenderer

| | |
|---|---|
| Name: | [*insert name of successful Tenderer*] |
| Address: | [*insert address of the successful Tenderer*] |
| Contract price: | [*insert contract price of the successful Tender*] |

**2)** 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.]*

| Name of Tenderer | Tender price | Evaluated Tender price (if applicable) |
|---|---|---|
| [*insert name*] | [*insert Tender price*] | [*insert evaluated price*] |

| | | |
|---|---|---|
| [*insert name*] | [*insert Tender price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Tender price*] | [*insert evaluated price*] |

| | | |
|---|---|---|
| [*insert name*] | [*insert Tender price*] | [*insert evaluated price*] |
| [*insert name*] | [*insert Tender price*] | [*insert evaluated price*] |

**3)** Reason/s why your Tender was unsuccessful

*[INSTRUCTIONS: State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) appoint by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]*

**4)** 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.

**5)** How to make a complaint

**Period:** Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[Insert date] (Local time)*.

Provide the contract name, reference number, name of the tenderer, contact details; and address the Procurementrelated Complaint as follows:

Attention: ..... *[Insert full name of person, if applicable]*
Title/position: ..... *[Insert title/position]*
Agency: ..... *[Insert name of Procuring Entity]*
Email address: ..... *[Insert email address]*

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

Further information:
For more information refer to the PPRA's Website www.ppra.go.ke or email complaints@ppra.go.ke.

You should read these provisions before preparing and submitting your complaint. 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 by the Procurement Regulations (as described in Annex III).

**6)** 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:_____

FORM NO. 3 - REQUEST FOR REVIEW

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

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO…….OF……..…20…….. BETWEEN**

**……...…….APPLICANT**

**AND**

**……RESPONDENT (Procuring Entity)**

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

**REQUEST FOR REVIEW**

I/We……,the above named Applicant(s), of address: Physical address…….P. O. Box

No……. Tel. No……..Email ……, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

1.

2.

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

1.

2.

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

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

**SIGNED**

**Board Secretary**

# FORM NO 4: LETTER OF AWARD

*[Letter head paper of the Procuring Entity]*

..... *[Date]*

To: ..... *[Name and address of the Contractor]*

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 Contract Data]* for the Accepted Contract Amount.....*[amount in numbers and words] [name of currency]*, as negotiated in accordance with the Instructions to Tenderer, is hereby accepted by…… (*Name of the Procuring Entity).*

Please find attached two copies of the draft contract for your review and acceptance. Please sign and return to us signed contracts for our further action, i.e. finalizing the contract and carrying on with the next steps. *[If so required]* You are requested to furnish the Performance Securitywithin28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity..... Attachment:

*Contract Agreement*.....

Authorized Signature: .....

Name and Title of Signatory: ..... Name of

Agency: .....

Attachment: Draft Contract

-

# FORM NO 5 CONTRACTAGREEMENT

*[The successful tenderer shall fill in this form in accordance with the instructions indicated]* THIS AGREEMENT

made the..... *[Insert: number]* day of *[insert: month]*, *[insert: year]*.

BETWEEN

..... *[Insert complete name of Procuring Entity* and having its principal place of business at ..... *[Insert: address of Procuring Entity]* (Hereinafter called "Procuring Entity"), of the one part; and

2. *[Insert name of Seller]*, a corporation incorporated under the laws of *[insert: country of Seller]* and having its principal place of business at *[insert: address of Seller]* (hereinafter called "the Seller"), of the other part.

3. WHEREAS the Procuring Entity invited Tenders for cert a in sale of*[insert brief description of Property]* and has successfully negotiated a contract based on the Tender by the Seller for the sale of the said Property, the Procuring Entity and the Seller agree as follows:

   i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

   ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.

   The Letter of Acceptance The Letter of Tender The Addenda Nos._(If any) General Conditions of Contract Special Conditions of Contract Schedule of Requirements the Completed Price Schedules any other document listed in GCC as forming part of the Contract

   iii) In consideration of the payments to be made by the Procuring Entity to the Seller as specified in this Agreement, the Seller here by covenants with the Procuring Entity to provide the Property and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Procuring Entity hereby covenant s to pay the Seller in consideration of the provision of the Property and the remedying of defects there in, the Contract Price or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. INWITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____on the day, month and year indicated above. For and on behalf of the Procuring Entity

Signed: ..... *[Insert signature]* in the capacity of..... *[Insert title or other appropriate designation]*

In the presence of..... *[Insert identification of official witness]*

For and on behalf of the Seller Signed: ..... *[Insert signature of authorized representative (s) of the Seller]*

in the capacity of..... *[Insert title or other appropriate designation]*

In the presence of..... *[Insert identification of official witness]*

-

# FORM NO. 6 PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

*[Guarantor letterhead]*

Beneficiary:..... *[Insert name and Address of Procuring Entity]*

Date:..... *[Insert date of issue]*

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

1. We have been informed that__(hereinafter called "the Contractor") has entered into Contract No._dated _____ with (*name of Procuring Entity*) (the Procuring Entity as the Beneficiary),for the execution of ————————————(here in after called" the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of (*in words* ),[1] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the….Day of……, 2...…[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed*[six months][one year],* in response to the Beneficiary's written request or such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

_____

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

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

1 *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

2

-

*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

# FORM No. 7 PERFORMANCESECURITY

[Option 2– Performance Bond]

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

*[Guarantor letterhead or SWIFT identifier code]* Beneficiary: ..... *[Insert name and Address of*

Procuring Entity*]* Date:_____*[Insert date of issue] PERFORMANCE* BOND No.:_____

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

1. By this Bond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____ ] as Obligee (hereinafter called "the Procuring Entity")in the amount of for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered in to a written Agreement with the Procuring Entity dated the day of, 20_____,
for_____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are herein after referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed its obligations thereunder, the Surety may promptly remedy the default, or shall promptly: a complete the Contract in accordance with its terms and conditions; or

   b obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the Lowest Evaluated Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses(even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

-

c pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal and the Surety has caused these presents to be sealed with his corporate seal duly at tested by the signature of his legal representative, this day of 20_.

SIGNED ON

By _____
of

In the presence of

on behalf of
in the capacity

SIGNED ON

By
of In the presence of

on behalf of

in the capacity

# FORM NO. 8- ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

*[Guarantor letterhead]*

Beneficiary:_____*[Insert name and Address of* Procuring Entity*]*

Date: _____*[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.:_____*[Insert guarantee reference number]*

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

1. We have been informed that_(hereinafter called "the Contractor") has entered into Contract No. *dated*_with the Beneficiary, for the execution of _____ (Herein after called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum (*In words) is* to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____(*in words* _____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

   has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number_____at _____.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the_day of _____, 2_,[2] whichever is earlier.
   Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

---

1 *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

2

*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made*

170*prior to the expiration date established in the guarantee.*

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

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

**FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE**

**BENEFICIAL OWNERSHIP DISCLOSURE FORM**

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

***INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM***

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender Reference No.: _____ [*insert identification no*] Name of the Tender Title/Description: _____ *[insert name of the assignment]* to: *[insert complete name of Procuring Entity]*

In response to the requirement in your notification of award dated *[insert date of notification of award]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership information. Details of beneficial ownership

| | **Details of all Benefic ial Owners** | | **% of shares a perso n holds in the company Directly or indirectly** | **% of voting rights a person holds in the company** | **Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer** (Yes / No) | **Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)** |
|---|---|---|---|---|---|---|
| **1.** | Full Name | | Directly---------- % of shares<br><br>Indirectly---------- % of shares | Directly…….% of voting rights<br><br>Indirectly--------% of voting rights | 1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----<br>2. Is this right held directly or indirectly?: | 1. Exercises significant influence or control over the Company body of the Company (tenderer)<br><br>Yes -----No---- |
| | National identity card number or Passport number | | | | | |
| | Personal Identification Number (where applicable) | | | | | |
| | Nationality | | | | | |
| | Date of birth *[dd/mm/yyyy]* | | | | | |

| | **Details of all Beneficial Owners** | | **% of shares a perso n holds in the company Directly or indirectly** | **% of voting rights a person holds in the company** | **Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer** (Yes / No) | **Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)** |
|---|---|---|---|---|---|---|
| | Postal address | | | | Direct…… | 2. Is this influence or control exercised directly or indirectly?<br><br>Direct……<br><br>Indirect…… |
| | Residential address | | | | | |
| | Telephone number | | | | | |
| | Email address | | | | Indirect…… | |
| | Occupation or profession | | | | | |
| | | | | | | |
| **2.** | Full Name | | Directly---------- | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | National identity card number or Passport number | | ----- % of shares<br><br>Indirectly---------- % of shares | Directly…… …….% of voting rights<br><br>Indirectly-------- % of voting rights | 1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No----<br>2. Is this right held directly or indirectly?:<br><br>Direct…… ……<br><br>Indirect…… ……... | 1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes -----No-----<br><br>2. Is this influence or control exercised directly or indirectly?<br><br>Direct…… …..<br><br>Indirect…… … |
| | Personal Identification Number (where applicable) | | | | | |
| | Nationality(ies) | | | | | |
| | Date of birth *[dd/mm/yyyy]* | | | | | |
| | Postal address | | | | | |
| | Residential address | | | | | |
| | Telephone number | | | | | |
| | Email address | | | | | |
| | Occupation or profession | | | | | |
| | | | | | | |
| **3.**<br><br>**e.t .c** | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

(a) holds at least ten percent of the issued shares in the company either directly or indirectly;

(b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(c) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer: .....*[insert complete name of the Tenderer]*_____

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

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

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date this ..... [insert date of signing] day of..... [Insert month], [insert year]*

Bidder Official Stamp

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