**ETHICS AND ANTI- CORRUPTION COMMISSION**



**STANDARD TENDER DOCUMENT**

**FOR**

**SUPPLY AND DELIVERY OF TONNERS**

**OPEN TENDER**

**FRAME WORK CONTRACT**

**TENDER NO. EACC/36/2020-2021**

**IFMIS NO: 864180**

**CLOSING DATE: 19th April, 2021**

**at 10.00 A.M.**

***INTEGRITY CENTRE***

***Valley Rd/Jakaya Kikwete Rd Junction***

***P.O Box 61130-00200, Nairobi, Kenya***

***Tel: 2717318/310722 fax 254 (020) 2719757***

***Email:*** [***eacc@integrity.go.ke***](mailto:eacc@integrity.go.ke)

TABLE OF CONTENTS

Contents

[SECTION I 4](#_Toc56073142)

[INVITATION TO TENDER 4](#_Toc56073143)

[SECTION II - INSTRUCTIONS TO TENDERERS 5](#_Toc56073144)

[2.1 Eligible Tenderers 5](#_Toc56073145)

[2.2 Eligible Goods 5](#_Toc56073146)

[2.3 Cost of Tendering 5](#_Toc56073147)

[2.4. The Tender Document 5](#_Toc56073148)

[2.5 Clarification of Documents 6](#_Toc56073149)

[2.6 Amendment of Documents 6](#_Toc56073150)

[2.7 Language of Tender 6](#_Toc56073151)

[2.8 Documents Comprising of Tender 6](#_Toc56073152)

[2.9 Tender Forms 7](#_Toc56073153)

[2.10 Tender Prices 7](#_Toc56073154)

[2.11 Tender Currencies 7](#_Toc56073155)

[2.12 Tenderers Eligibility and Qualifications 7](#_Toc56073156)

[2.13 Goods Eligibility and Conformity to Tender Documents 7](#_Toc56073157)

[2.14 Tender Security 8](#_Toc56073158)

[2.15 Validity of Tenders 9](#_Toc56073159)

[2.16 Format and Signing of Tender 9](#_Toc56073160)

[2.17 Deadline for Submission of Tenders 9](#_Toc56073161)

[2.18 Modification and Withdrawal of Tenders 9](#_Toc56073162)

[2.19 Opening of Tenders 10](#_Toc56073163)

[2.20 Clarification of Tenders 10](#_Toc56073164)

[2.21 Preliminary Examination 10](#_Toc56073165)

[2.22 Conversion to Single Currency 11](#_Toc56073166)

[2.23 Evaluation and Comparison of Tenders 11](#_Toc56073167)

[2.24 Preference 11](#_Toc56073168)

[2.25 Contacting the Procuring entity 11](#_Toc56073169)

[2.26 Award of Contract 11](#_Toc56073170)

[(a) Post-qualification 11](#_Toc56073171)

[(b) Award Criteria 11](#_Toc56073172)

[(c) Procuring entity’s Right to Vary quantities 11](#_Toc56073173)

[(d) Procuring entity’s Right to accept or Reject any or All Tenders 12](#_Toc56073174)

[2.27 Notification of Award 12](#_Toc56073175)

[2.28 Signing of Contract 12](#_Toc56073176)

[2.29 Performance Security 12](#_Toc56073177)

[2.30 Corrupt or Fraudulent Practices 12](#_Toc56073178)

[SECTION III - GENERAL CONDITIONS OF CONTRACT 17](#_Toc56073179)

[3.1 Definitions 17](#_Toc56073180)

[3.2 Application 17](#_Toc56073181)

[3.3 Country of Origin 17](#_Toc56073182)

[3.4 Standards 17](#_Toc56073183)

[3.5 Use of Contract Documents and Information 17](#_Toc56073184)

[3.6 Patent Rights 18](#_Toc56073185)

[3.7 Performance Security 18](#_Toc56073186)

[3.8 Inspection and Tests 18](#_Toc56073187)

[3.9 Packing 19](#_Toc56073188)

[3.10 Delivery and Documents 19](#_Toc56073189)

[3.11 Insurance 19](#_Toc56073190)

[3.12 Payment 19](#_Toc56073191)

[3.13 Prices 19](#_Toc56073192)

[3.14 Assignment 19](#_Toc56073193)

[3.15 Subcontracts 19](#_Toc56073194)

[3.16 Termination for default 20](#_Toc56073195)

[3.17 Liquidated Damages 20](#_Toc56073196)

[3.18 Resolution of Disputes 20](#_Toc56073197)

[3.19 Language and Law 20](#_Toc56073198)

[3.20 Force Majeure 20](#_Toc56073199)

[SECTION IV - SPECIAL CONDITIONS OF CONTRACT 20](#_Toc56073200)

[SECTION V - TECHNICAL SPECIFICATIONS 22](#_Toc56073201)

[SCHEDULE OF REQUIREMENTS AND TECHNICAL SPECIFICATIONS FOR GOODS 23](#_Toc56073202)

[SECTION VII -PRICE AND DELIVERY SCHEDULE FOR GOODS 23](#_Toc56073203)

[SECTION VIII - STANDARD FORMS 25](#_Toc56073204)

[8.1 FORM OF TENDER 26](#_Toc56073205)

[8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM 27](#_Toc56073206)

[8.3 TENDER-SECURING FORM 29](#_Toc56073207)

[8.4 CONTRACT FORM 30](#_Toc56073208)

[8.5 PERFORMANCE SECURITY FORM 31](#_Toc56073209)

[8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM 32](#_Toc56073210)

[8.7 MANUFACTURER’S AUTHORIZATION FORM 33](#_Toc56073211)

[8.8 LETTER OF NOTIFICATION OF AWARD 34](#_Toc56073212)

[8.9 FORM RB 1 35](#_Toc56073213)

[8.10 SELF-DECLARATION FORM 36](#_Toc56073214)

[8.11 TENDER-SECURING DECLARATION FORM 37](#_Toc56073215)

|  |  |
| --- | --- |
| SECTION I | INVITATION TO TENDER |

|  |
| --- |
|  |

**ETHICS AND ANTI-CORRUPTION COMMISSION**

|  |  |
| --- | --- |
| **P.O Box 61130-00200,**  **Nairobi, Kenya**  **Tel: 2717318/310722**  **Fax: 254 (020) 2719757**  **Email: eacc@integrity.go.ke** | **INTEGRITY CENTRE**  **Valley Rd/Jakaya Kikwete Rd Junction** |

**Date: 6th April,2021**

|  |  |
| --- | --- |
| **RE:** | **TENDER NO. EACC/36/2020-2021 IFMIS NO 864180 – SUPPLY AND DELIVERY OF TONNERS)** |

The Ethics and Anti-Corruption Commission (EACC) invites sealed bids from eligible candidates for supply and delivery of Tonners on Framework Contract arrangement.

Interested eligible candidates may obtain further information from and inspect the tender documents at the Supply Chain Management office, Ethics and Anti-Corruption Commission, ground Floor, **Integrity Centre** during normal working hours.

A complete set of tender documents may be downloaded from the Ethics and Anti-Corruption Commission’s websites: ***www.eacc.go.ke*** or IFMIS suppliers’ portal ***supplier.treasury.go.ke*** free of charge.

Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and shall remain valid for **(120) days** from the closing date of the tender.

Completed tender documents are to be submitted through **IFMIS only** so as to reach: **THE SECRETARY/CEO**

**Ethics and Anti-Corruption Commission,**

**P. O. Box 61130 - 00200**

**NAIROBI.**

on or before **19th April, 2021 at 10.00 A.M.** Tenders must be accompanied by a tender security of Kshs. 40,000.00 The system will automatically lock out at the time and date of tender closing indicated in the IFMIS portal.

**THE SECRETARY/CEO,**

**ETHICS AND ANTI-CORRUPTION COMMISSION.**

# SECTION II - INSTRUCTIONS TO TENDERERS

## 2.1 Eligible Tenderers

* + 1. This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
    2. The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
    3. Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
    4. Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

## 2.2 Eligible Goods

* + 1. All goods to be supplied under the contract shall have their origin in eligible source countries.
    2. For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
    3. The origin of goods is distinct from the nationality of the tenderer.

## 2.3 Cost of Tendering

* + 1. The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
    2. The price to be charged for the tender document shall not exceed Kshs.1,000/=
    3. All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## 2.4. The Tender Document

* + 1. The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

1. Invitation to Tender
2. Instructions to tenderers
3. General Conditions of Contract
4. Special Conditions of Contract
5. Schedule of requirements
6. Technical Specifications
7. Tender Form and Price Schedules
8. Tender Security Form
9. Contract Form
10. Performance Security Form
11. Bank Guarantee for Advance Payment Form
12. Manufacturer’s Authorization Form
13. Confidential Business Questionnaire
    * 1. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## Clarification of Documents

* + 1. A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by post at the entity’s address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.
    2. The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## 2.6 Amendment of Documents

* + 1. At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
    2. All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.
    3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## 2.7 Language of Tender

* + 1. The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## 2.8 Documents Comprising of Tender

* + 1. The tender prepared by the tenderers shall comprise the following components
  1. a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
  2. documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
  3. documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
  4. tender security furnished in accordance with paragraph 2.14

## 2.9 Tender Forms

* + 1. The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

## 2.10 Tender Prices

* + 1. The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
    2. Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
    3. Prices quoted by the tenderer shall be fixed during the Tender’s performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
    4. The validity period of the tender shall be 120 days from the date of opening of the tender.

## 2.11 Tender Currencies

* + 1. Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

## Tenderers Eligibility and Qualifications

* + 1. Pursuant to paragraph 2.1. the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
    2. The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity’s satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
    3. The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity’s satisfaction;

1. that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods’ Manufacturer or producer to supply the goods.
2. that the tenderer has the financial, technical, and production capability necessary to perform the contract;
3. that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer’s maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## 2.13 Goods Eligibility and Conformity to Tender Documents

* + 1. Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract
    2. The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
    3. The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

1. a detailed description of the essential technical and performance characteristic of the goods;
2. a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
3. A clause-by-clause commentary on the Procuring entity’s Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
   * 1. For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity’s satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## 2.14 Tender Security

* + 1. The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.
    2. The tender security shall be as indicated in the Appendix to Instructions to Tenderers
    3. The tender security is required to protect the Procuring entity against the risk of Tenderer’s conduct which would warrant the security’s forfeiture, pursuant to paragraph 2.14.7
    4. The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
    5. Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22
    6. Unsuccessful Tenderer’s tender security will be discharged or returned as promptly as possible. But not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
    7. The successful Tenderer’s tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
    8. The tender security may be forfeited:

1. if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
2. in the case of a successful tenderer, if the tenderer fails:
   1. to sign the contract in accordance with paragraph 2.27

Or

* 1. to furnish performance security in accordance with paragraph 2.28

## 2.15 Validity of Tenders

* + 1. Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
    2. In exceptional circumstances, the Procuring entity may solicit the Tenderer’s consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.16 Format and Signing of Tender

* + 1. The Procuring entity shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.
    2. The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
    3. The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## 2.17 Sealing and Marking of Tenders

* + 1. The inner and outer envelopes shall:

(a) Be addressed to the Procuring entity at the address given in the Invitation to Tender:

* + 1. (b) Bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” the time indicated Appendix to Instructions to Tenderers
    2. The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.
    3. If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## 2.18 Deadline for Submission of Tenders

* + 1. Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than the time indicated Appendix to Instructions to Tenderers
    2. The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## 2.19 Modification and Withdrawal of Tenders

* + 1. The tenderer may modify or withdraw its tender after the tender’s submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.
    2. The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
    3. No tender may be modified after the deadline for submission of tenders.
    4. No tender may be withdrawn 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 Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 2.14.7
    5. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
    6. The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## Opening of Tenders

2.20.1 Tenders will be opened as indicated in Appendix to Instructions to Tenderers

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

## Preliminary Examination

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

* + 1. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail
    2. The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
    3. Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity’s determination of a tender’s responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
    4. If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

## Conversion to Single Currency

2.22.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

## Evaluation and Comparison of Tenders

2.23.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

* + 1. The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
    2. A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## Preference

2.24.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

## Contacting the Procuring entity

* + 1. Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.
    2. Any effort by a tenderer to influence the Procuring entity in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer’s tender.

## Award of Contract

### Post-qualification

* + 1. In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
    2. The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.
    3. An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer’s tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer’s capabilities to perform satisfactorily.

### (b) Award Criteria

* + 1. The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

### (c) Procuring entity’s Right to Vary quantities

* + 1. The Procuring entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

### (d) Procuring entity’s Right to accept or Reject any or All Tenders

* + 1. The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity’s action

## Notification of Award

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

* + 1. The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties
    2. Upon the successful Tenderer’s furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

## Signing of Contract

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

* + 1. The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
    2. Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

## Performance Security

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

* + 1. Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

## Corrupt or Fraudulent Practices

2.30.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
2. “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;
   * 1. The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
     2. Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya. Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement, supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

|  |  |
| --- | --- |
| **Instructions to tenderers** | **Particulars of appendix to instructions to tenderers** |
| 2.1 | Particulars of eligible tenders: **Open.**  The duration of contract will be from the delivery period indicated from the date of contract signing and quoted prices shall be fixed during the contract period. |
| 2.10 | Particulars of other currencies allowed. **None** |
| 2.11 | Particulars of eligibility and qualifications documents of evidence required. **Copies of:**   1. **Certificate of Registration** 2. **Certificate of valid Tax Compliance** 3. **Form of Tender** 4. **Fully Filled Price Schedule in the format provided** 5. **Fully Filled Confidential Business Questionnaire** 6. **Tender Security of Kes. 40,000.00** 7. **Fully Filled self-declaration form in the format provided** |
| 2.12.2 | Particulars of tender security if applicable. In addition to attaching a copy of the bid document in the IFMIS system the **original Tender security only** must be submitted in the tender box on or before the lapse of the submission date  **The tender security should be valid for 150 days from the date of tender opening**  The Tender Security Must also be scanned and attached in IFMIS together with the Tender Document |
| 2.13 | Validity of Tenders: Tenders Shall remain valid for 120 days from the closing date indicated in IFMIS |
| 2.14 | The tender security shall be Kshs. 40,000.00 in the form of Bank Guarantee from a Bank approved and licensed by the Central Bank of Kenya. |
| 2.16 | The Procuring entity shall prepare one copies of the tender, clearly marking each “ORIGINAL TENDER” which shall be scanned by the bidder after the response.  The tender security as required by the procuring entity shall also be scanned and uploaded along with the bid, and the original physical copy shall be submitted to the procuring entity so as to reach before the date of closing of the bids.  Failure to submit the original physical copy of a tender security before the closing of the bid shall lead to the disqualification of the bid. In the event of any discrepancy between them, the bid shall be disqualified. |
| 2.17 | Sealing and Marking of Tenders will not be applicable |
| 2.20 | Opening of Tenders  * + 1. The Tenders Will Lock automatically in the IFMIS Portal at on or before 19th April, 2021   1. Manual opening will only be conducted for the original bid security. This process may be conducted via an online meeting as we observe the Ministry of Health protocols. |
| 2.22 | **Evaluation Criteria**    The following requirements must be met by the tenderer not withstanding other requirements in the tender documents: -   1. **Mandatory Requirements (MR)**  |  |  |  | | --- | --- | --- | | **NO.** | **Requirements** | **Responsive or Not Responsive** | | MR1 | Certificate of Registration / Incorporation |  | | MR2 | Certificate of Valid Tax Compliance |  | | MR3 | Fully Filled Price Schedule in the format provided |  | | MR4 | Fully Filled Form of Tender in the Format provided |  | | MR5 | Fully Filled Confidential Business Questionnaire in the format provided |  | | MR6 | Must provide original Tender Security of Kes. 40,000/= in form of a bank guarantee from a Reputable Bank or such insurance company approved by the PPRA.  The ORIGINAL Tender Security to be submitted MANUALY and dropped at the Tender Box Located in ground Floor-Integrity center on or before the closing date. MUST attach Scanned copy of the Bid security together with the other documents in IFMIS. |  | | MR7 | Tenders valid for 120 days |  | | MR8 | Fully Filled self-declaration form in format provided |  | | MR9 | Bidders Must provide manufacturer’ authorization directly issued by HP to them |  | | MR10 | Bidders Must Provide a valid Supplies Partner certificate from HP |  | | MR11 | All documents must be submitted through IFMIS attached at technical stage (“From supplier: Technical”) |  | | Note that all requirement above and those in the technical evaluation **MUST** be attached in the **IFMIS** as ‘**from supplier technical’** | | |   **At this stage, the tenderer’s submission will either be responsive in all the mandatory (MR) requirements above or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further.** |

|  |  |
| --- | --- |
| **Instructions to tenderers** | **Particulars of appendix to instructions to tenderers** |
|  | 1. **Technical Scores (T.S.)**   This section (Technical Evaluation) will carry a total of 100% of the whole evaluation.   | **No.** | **Evaluation Attribute** | **Tenderer’s Response** | **Weighting Score** | **Max. Score** | | --- | --- | --- | --- | --- | | T.S.1 | Number of years in supply and delivery of tonners or any other related items |  | * 3 years and above (20 marks) * Below 3 years, prorated-   Number of years x 20  3 | 20 | | T.S.2 | Provide a list of LPOs or any other evidence to which the company has done supply of tonners in the last three year |  | * 3 or LPO’s/Contracts   (20 marks)   * Others prorated at:   No of LPO/Contracts x 20  3 | 20 | | T.S.3 | Indicate  minimum time  required to deliver  the items after an  LPO is issued.  (Please note that  this will be used  in performance  evaluation for  the successful  bidder) |  | * Five – Ten days – 10 marks * Ten – fifteen – 8 marks * Fifteen – Twenty days – 6 marks * Beyond Twenty Days - 0 marks (Not allowed) | 10 | | T.S.4 | Physical Facilities:  Provide details of  physical address  and contacts –  attach evidence |  | address and contacts  with **copy of title** or  **lease documents** or  **latest utility bill**, or **Business Permit** – 10  marks  Not provided – 0 mark | 10 | | T.S.5 | Provide a commitment letter that you will supply genuine tonners. That you will repair any damage that may occur to printers due to use of counterfeit tonners supplied. |  | Commitment letter Provided.  If not provided -0 marks | 40 | | **Financial Evaluation**  Tenderers shall state their tender bid as detailed on a schedule outlined in Bid price schedule. Tenders shall be ranked according to their evaluated price and the successful tender shall be the tender with the lowest evaluated price for **all the tonners** from the bidders who qualify at the technical stage (75% points and above) It is worthy to note that the comparison shall be of the price including all costs as well as duties and taxes payable in the supply & delivery of the Tendered Items  **Weighting of scores:**   1. Technical score – 100 2. Financial score – Lowest Price | | | | | |
|  | **Candidates will require to score a minimum of 75% to proceed to the next stage of evaluation. Those who score below 75% will be eliminated at this stage from the entire evaluation process and will not be considered further.** |

|  |  |
| --- | --- |
| 2.27 | Particulars of post – qualification if applicable.  **EACC shall inspect the premises and /or check the accuracy of any or all information provided by the bidder before awarding a contract.** |
| 2.27.6 | Award Criteria:  **The successful bidder shall be the tenderer with the lost evaluated tender price.** |

**NB:**

* + - * 1. **Ensure that all documents on IFMIS are attached under the Technical Section. This is because some of those documents are already defined as mandatory and failure to produce them at the Mandatory Evaluation stage will result to Automatic disqualification.**
        2. **Ensure that your Grand Total on your Price schedule, The Form of Tender and on IFMIS are matching.**
        3. **Only the Original of the Tender Security is to be dropped in the Tender Box located at our Reception on Ground Floor at Integrity House, along Milimani Road.**
        4. SECTION III - GENERAL CONDITIONS OF CONTRACT

## Definitions

* + 1. In this Contract, the following terms shall be interpreted as indicated:-“The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1. “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
2. “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
3. “The Procuring entity” means the organization purchasing the Goods under this Contract.
4. “The Tenderer’ means the individual or firm supplying the Goods under this Contract.

## Application

* + 1. These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

## Country of Origin

* + 1. For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.
    2. The origin of Goods and Services is distinct from the nationality of the tenderer.

## Standards

* + 1. The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

## Use of Contract Documents and Information

* + 1. The tenderer shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
    2. The tenderer shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
    3. Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer’s performance under the Contract if so required by the Procuring entity

## Patent Rights

* + 1. The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity’s country

## Performance Security

* + 1. Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.
    2. The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer’s failure to complete its obligations under the Contract.
    3. The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
    4. The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer’s performance obligations under the Contract, including any warranty obligations, under the Contract

## Inspection and Tests

* + 1. The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
    2. The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods’ final destination If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
    3. Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
    4. The Procuring entity’s right to inspect, test and where necessary, reject the goods after the Goods’ arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
    5. Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

## Packing

* + 1. The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
    2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

## Delivery and Documents

* + 1. Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

## Insurance

* + 1. The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

## Payment

* + 1. The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract
    2. Payments shall be made promptly by the Procuring entity as specified in the contract

## Prices

* + 1. Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.
    2. Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
    3. Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
    4. Price variation request shall be processed by the procuring entity within 30 days of receiving the request.

## Assignment

* + 1. The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity’s prior written consent

## Subcontracts

* + 1. The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

## Termination for default

* + 1. The Procuring entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part
    2. if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
    3. if the tenderer fails to perform any other obligation(s) under the Contract
    4. if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract
    5. In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

## Liquidated Damages

* + 1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

## Resolution of Disputes

* + 1. The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract
    2. If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

## Language and Law

* + 1. The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

## Force Majeure

* + 1. The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it’s delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

# SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

42. Special conditions of contract as relates to the GCC

|  |  |
| --- | --- |
| **REFERENCE OF GCC** | **SPECIAL CONDITIONS OF CONTRACT** |
| 3.12.1 | ***Indicate terms of payment***  Payment shall be made promptly by the Client, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier and verification and acceptance of the goods delivered by the Supplier to the Client. |
| 3.18. | ***Indicate resolutions of disputes***   * + 1. **Settlement**         1. The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Agreement and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.        2. Any dispute or claim arising or relating to the Agreement, which cannot be settled between the Parties shall be referred by the Parties in the first instance to mediation.     2. **Mediation**         1. Where negotiations in regard to a dispute have failed, an aggrieved Party may require that the dispute be referred to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose by the Nairobi Centre for International Arbitration. The costs of the mediation shall be borne equally by the Parties.        2. The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.        3. The mediator is authorized to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Parties.     3. **Civil Redress**        1. If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party will be at liberty to file suit before a competent civil court, within three calendar months of mediator’s decision being issued or the mediator declaring the mediation to have ended. Claims not brought within the time periods set out herein will be deemed to be waived. |
| 3.7.3 | Performance security of 10% of the bid sum in form of a bank guarantee |

# SECTION V - TECHNICAL SPECIFICATIONS

**5.1 General**

* + 1. These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply
    2. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
    3. All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
    4. The tenderers are requested to present information along with their offers as follows:

1. Shortest possible delivery period of each product
   1. Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.
   2. **PARTICULARS**

## SCHEDULE OF REQUIREMENTS AND TECHNICAL SPECIFICATIONS FOR SUPPLY AND DELIVERY OF TONNERS

**Introduction**

The items proposed to be supplied by the Supplier shall be industry proven products. All suppliers shall conform to the requirements of relevant Kenyan and International standards. The Supplier shall provide all the required services, whether explicitly mentioned in these specifications or not, to fulfill the intent of the specification and to ensure the completeness, operation and maintainability of the item at no extra cost to the procuring entity.

**Table : 1 TONNERS’ SPECIFICATIONS AND PRICE SCHEDULE**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **No.** | **Description** | **Unit of Measure** | **Estimated quantity required** | **Unit price (Kes)**  **(INC’ OF 16% VAT)** | **Brand** | **Delivery Time after LPO is issued**  **(in Days)** |
|  | Toner Catridge W2030 A | Pcs | 5 |  |  |  |
|  | Toner Catridge W2031 A | Pcs | 5 |  |  |  |
|  | Toner Catridge W2032 A | Pcs | 5 |  |  |  |
|  | Toner Catridge W2033 A | Pcs | 5 |  |  |  |
|  | HP Toner CC 364 A | Pcs | 5 |  |  |  |
|  | HP Toner CE 505 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 305 CE 410 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 305 CE 411 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 305 CE 412 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 305 CE 413 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 250 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 251 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 252 A | Pcs | 5 |  |  |  |
|  | HP LaserJet 253 A | Pcs | 5 |  |  |  |
|  | HP Laser Jet CF 360 A | Pcs | 5 |  |  |  |
|  | HP Laser Jet CF 361 A | Pcs | 5 |  |  |  |
|  | HP Laser Jet CF 362 A | Pcs | 5 |  |  |  |
|  | HP Laser Jet CF 363 A | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge 5950 A BLACK | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge CE 390 A | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge CE 400 A | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge CE 401 A | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge CE 402 A | Pcs | 5 |  |  |  |
|  | HP Toner Cartridge CE 403 A | Pcs | 5 |  |  |  |
| **Total Price (Kes)** | | | |  | | |

**The items shall be ordered as and when required**

* + - * 1. Bidders must quote, supply and deliver genuine toners verifiable through serial numbers among other methods from HP website: <http://www8.hp.com/us/en/cartridge/anti-counterfeit.html>
        2. The winning bidder shall furnish a commitment letter with Serial numbers of the toners to be supplied addressing it to Secretary/CEO, Ethics & Anti-Corruption Commission (EACC) providing that the supplied toners are genuine from HP and that, should they occasion any damage(s) to printers, the bidding firm commits to repair, replace with genuine toner(s) and further compensate EACC for any resultant loss(es).

The bidders must provide their Manufacturer Authorization letter from HP

**The items shall be ordered as and when required**

**NB:**

1. **Ensure that all documents on IFMIS are attached under the Technical Section. This is because some of those documents are already defined as mandatory and failure to produce them at the Mandatory Evaluation stage will result to Automatic disqualification.**
2. **Ensure that your Grand Total on your Price schedule, The Form of Tender and on IFMIS are matching.**

Signature of tenderer

Stamp of Tenderer……………………………………………………………………...

# SECTION VIII - STANDARD FORMS

**Notes on the sample Forms**

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.

2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.

3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.

4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.

5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.

6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.

7. Manufacturers Authorization Form - When required by the ender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

## 8.1 FORM OF TENDER

**TENDER NO. EACC/33/2020-2021** Date: 6**/04/2021**

To: **THE SECRETARY/CEO**

**Ethics and Anti-Corruption Commission,**

**P. O. Box 61130 - 00200**

**NAIROBI**

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. ………………………………. *[Insert numbers],* the receipt of which is hereby duly acknowledged, we, the undersigned, offer to undertake the **SUPPLY AND DELIVERY OF TONNERS)** in conformity with the said tender documents for the sum of …………………………………………………………. (*total tender amount in words and figures*) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

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

4. We agree to a bid by this Tender for a period of **120** days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

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

Dated this day of 20

[Signature] [In the capacity of]

Duly authorized to sign tender for an on behalf of

## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

|  |
| --- |
| *Part 1 – General:*  Business Name…………………………………………………………………………..  Location of business premises.……………………………………………………….  Plot No………………………………………………… Street/Road ………………….  Postal Address ……………………….. Tel No. …………………. Fax ……………..  Email………………………. Nature of Business …………………………………….  Registration Certificate No. ……………………………………………………………  Maximum value of business which you can handle at any one time  – Kshs……………………………………………………………………………………..  Name of your bankers ……………………………………….. Branch ……………. |

|  |
| --- |
| Part 2 (a) – Sole Proprietor  Your name in full …………………………………………………….. Age …………………..  Nationality ………………………………… Country of origin ………………………………  Citizenship details ……………………………………………………………………………… |
| Part 2 (b) Partnership  Given details of partners as follows:   |  |  |  |  | | --- | --- | --- | --- | | Name | Nationality | Citizenship Details | Shares | | 1 |  |  |  | | 2 |  |  |  | | 3 |  |  |  | | 4 |  |  |  | |
| Part 2 (c ) – Registered Company  Private or Public ………………………………………………………………………………  State the nominal and issued capital of company-  Nominal Kshs.  Issued Kshs.  Given details of all directors as follows   |  |  |  |  | | --- | --- | --- | --- | | Name | Nationality | Citizenship Details | Shares | | 1 |  |  |  | | 2 |  |  |  | | 3 |  |  |  | | 4 |  |  |  | |
| Date …………………………………Signature of Candidate ……………………………….. |

* + - If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

(r.22)

## 8.3 TENDER-SECURING FORM

Whereas....................... (Name of the tenderer) (Herein after 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”).

KNOW ALL PEOPLE by these presents that WE.............................of........................... (Name of Insurance Company) having our registered office at........................... (herein after called the “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 by these presents.

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

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers; or
2. If the tenderer rejects the correction of an error upon prompt notice by the procuring entity; and
3. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
4. fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
5. fails or refuses to furnish the Performance Security, in accordance with Instructions to Tenderers.

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

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

|  |  |
| --- | --- |
|  |  |
| **(Date)** | **(Signature of the Guarantor)** |
|  |  |
| **(Witness)** | **(Seal)** |

## 8.4 CONTRACT FORM

THIS AGREEMENT made the day of 20 between ……………… [*name of Procurement entity)* of ……….. [*Country of Procurement entity]* (Hereinafter called “the Procuring entity) of the one part and …………………….. [*Name of tenderer]* of ………….. [*City and country of tenderer]* (Hereinafter called “the tenderer”) of the other part;

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:

2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:

(a) The Tender Form and the Price Schedule submitted by the tenderer

(b) The Schedule of Requirements

(c) The Technical Specifications

(d) The General Conditions of Contract

(e) The Special Conditions of contract; and

(f) The Procuring entity’s Notification of Award

3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tender hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provisions of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.

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

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

Signed, sealed, delivered by the (for the tenderer in the presence of

*(Amend accordingly if provided by Insurance Company)*

## 8.5 PERFORMANCE SECURITY FORM

To ………………………………………….

[*Name of procuring entity]*

WHEREAS …………………………………… [*Name of tenderer*] (Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. [*Reference number of the contract]* dated 20 to supply ……………………………………………… [*Description of goods]* (Hereinafter called “the Contract”).

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of ………………………. [*amount of the guarantee in words and figure]* and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of …………………….. [*Amount of guarantee]* as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the day of 20

Signed and seal of the Guarantors

*[Name of bank or financial institution]*

*[Address]*

*[Date]*

## 8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

##### To ………………………………

[*Name of procuring entity]*

*[Name of tender] …………………..*

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, …………………………………………………. [*Name and address of tenderer]*(hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of …… …………………. [*Amount of guarantee in figures and words].*

We, the ……………………………. [*bank or financial institutions]*, as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding …………………… [*Amount of guarantee in figures and words]*

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until ………… [*Date]*.

Yours truly,

Signature and seal of the Guarantors

*[Name of bank or financial institution]*

*[Address]*

*[Date]*

## 8.7 MANUFACTURER’S AUTHORIZATION FORM

To [*name of the Procuring entity] ………………….*

WHEREAS ………………………………………………………… [Name *of the manufacturer]* who are established and reputable manufacturers of ………………….. [*Name and/or description of the goods]* having factories at ………………………………… [*Address of factory]* do hereby authorize ………………………… [*Name and address of Agent]* to submit a tender, and subsequently negotiate and sign the Contract with you against **TENDER NO. EACC/36/2020-2021** for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[*Signature for and on behalf of manufacturer]*

***Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person of competent Authority.***

## 8.8 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To:

RE: **TENDER NO. EACC/36/2020-2021**

Tender Name

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

*(FULL PARTICULARS)*

SIGNED FOR ACCOUNTING OFFICER

## 8.9 FORM RB 1

**REPUBLIC OF KENYA**

**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…

**REQUEST FOR REVIEW**

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

Etc.

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

1.

2.

Etc

SIGNED ………………. (Applicant)

Dated on…………….day of ……………/…20…

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ………… day of ………....20….………

SIGNED

Board Secretary

## 8.10 SELF-DECLARATION FORM

**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 hereinabove is true to the best of my knowledge information and belief.

|  |  |  |
| --- | --- | --- |
| ………………………………… | ………………………… | ……………………… |
| (Title) | (Signature) | (Date) |

Bidder’s Official Stamp

(r.22)

## 8.11 TENDER-SECURING DECLARATION FORM

**TENDER NO…………………………………………**

To:

**THE SECRETARY/CEO,**

**Ethics and Anti-Corruption Commission (EACC),**

**P. O. Box 61130 - 00200**

**NAIROBI**]

We, the undersigned, declare that:

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

2 We accept that we will automatically be suspended from being eligible for bidding in any contract with EACC for the period of 3 years if we are in breach of our obligation(s) under the bid conditions, because we –

1. have withdrawn our Bid within 120 days from date of tender closure or
2. (b)having been notified of the acceptance of our Bid by EACC 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 ITT.

3 We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of

(I) our receipt of a copy of your notification of the name of the successful Bidder; or

(ii) thirty days after the expiration of Tender validity period (120 days).

4 We understand that if we are a Joint Venture, the Bid Securing

Declaration must be in the name of the Joint Venture that submits the bid, and if the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

**Signed:………………in the capacity of………………………………………….**

**Name:……………………………………………………………………………………**

**Duly authorized to sign the bid for and on behalf of:**

**……………………………………………………………………………………………**

**Dated on …………………. day of ……………., 2021**