



TENDER NO: KWS/OT/ADMIN/27/2021-2023

**PROVISION OF CLEANING, SANITATION AND GROUND MAINTENANCE
SERVICES FOR KWS HQS, NAIROBI NATIONAL PARK, NAIROBI
ORPHANAGE, NAIROBI SAFARI WALK, CENTRAL WORKSHOP AND
AIRWING.**

CLOSING DATE AND TIME

2nd December 2021

AT

12 NOON

P.O. BOX 40241 – 01000 NAIROBI, TEL 254-20-6000800, 6002345. ISDN +254-0203992000/1000

WIRELESS +254-020-2379407/8/9 MOBILE +254-735 663 421, +254-726 610 508 FAX: +254-020-6003792.

Email kws@kws.go.ke website www.kws.go.ke

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INVITATION TO TENDER
KENYA WILDLIFE SERVICE,
P.O. BOX 40241-00100
NAIROBI.

hps@kws.go.ke

TENDER NO: KWS/OT/ADM/27/2021-2022

**PROVISION FOR CLEANING, SANITATION AND GROUND MAINTENANCE
SERVICES AT KWS HEADQUARTERS COMPLEX, NAIROBI NATIONAL PARK,
NAIROBI ORPHANAGE, NAIROBI SAFARI WALK, and CENTRAL WORKSHOP
AND AIRWING**

-
1. KENYA WILDLIFE SERVICE) invites sealed tenders for the PROVISION OF CLEANING, SANITATION AND GROUND MAINTENANCE SERVICES AT KWS HQS, NAIROBI NATIONAL PARK, NAIROBI ORPHANAGE, NAIROBI SAFARI WALK, and CENTRAL WORKSHOP AND AIRWING.
 2. Tendering will be conducted under reservation of special group using a standardized tender document. Tendering is reserved to interested and qualified Women and Youth groups registered under AGPO. **Tenderers will be allowed to tender for one or more lots”.**

I. Lot 1 :Provision of cleaning and sanitation Services

II. Lot 2: Provision of ground maintenance and garbage collection Services

(Tendering is open to all Small and Medium Enterprises registered with Women and Youth”).

3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours (0800 to 1700 hours) at the address given below. More details on the Services are provided in **PART 2 - Services' Requirements**, Section V - Description of Services of the Tender Document.
4. A complete set of tender documents may be obtained by interested tenders free of charge from the KWS WEBSITE; www.kws.go.ke or tender

- documents may be obtained electronically from the Public Procurement Information Portal <https://www.tenders.go.ke>
5. Tender documents may be viewed and downloaded for free from the KWS website (www.kws.go.ke). Tenderers who download the tender document must forward their particulars immediately to hps@kws.go.ke to facilitate any further clarification or addendum.
 6. All Tenders must be accompanied by a *Tender-Securing Declaration*
 7. The Tenderer shall chronologically serialize all pages of the tender documents submitted and book or tape bound
 8. Completed tenders must be delivered to the address below on or before **2nd**

December 2021 at 10.0 00 am. Electronic Tender **will not** be permitted.

9. 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.
9. Late tenders will be rejected.
10. The addresses referred to above are:
 - A. **Address for obtaining further information and for purchasing tender documents**

Kenya Wildlife Service

Physical address for hand Courier Delivery shall be the office of Head Supply Chain Management located at Ndovu Court 1st Floor Kenya Wildlife Service Headquarters located along Langata Road, P.O BOX 40241-00100, NAIROBI, KENYA.

The contact person is the Head Supply Chain Management, Kenya Wildlife Service, Telephone number 0202379407 and Email hps@kws.go.ke

B. Address for Submission of Tenders.

Kenya Wildlife Service
P.O. Box 40241-00100,
NAIROBI, KENYA

- i. Hand Delivery Shall be deposited in the Tender Box located at, Kenya Wildlife Service Headquarters,
Main Reception, along Lang'ata Road
- ii. Courier delivery shall be registered at the office of Head Supply Chain Management located at Ndovu Court
1st Floor Kenya Wildlife Services Headquarters along Lang'ata Road

C. Address for Opening of Tenders.

Kenya Wildlife Service

Veterinary Conference Room,

KWS Headquarters located along Lang'ata Road

Name: **Brig. (Rtd) John Waweru, EBS,'ndc' (K), 'psc' (K)**

Designation: **DIRECTOR GENERAL**

Signature:.....

Date.....

PART 1 - TENDERING PROCEDURES

SECTION I -INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

- 1.1 This tendering document is for the delivery of Non-Consulting Services, as specified in Section V, KWS Requirements. The name, identification and number of this tender are specified in the **TDS**.

2. Throughout this tendering document:

2.1 The terms:

- a) The term “in writing” means communicated in written form (e.g., by mail, e-mail, fax, including if specified **in the TDS**, distributed or received through the electronic- procurement system used by the KWS) with proof of receipt;
- b) if the contexts or esquires, “singular” means “plural” and vice versa; and
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the KWS. It excludes the KWS's official public holidays.

- 2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided **in the TDS**.

3. Fraud and Corruption

- 3.1 The KWS requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), 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-service provider s are not debarred from participating in public procurement proceedings.

- 3.2 The KWS requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to

have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

- 3.3 **Unfair Competitive Advantage** - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the KWS shall indicate in the **TDS** and make available to all the firms together with this tender document all Information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 3.4 Unfair Competitive Advantage-Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The KWS shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The KWS shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The KWS shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a sub contract or in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers, of the KWS, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b Receives or has received any direct or indirect subsidy from another Tenderer; or
 - c has the same legal representative as another Tenderer; or
 - d has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the KWS regarding this Tendering process; or
 - e or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Non-Consulting Services that are the subject of the Tender; or
 - f or any of its affiliates has been hired (or is proposed to be hired) by the KWS or KWS for the Contract implementation; or
 - g would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 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
 - h has a close business or family relationship with a professional staff of the KWS 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 conflicts stemming from such relationship has been resolved in a manner acceptable to the KWS throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender, except for permitted alternative Tenders. This includes participation as a subservice provider . Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member may participate as a sub-service provider in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4 .9.
- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya shall be ineligible to be pre-qualified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the PPRA Website www.ppra.go.ke
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and

financially autonomous; (ii) operate under Commercial law; and (iii) are not under supervision of the KWS.

- 4.8 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council take under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person or entity in that country.
- 4.9 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 may be. This criterion also shall apply to the determination of the nationality of proposed subservice provider s or sub consultants for any part of the Contract including related Services.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and service provider s. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the KWS determine if this condition is met shall be provided in for this purpose is be provided in *“SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9”*.
- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not sub contract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 4.13 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate is sued by the Kenya Revenue Authority.

5 Qualification of the Tenderer

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

B. Contents of Tendering Document

6 Sections of Tendering Document

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

PART 1: Tendering Procedures

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV - Tendering Forms

PART 2: KWS's Requirements

- v) Section V-KWS's Requirements

PART 3: Contract

- vi) Section VI - General Conditions of Contract (GCC)
- vii) Section VII - Special Conditions of Contract (SCC)
- viii) Section VIII - Contract Forms

6.2 The Invitation to Tender (ITT) notice or the notice to pre-qualify Tenderers, as the case may be, issued by the KWS is not part of this tendering document.

6.3 Unless obtained directly from the KWS, the KWS is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the KWS 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.

1. Site Visit

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

8 Pre-Tender Meeting

8.1 The KWS shall specify in the **TDS** if a pre-tender conference will be held, when and where. The KWS shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the KWS not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pre tender visit of the site of the service, if applicable, including the text of the questions asked by Tenderers and 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 ITT6.3. Minutes shall not identify the source of the questions asked.

8.4 The KWS shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the service 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 meeting shall be made by the KWS exclusively through the issue of an Addendum pursuant to ITT10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9 Clarification of Tender Documents

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the KWS in writing at the KWS's address specified in the TDS or raise its enquiries during the pre-

Tender meeting and the pre- arranged pretender visit of the site of the Service if provided for in accordance with ITT 8.4. The KWS will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The KWS shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the KWS shall also promptly publish its response at the webpage identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the KWS shall amend the Tender Documents appropriately following the procedure under ITT 8.4.

10 Amendment of Tender Documents

- 10.1 At any time prior to the deadline for submission of Tenders, the KWS may amend the Tendering document by issuing addenda.
- 10.2 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 KWS in accordance with ITT 6.3. The KWS shall also promptly publish the addendum on the KWS's web page in accordance with ITT 8.4.
- 10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the KWS shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. Preparation of Tenders

11 Cost of Tendering

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

12 Language of Tender

- 12.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the KWS shall be written in the 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.

13 Documents Comprising the Tender

- 13.1 The Tender shall comprise the following:

- a Form of Tender** prepared in accordance with ITT 14;
- b Schedules:** priced Activity Schedule completed in accordance with ITT 14 and ITT 16;
- c Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;
- d Alternative Tender:** if permissible in accordance with ITT 15;
- e Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
- f Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g Tenderer's Eligibility:** documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;
- h Conformity:** documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and
- i Any other document required in the **TDS**.**

The Tenderer shall chronologically serialize pages of all tender documents submitted.

- 13.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.
- 13.3 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.
- 14 Form of Tender and Activity Schedule
 - 14.1 The Form of Tender and priced Activity Schedule 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 22.3. All blank spaces shall be filled in with the information requested.
 - 14.2 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.
- 15 Alternative Tenders
 - 15.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Best Evaluated Tender shall be considered by the KWS.
 - 15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included **in the TDS** and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.
 - 15.3 When specified **in the TDS**, Tenderers are reemitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified **in the TDS**, as will the method for their evaluating, and described in Section VII, KWS's Requirements.
16. Tender Prices and Discounts
 - 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule (s) shall conform to the requirements specified below.
 - 16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
 - 16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.
 - 16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 16.1.
 - 16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, KWS's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the KWS when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
 - 16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.
 - 16.7 If provided for **in the TDS**, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and / or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
 - 16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17 Currencies of Tender and Payment

17.1 The currency of the Tender and the currency of payments shall be Kenya Shillings.

18 Documents Establishing Conformity of Services

18.1 To establish the conformity of the Non-Consulting Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, KWS's Requirements

18.2 Standards for provision of the Non-Consulting Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the KWS's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, KWS's Requirements.

18.3 Tender 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 KWS, a Service provider or group of service providers, qualifies for a margin of preference. Further the information will enable the KWS 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 processor contract management.

18.4 The purpose of the information described in ITT 18.3 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 KWS as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

18.4 The Tenderer shall provide further documentary proof, information or authorizations that the KWS may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT18.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

18.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the KWS. 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 KWS.

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

18.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the KWS (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 on going, 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, pending the outcome of (iii),
- 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.

18.9 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences of ITT 18.9 will ensue unless the tenderer can show to the reasonable satisfaction of the KWS that any such act was not material, or was due to genuine error or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

19 Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 To establish Tenderer's eligibility in accordance with ITT4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.

19.2 The documentary evidence of the Tenderer's qualification submitted with the Contract if its Tender is accepted shall establish to the KWS's satisfaction that the Tenderer meets each of the qualification criteria specified in Section III, Evaluation and Qualification Criteria.

19.3 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed methodology, work plan and schedule.

19.4 In the event that pre-qualification of Tenderers has been undertaken, only Tenders from prequalified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.

19.5 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified in Section III, Evaluation and Qualification Criteria.

20 Period of Validity of Tenders

20.1 Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the KWS in accordance with ITT 24.1). A Tender valid for a shorter period shall be rejected by the KWS as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the KWS 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 ITT20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

21 Tender Security

21.1 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.

21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

21.3 If a Tender Security is specified pursuant to ITT 21.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's 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,

21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the KWS as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46. The KWS shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

- 21.6** The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.
- 21.7** The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereof provided by the Tenderer; or
 - if the successful Tenderer fails to:
 - sign the Contract in accordance with ITT 46; or
 - Furnish a performance security in accordance with ITT 47.
- 21.8** Where tender securing declaration is executed, the KWS shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.
- 21.9** The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 13.2.
- 21.10** A tenderer shall not issue a tender security to guarantee itself.
- 22** Format and Signing of Tender
- 22.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, bound with the volume containing the Form of Tender, and clearly marked "Original. "In addition, the Tenderer shall submit copies of the Tender, in the number specified **in the TDS**, and clearly marked as "Copies. "In the event of discrepancy between them, the original shall prevail.
- 22.2** 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.
- 22.3** The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified **in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 22.4** In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 22.5** Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

The tenderer shall separate the Technical Proposal and the Financial Proposal. The Technical Proposal shall not include any price, rates and Priced Schedule of Requirements. The Financial Proposal shall include Form of Tender and Priced Schedules of Requirements. The separated Technical and Financial Proposal be submitted as follows: -

- a) original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "TECHNICAL PROPOSAL," and,
- b) the original and a copy of the Financial Proposal placed in a sealed envelope clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL". The financial proposal must bear the name and address of the bidder.

23 Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the KWS and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- a. in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT13; and
- b. in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- c. if alternative Tenders are permitted in accordance with ITT15, and if relevant:
 - i. in an envelope or package or container marked "ORIGINAL-ALTERNATIVE TENDER", the alternative Tender; and
 - ii. in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the KWS.
- b) Bear the name and address of the Tenderer; and
- c) Bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, the KWS will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

24 Deadline for Submission of Tenders

24.1 Tenders must be received by the KWS 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**.

24.2 The KWS may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, in which case all rights and obligations of the KWS and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25 Late Tenders

25.1 The KWS shall not consider any Tender that arrives after the dead line for submission of Tenders, in accordance with ITT 24. Any Tender received by the KWS after the deadline for submission of Tenders shall be declared late, rejected, and returned un opened to the Tenderer.

26 Withdrawal, Substitution and Modification of Tenders

- 26.1** A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by a n authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (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 21 and ITT 22 (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 KWS prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.
- 26.2** Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.
- 26.3** 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.

27 Tender Opening

- 27.1** Except as in the cases specified in ITT 23 and ITT 25.2, the KWS shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1 shall be as specified **in the TDS**.
- 27.2** First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 27.3** 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.
- 27.4** 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.
- 27.5** Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the KWS may consider appropriate.
- 27.6** Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of the KWS attending Tender opening in the manner specified **in the TDS**.
- 27.7** The KWS shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT25.1).
- 27.8** The KWS shall prepare are cord of the Tender opening that shall include, as a minimum:
- The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - The Tender Price, per lot (contract) if applicable, including any discounts; and
 - any alternative Tenders;
 - The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
 - Number of pages of each tender document submitted

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

E. Evaluation and Comparison of Tenders

28 Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 42.

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

28.3 Notwithstanding ITT 28.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the KWS on any matter related to the Tendering process, it should do so in writing.

29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the KWS may, at the KWS's discretion, ask any tenderer for clarification of its Tender including break downs of the prices in the Activity Schedule, and other information that the KWS may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the KWS shall not be considered. The KWS'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 KWS in the evaluation of the Tenders, in accordance with ITT32.

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

30 Deviations, Reservations, and Omissions

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

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

31 Determination of Responsiveness

31.1 The KWS's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

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

- a) If accepted, would:
 - i. affect in any substantial way the scope, quality, or performance of the Non-Consulting Services specified in the Contract; or
 - ii. limit in any substantial way, inconsistent with the tendering document, the KWS's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

31.3 The KWS shall examine the technical aspects of the Tender submitted in accordance with ITT 18 and ITT 19, in particular, to confirm that all requirements of Section VII, KWS's Requirements have been met without any material deviation or reservation, or omission.

- 31.4** If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the KWS and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 31.5** Provided that a Tender is substantially responsive, the KWS may waive any non-conformity in the Tender.
- 31.6** Provided that a Tender is substantially responsive, the KWS 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. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 31.7** Provided that a Tender is substantially responsive, the KWS shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS**.

32 Arithmetical Errors

- 32.1** The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 32.2** Provided that the Tender is substantially responsive, the KWS shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
 - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive .and
 - c) If there is a discrepancy between words and figures, the amount in words shall prevail

- 32.3** Tenderers shall be notified of any error detected in their bid during the notification of a ward.

33 Conversion to Single Currency

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

34 Margin of Preference and Reservations

- 34.1** Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS**.
- 34.2** Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and /or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a KWS shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all tenderers.

35 Evaluation of Tenders

- 35.1** The KWS 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 KWS shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:
- a) Substantially responsive to the tendering document; and

b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the KWS will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 16.4;
- b) price adjustment due to quantifiable non material non-conformities in accordance with ITT 31.3;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33; and
- d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

35.3 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.

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria. For one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT

35.5. The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36 Comparison of Tenders

36.1 The KWS shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

37 Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

37.2 In the event of identification of a potentially Abnormally Low Tender, the KWS shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that the KWS determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the KWS shall reject the Tender.

Abnormally High Tenders

37.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the KWS is concerned that it (the KWS) 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.

37.5 In case of an abnormally high price, the KWS 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 KWS may also seek written clarification from the tenderer on the reason for the high tender price. The KWS shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the KWS may accept or not accept the tender depending on the KWS's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the KWS 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 maybe.

37.6 If the KWS 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 KWS shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

38 Unbalanced and/or Front-Loaded Tenders

38.1 If in the KWS's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the KWS may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the KWS may as appropriate:

- a) Accept the Tender; or
- b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 10% of the Contract Price; or
- c) agree on a payment mode that eliminates the inherent risk of the KWS paying too much for undelivered works; or
- d) Reject the Tender.

39 Qualification of the Tenderer

39.1 The KWS shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subservice providers or any other firm(s) different from the Tenderer that submitted the Tender.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the KWS shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40 KWS's Right to Accept Any Tender, and to Reject Any or All Tenders

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

F. Award of Contract

43 Award Criteria

43.1 The KWS shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

42 Notice of Intention to enter in to a Contract

- 42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the KWS shall issue a Notification of Intention to Enter into a Contract/Notification of a ward to all tenderers which shall contain, at a minimum, the following information:
- a) The name and address of the Tenderer submitting the successful tender;
 - b) The Contract price of the successful tender;
 - c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
 - d) the expiry date of the Stand still Period; and
 - e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;

43 Stand still Period

- 43.1 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.
- 43.2 Where a Standstill Period applies, it shall commence when the KWS has transmitted to each Tenderer the Notification of Intention to enter in to a Contract with the successful Tenderer.

44 Debriefing by the KWS

- 44.1 On receipt of the KWS's Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to the KWS for a debriefing on specific issues or concerns regarding their tender. The KWS shall provide the debriefing within five days of receipt of the request.
- 44.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

45 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, upon addressing a complaint that has been filed within the Standstill Period, the KWS 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.

46 Signing of Contract

- 46.1 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 KWS shall send the successful Tenderer the Contract Agreement.
- 46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the KWS.
- 46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

47 Performance Security

- 47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the KWS, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section VIII, Contract Forms, or another Form acceptable to the KWS. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the KWS. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the KWS has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the KWS may award the Contract to the Tenderer offering the next Best Evaluated Tender.

48 Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, the KWS 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 KWS;
- 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 Adjudicator

49.1 The KWS proposes the person named **in the TDS** to be appointed as adjudicator or under the Contract, at an hourly fee specified in **the TDS**, plus reimbursable expenses. If the Tenderer disagrees with this Tender, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the KWS has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

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 for the Non-Consulting Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

[Where a new-procurement system is used, modify the relevant parts of the TDS accordingly to reflect thee-procurement process].

[Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT].

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---------------|--|
| | A. General |
| ITT 1.1 | <p>The reference number of the Request for Tenders (ITT) is : KWS/OT/ADMIN/27/2021-2023</p> <p>The KWS is: Kenya Wildlife Service</p> <p>The name of the ITT is: PROVISION OF CLEANING, SANITATION AND GROUND MAINTENANCE SERVICES FOR KWS HQS, NAIROBI NATIONAL PARK, NAIROBI ORPHANAGE, NAIROBI SAFARI WALK, CENTRAL WORKSHOP AND AIRWING</p> |
| ITT 2.2 | The Intended Completion Date is June 2023 |
| ITT 3.3 | Information that any unfair competitive advantage over competing firms is as follow: None |
| ITT 3.4 | The firms that provided consulting services Not Applicable |
| ITT 4.1 | Maximum number of members in the Joint Venture (JV): Joint ventures shall not be allowed |
| | B. Contents of Tendering Document |
| ITT 8.1 | <p>(a) A pre-tender conference will be held on (25TH November 2021), at 10.00 am Vet Conference room, KWS headquarters, Langata road.</p> <p>(b) A pre-arranged mandatory pretender visit of the site of the works visit will be held on 25th November 2021 at 10.00am in Vet conference room, KWS Headquarters Langata road.</p> |
| ITT 8.2 | The questions in writing, to reach the KWS not later than 24th November 2021 at 3.30pm |
| ITT 8.4 | Minutes of the pre-Tender meeting and the pre-arranged mandatory pretender visit of the site of the works shall be published on the website: www.kws.go.ke |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---------------|---|
| | |
| ITT 9.1 | <p>i) The Tenderer will submit any request for clarifications in writing at the Address: Director General, Kenya Wildlife Service, P.O Box 40241-00100, Nairobi. To reach the Kenya Wildlife Service not later than 5 days prior to the deadline for submission of tenders.</p> <p>ii) The Kenya Wildlife Service will publish its response at the website www.kws.go.ke</p> |
| | C. Preparation of Tenders |
| ITT 13.1 (i) | <p>The Tenderer shall submit the following additional documents in its Tender:</p> <ul style="list-style-type: none"> i) Copy of Certificate of Incorporation/Business Registration name under the Companies ii) A current copy of Form CR12 for limited companies issued by the Registrar of Companies that indicates the ownership of the company (not older than 12 months, as at the time of the tender Closing). Form CR12 shall be duly certified by a Commissioner of Oaths. This should be provided with Identification documents of all directors listed on the CR12 (ID or Passport). or Partnership Deed duly Certified by a Commissioner of Oaths iii) Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (KRA) as at the time of tender opening/closing. v) Copy of AGPO Certificate, copy must be attached vi) Copy of a duly Signed Second Schedule – Tender Securing Declaration vii) Evidence of financing agreement or Credit facility for enterprises owned by youth, women or persons with disabilities viii) Valid NEMA Certificate for waste management and disposal ix) Valid NEMA letter for Cleaning and Fumigation x) Valid Pest Control License xi) Attach evidence that the employees have injury insurance cover(WIBA) xii) Confirm that wages are paid through a bank by 30th of each month (Provide evidence) xiii) Provide a copy of valid city, Municipal or County Council License/Single business permit Certified by an Advocate xiv) NSSF Registration, compliance certificate and payment schedules for the last three months. Date reference is the tender opening date. xv) NHIF Registration, compliance certificate and payment schedules for the last three months. Date reference is the tender opening date |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---------------|---|
| | <p>xvi) Must complete sign & stamp the self-declaration that the bidder will not engage in any corrupt or fraudulent practice</p> <p>xvii) Must complete sign & stamp the self-declaration that the bidder/ person is not debarred in the matter of public procurement</p> <p>xviii) Proof of compliance with minimum wage guidelines gazette by the government (Attach a dully certified letter from the local Labor Office</p> <p>xix) All pages of the tender document MUST be book or tape bound and sequentially paginated</p> <p>xx) Certified Audited accounts for the last(2) years 2018 /2019 to 2019/2020</p> <p>xxi) Evidence of compliance with remittance of statutory NHIF and NSSF deductions as provided for, under Section 19 (1) of the employment act Cap226, Laws of Kenya.</p> <p>xxii) Bidders are expected to present complete documentation including physical address and location of the business</p> |
| ITT 15.1 | Alternative Tenders shall not be considered. |
| ITT 15.2 | Alternative times for completion shall not be permitted. |
| ITT 15.3 | Alternative technical solutions shall not be permitted. |
| ITT 16.7 | The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract. |
| ITT 20.1 | The Tender validity period shall be 126 days . |
| ITT 21.1 | A Tender-Securing Declaration shall be required. |
| ITT 21.3 (a) | The Contract price shall not be adjusted |
| ITT 22.1 | In addition to the original of the Tender, the number of copies is: ONE |
| ITT 22.3 | The written confirmation of authorization to sign on behalf of the Tenderer shall be a Written Power of Attorney. |
| | D. Submission and Opening of Tenders |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|-------------------------------|---|
| <p>ITT 24.1</p> <p>Physic</p> | <p>For <u>Tender submission purposes</u> only, the address is:</p> <p>Kenya Wildlife Service, Director General, P.O Box 40241-00100, Nairobi</p> <p>Physical address for-:</p> <p>Hand delivery shall be deposited in the Tender Box located at, Kenya Wildlife Service Headquarters, Main Reception, a long Lang'ata Road</p> <p>Courier delivery shall be registered at the office of Head Supply Chain Management located at Ndovu court 1st Floor Kenya Wildlife Service Headquarters along Lang'ata Road</p> <p>Date and time for submission of Tenders 10 00hrs on or before 2nd December,, 2021</p> <p>Tender Shall not be submitted electronically</p> |
| <p>ITT 24.1</p> | <p>The deadline for Tender submission is:</p> <p>Date: 2nd December, 2021</p> <p>Time: 10:00am</p> <p>Tenderers <i>shall not</i> submit their Tenders electronically.</p> |
| <p>ITT 27.1</p> | <p>The Tender opening shall take place at:</p> <p>Venue: Kenya Wildlife Service, Veterinary Conference Room, KWS Headquarters, located along Lang'ata Road</p> <p>Date: 2nd December, 2021</p> <p>Time: 10:00am</p> |
| <p>ITT 27.6</p> | <p>The Form of Tender and priced Activity Schedule shall be initialed by all representatives of the KWS conducting Tender opening. Each member of the tender opening committee shall —</p> <p>(a) sign each tender on one or more pages as determined by the tender opening committee; and</p> <p>(b) initial, in each tender, against the quotation of the price and any modifications or discounts, where applicable.</p> |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|--|--|
| | <p>(c) The tender opening committee shall prepare tender opening minutes which shall set out —</p> <p>(d) a record of the procedure followed in opening the tenders; and</p> <p>(e) the particulars of those persons submitting tenders, or their representatives, who attended the opening of the tenders. <i>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 KWS,</i></p> |
| E. Evaluation and Comparison of Tenders | |
| ITT 31.7 | For comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified as follows: The adjustment shall be based on the <i>average</i> price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the KWS shall use its best estimate. |
| ITT 33.1 | The currency that shall be used for Tender evaluation is Kenya shillings |
| ITT 34.1 | Margin of preference not allowed. |
| ITT 34.2 | <p>The invitation to tender is extended to the following group that qualify for Reservations</p> <p>i) Women Enterprises</p> <p>ii) Youth Enterprises</p> |
| ITT 35.2 (d) | <p>Additional evaluation factors shall be:</p> <ul style="list-style-type: none"> • An Acceptance evaluation Letter within fourteen(14) days from the date of notification of award • An irrevocable and unconditional Performance Bank Guarantee equivalent to one Percent (1%) of the of the contract price awarded as per the format stipulated in the tender document. • Contactors All risk policy and the relevant insurance policies necessary during the execution of the works • Program of works showing the general methods, order timing and sequence for all activities of the works • Detailed cash flow projection for the entire contract period |
| ITT 35.4 | <p>Tenderers shall be <u>allowed</u> to quote separate prices for different lots (contracts) and the methodology to determine the lowest tenderer is specified in Section III, Evaluation and Qualification Criteria.</p> <p>As per Section 111</p> |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---------------|--|
| | F. Award of Contract |
| ITT 50.1 | <p>The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>For the attention: George M. Wambua</p> <p>Title/position: Head Supply Chain Management</p> <p>KWS: Kenya Wildlife Service</p> <p>Email address: hps@kws.go.ke</p> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <ul style="list-style-type: none"> (i) The terms of the Tender Documents; and (ii) The KWS'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 determined as follows:
- a) For financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.
 - b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
 - c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the KWS.
- 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..
- 1.3** Evaluation and contract award Criteria

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

2 Preliminary examination for Determination of Responsiveness

The KWS 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.

| MANDATORY REQUIREMENTS | RESPONSIVE OR NON RESPONSIVE |
|---|------------------------------|
| i) Copy of Certificate of Incorporation/Business Registration name under the Companies | |
| ii) A current copy of Form CR12 for limited companies issued by the Registrar of Companies that indicates the ownership of the company (not older than 12 months, as at the time of the tender Closing). Form CR12 shall be duly certified by a Commissioner of Oaths. This should be provided with Identification documents of all directors listed on the CR12 (ID or Passport). Partnership Deed duly Certified by a Commissioner of Oaths | |
| iii) Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (KRA) as at the time of | |

| | |
|---|--|
| tender opening/closing | |
| iv) Tenderers with ongoing works with KWS that have not been completed will not be eligible for bidding in these tenders and will be disqualified | |
| v) Copy of AGPO Certificate, copy must be attached | |
| vi) Copy of a duly Signed Second Schedule – Tender Securing Declaration | |
| vii) Evidence of financing agreement or Credit facility for enterprises owned by youth or women | |
| viii) Valid NEMA Certificate for waste management and disposal | |
| ix) Valid NEMA letter for Cleaning and Fumigation | |
| x) Valid Pest Control License | |
| xi) Attach evidence that the employees have injury insurance cover(WIBA) | |
| xii) Confirm that wages are paid through a bank by 30th of each month (Provide evidence | |
| xiii) Provide a copy of valid city, Municipal or County Council License/Single business permit Certified by an Advocate | |
| xiv) NSSF Registration, compliance certificate and payment schedules for the last three months. Date reference is the tender opening date. | |
| xv) NHIF Registration, compliance certificate and payment schedules for the last three months. Date reference is the tender opening date | |
| xvi) Must complete sign & stamp the self-declaration that the bidder will not engage in any corrupt or fraudulent practice | |
| xvii) Must complete sign & stamp the self-declaration that the bidder/ person is not debarred in the matter of public procurement | |
| xviii) Proof of compliance with minimum wage guidelines gazette by the government (Attach a dully certified | |

| | |
|--|--|
| letter from the local Labor Office | |
| xix) All pages of the tender document MUST be book or tape bound and sequentially paginated | |
| xx) Certified Audited accounts for the last(2) years between 2018 to 2020 | |
| xxi) Evidence of compliance with remittance of statutory NHIF and NSSF deductions as provided for, under Section 19 (1) of the employment act Cap226, Laws of Kenya. | |
| xxii) Bidders are expected to present complete documentation including physical address and location of the business. | |

SCHEDULE OF REQUIREMENTS AND DESCRIPTION OF SERVICES (PROSPECTUS)

INTRODUCTION

Kenya Wildlife Service (KWS) seeks to engage the services of private contractors specialized in the provision of Office cleaning, Sanitation, and Environmental Management (gardening and garbage collection and waste disposal) at its Headquarters complex at Langata in Nairobi County

Bids are invited from eligible service providers in the cleaning, sanitation and environmental management for a two year contract subject to annual satisfactory performance review.

The award of contract shall be made to the successful bidder per **LOT** basis **as follows;**

LOT 1: Provision of cleaning and sanitation Services

LOT 2: Provision of ground maintenance and garbage collection Services

KWS HEADQUARTERS COMPLEX- LANGATA

Description of the Headquarters

The Complex covers an area of approximately 6.2 Hectares (260m X 240m). Stretching from the main entrance to the west of the Langata Road, the boundary of the animal orphanage, staff quarters to the east and Langata Barracks to the north, and to the south the Nairobi National Park Boundaries, Nairobi Safari

Walk, Rangers Restaurant, and the KWS Veterinary Laboratories, Nairobi Animal Orphanage, Nairobi Safariwalk, KWS Hangar- Air wing and Central Workshop.

2.1 Buildings

Buildings in the Complex include;

- Three courts – Chui, Ndovu and Simba courts.
- Two Timber Prefabricated Buildings
- Education Block
- Senior Warden's Nairobi Safari walk & Orphanage
- Nairobi National Park offices and toilets.
- White House –White building adjacent to Kifaru court building (Ground floor/first floor)
- Main Bus Park & Ablution Block
- Sebastian cafe
- Public Ablution Block near Sebastian cafe
- KWS Hqs. Main Entrance Gate
- Vet offices and clinic prefabricated stores(2)
- Two generator Houses, old and new block adjacent to each other.
- Vet clinic Animal Holding Cages and animal supplies stores
- Telecommunication Riggers workshop and adjacent stores
- Airwing Offices and Hangar and its compounds.
- Central Workshop office blocks, Stores, servicing areas ablution blocks toilets, basement floors, yards and its compounds.
- Nairobi Safari walk (offices, ablutions, pathways and grounds) excluding cages
- Nairobi orphanage (offices, ablutions, pathways and grounds) excluding cages

2.2 Parking Yards

The Following Parking areas and connecting driveways and walkways are included:

1. Bus Parking
2. Visitors Parking Lots in front of Reception
3. KWS Staff Parking Lots in front of Reception
4. Ranger's Restaurant and Kifaru Shop Parking
5. Security and Kifaru Court Parking lot
6. Nairobi Safari Walk Parking Lot
7. Airwing Parking lot
8. Central Workshop Parking
9. Nairobi National Park Parking Lot
10. Director General's & VIP Parking area

2.3 Gardens, Lawns and Hedges

Areas covered by the gardens and grounds include but not limited to;

Location/Description

1. Central Flower Gardens in Chui, Ndovu and Simba Courts
2. Central Water fountain at Ndovu Court
3. Grounds on both sides of Rangers parking lot and surrounding isles
4. Grounds on both sides of the Bus Park
5. Grounds behind Ndovu Court
6. Grounds behind and in front of KTF prefab buildings
7. Grounds behind and in front of Combo stores
8. Vet Grounds
9. Director General's grounds
10. Monuments Area
11. Grounds along KWS Hqs. Boundary from Langata army barracks to the
Langata Crematorium
12. Grounds behind and in front of Central Workshop
13. Gardens at the KWS hangar at Wilson Airport

2.4 Toilets

All Toilets facilities housed within Office blocks and courts

6. Nairobi Orphanage
7. Nairobi Safari Walk
8. Nairobi National Park

2.5 Surfaces

Description

1. Floors – Mazeras Stone, PVC, Wood, Terrazzo, Tiled and cemented
2. Glasses and windows
3. Mirrors
4. Ceilings and Roofs
5. Terrazzo Staircases, Wooden pillars and Stairways
6. Toilet sets and tiles
7. Walls
8. Furniture and office equipment,
9. Pavements
10. Walkways
11. Tarmac drive ways
12. Parking Lots

3. OBJECTIVE OF THE ASSIGNMENT AND SCOPE OF WORKS

3.1 The contractor shall undertake to provide **Office cleaning and sanitation services** or **Environmental Management** (ground maintenance, gardening, pest control, fumigation, garbage collection and disposal) to a standard and level of KWS corporate image in the areas including but not limited to those specified above.

3.2 The services shall be executed and maintained in strict adherence to the contract terms to the satisfaction of the Head of Administration and shall comply with the instructions given by them from time to time.

3.3 The Successful contractor for the cleaning services shall provide Sanitation Services, fumigation, cleaning in the areas specified while the successful contractor for Environmental Management (ground maintenance and gardening) shall provide services in the areas specified in a manner that will not interfere with the smooth operation and use of the facilities by KWS staff, its visitors and tenants.

3.4 The Contractor will provide the required tools, equipment, detergents, pesticides and other materials required for the purpose of satisfactorily carrying out the services. These detergents,

consumable material and equipment used shall be of kinds recommended by respective manufacturers and are environmentally safe and approved by KWS in keeping with agreed environmental health standards and current and future laws and regulation on safety of workers and general users of the facility.

- 3.5** The Contractor shall while performing the cleaning services, provide its staff with adequate and suitable uniform clothing to a standard that gives safety, protection and good image to both KWS and the contractor.

5. - LOT 1

Without limiting the generality of Paragraph 3 (3.1), the successful contractor shall provide the following interior services;

- Remove from all office floor surfaces dirt, stains spills or foreign objects and ensure that the floors are maintained free from any blemish on daily basis.
- Apply on weekly basis an acceptable polish to all Mazeras Stone, red oxide, wood and PVC floors and terrazzo staircases.
- Wipe, dust and/or clean with wet cloth all the wooden pillars, workstations, computer surfaces, shelves and furniture and fittings within the offices
- All Telephone headsets should be wiped and regularly cleaned and disinfected.
- Computers, printers, photocopiers and typewriters should be dusted daily and should be free from dust and fluff
- Maintain all kitchens within the office blocks clean, with their floors and wall free of stains, blemish and their sinks scrubbed free of food stains, where applicable appropriate stain removers to be used.
- Clean and keep unsoiled WCs toilet bowls, urinals, WHBs sinks, walls and mirrors within the toilets at all times.
- Remove and dispose of rubbish from toilet bins and staff camps within Hqs.
- Check the working conditions of drainpipes, main sanitary apparatus, water pipes and drains and make reports to the KWS Head of Administration regarding any faults on a daily basis for rectification
- Ensure that all toilets are maintained free from unpleasant odours and kept sparkling clean at all times.
- Ensure adequate supply of liquid soap in the soap dispensers and liquid hand washing soap for areas without soap dispensers. Any faulty soap dispensers and/or hand dryers should be reported immediately
- Provide step- on sanitation bins in ladies toilets to be changed and replaced at least twice a week.
- Mop and maintain toilet floors dry at all times
- Provide dustbins (Step-on) in the toilets to be emptied regularly.
- Provide toilet accessories including high quality toilet paper (White), hand washing soap, disinfectant, air freshener and maintain hand driers in working condition
- Supply moth balls and sanitary blocks to the toilets. Toilet balls supplied by the contractor should always be correctly placed
- Control pests in offices, office toilets, public toilets, stores and all buildings within the Hqs by fumigating the buildings once every month using approved agents and whenever the need arises
- Collect and dispose all rubbish, dirt, waste materials or refuse from the building and offices to designated disposal areas
- Using acceptable detergents and cleaning agents, maintain windows and window panes clean and free from stain and cobwebs on weekly basis.
- Dust and wipe all balustrades and handrails.

- All cleaning especially of toilets should be carried out before 8am and offices before 9am. Other cleaning will be regular and continuous.
- Remove rubbish, dirt, stains, cobwebs or spills or foreign objects and generally ensure that all areas are free from any blemish
- Ensure that all areas are free from any foul or unpleasant odour;
- Ensure that all polished or smooth surfaces retain their shining gloss finish at all times;
- Thoroughly scrub and polish floors once a week and whenever the need arises
- Door mats & mud scrappers must be maintained free from mud, dust and should be swept at least twice a day

The services to be rendered will also include fumigation and garbage collection inside the KWS Headquarters/buildings.

The Contractor will be expected to provide clean staff uniform to his employees and all other necessary personal protective gear, machinery, tools and materials for use in providing the services.

5. Provision of ground maintenance and garbage collection Services –NAIROBI – LOT 2

Without limiting the generality of Paragraph 3 (3.1), the successful contractor shall provide the following exterior services;

- Provide potted flowers at designated areas in all courts, well-watered and healthy, attractive and presentable at all times.
- Control all Pests, vermin and weeds within the complex on a monthly basis using acceptable agents within the provisions of paragraph 3 (3.4)
- Maintain roofs, gutters, drainages, water pipes, and drains in the aforesaid complex in proper working condition at all times.
- Check the working conditions of drain pipes, main sanitary apparatus, water pipes and drains and make reports to the Head of Administration regarding any faults on a daily basis for rectification
- Remove and dispose of rubbish from litter/trash bins and staff camps within Hqs.
- Maintain all grass lawns well watered, trim within 2 inches (50mm) at all times.
- Maintain all hedges included within the complex and its perimeters trimmed and kept at height not exceeding that agreed upon and specified by the Head of Administration.
- Maintain the existing flowerbeds and those to be extended well watered and free of weeds throughout the year.
- Maintain Parking lots, walkways, driveways pavement and areas within the courts free of dirt, litter, mud and any other undesirable objects at all times.
- Remove from and maintain all walls free from cobwebs and any undesirable blemishes
- Empty rubbish bins and cart away rubbish to acceptable disposal areas and ensure that garbage collection is carried out **at least three times per week**.
- The compound, grounds should be kept clean by sweeping and/or rake leaves and cart away to designated compost sites.
- Apply on weekly basis an acceptable polish to all Mazeras Stone, red oxide, wood and PVC floors and terrazzo staircases.
- The Lawns must be mowed and Flower beds should be weeded regularly

- The Heroes and Living Rangers monument should be machine scrubbed, cleaned and polished on a monthly basis.

The contractor shall be liable for any destructions on plants, flowers, trees, grass lawns, tree and flower nurseries that may be destroyed during the term of the contract as a result of neglect and/or improper use herbicides and pesticides.

The Contractor will be expected to provide clean and presentable staff uniforms to his employees and all other necessary machinery, tools and materials for use in providing the services

SCOPE OF WORKS

LOT 1 – PROVISION OF CLEANING AND SANITATION SERVICES

Without limiting the generality of Paragraph 3 (3.1), the successful contractor shall provide the following

Interior/exterior services;

All seats, desks, cabinets, wooden fittings, furniture fittings, work stations, benches, work tops, and all other surfaces and appliances SHALL be cleaned appropriately, dusted and maintained free of dirt, stains or blemish at all times. Mazeras tiled floors shall be machine scrubbed of all dirt, old polish, stains and polished at least twice a week using appropriate floor polish.

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|--|---|-------------|
| 1. | Mop floors, dust, wipe and disinfect work surfaces | <p>KWS HQS.</p> <p>i) Chui, Ndovu and Simba courts Basement, Ground and first floors,</p> <p>ii) Prefabricated Building housing The Kenya Tourism Federation</p> <p>iii) Timber Prefabricated Building- Combo Store</p> <p>iv) Education Block Ground/first floor</p> | Twice Daily |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|--|--|-----------|
| | <p>air fresheners, coloured moth balls, detergents, disinfectants etc.</p> <p>A cloak room cleaning check list shall be maintained filled, signed and displayed in the washrooms</p> <p>Soap Dispensers, Tissue Holders, Tissue Dispensers, Hand Towel Dispensers and Hand driers SHALL be serviced with Supplies and maintained clean and presentable at all times.</p> | | |
| 3. | Mop floors and dust and wipe surfaces using appropriate degreasing detergents and chemicals under the supervision of the officer in charge | 1) Central workshop 2) KWS Airwing 3) KWS Hqs generator rooms 4) KWS fuel pumps | Weekly |
| 4. | All Telephone headsets should be wiped and regularly cleaned and disinfected. | In all offices where provided | Daily |
| 5. | Apply on weekly basis an acceptable polish to all | KWS Hqs., Central workshop' Airwing Offices, Vet, monuments, main reception, | Weekly |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|--|---|--------------|
| | Mazeras Stone, red oxide, wood and PVC floors and terrazzo staircases. | molecular lab, NNP, NAO and NSW entrances | |
| 6. | Computers, printers, photocopiers and typewriters should be dusted daily and should be free from dust and fluff | All offices where provided | Daily |
| 7. | Maintain all kitchens within the office blocks clean, with their floors and wall free of stains, blemish and their sinks scrubbed free of food stains, where applicable appropriate stain removers to be used. | All kitchens | At all times |
| 8. | Remove and dispose of rubbish from toilet bins and staff camps | As in 2 above | Twice Daily |
| 9. | Check the working conditions of drainpipes, main sanitary apparatus, water pipes and drains and ensure proper working condition | Where provided within the premises of HQs Complex, Airwing and Central workshop | Weekly |
| 10. | Ensure adequate supply of liquid soap in the soap dispensers Any faulty soap dispensers and/or hand dryers should be reported immediately | As in 2 above | At all times |
| 11. | Provide step- on sanitation bins in ladies toilets to be changed and replaced | As in 2 above | Weekly |
| 12. | Provide Step-on dustbins in the toilets to be emptied regularly. | As in 2 above | At all times |
| 13. | Provide toilet accessories including high quality toilet paper white in colour, hand washing soap, | As in 2 above | At all times |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|--|---|--------------------------|
| | disinfectant, air freshener and maintain hand driers in working condition | | |
| 14. | Supply moth balls and sanitary blocks to the toilets. Toilet balls supplied by the contractor should always be correctly placed | As in 2 above | At all times |
| 15. | Collect and dispose all rubbish, dirt, waste materials or refuse from the building and offices to designated disposal areas | All office blocks | Twice Daily |
| 16. | Using acceptable detergents and cleaning agents, maintain windows and window panes clean and free from stain and cobwebs | As in 1 and 2 above | Weekly |
| 17. | Dust and wipe all balustrades, Poles, Hand Rails, | Where provided | Twice Weekly |
| 18. | Door mats & mud scrappers must be free from dirt and dust and should be cleaned, swept and dusted | Where provided | Twice Daily |
| 19. | Degrease, clean and maintain all service pits, work benches, engine assembly area, fabrication section, oil stores, floors and surfaces at Central workshop | Central Workshop | Weekly |
| 20. | <ul style="list-style-type: none"> Fumigate all offices, washrooms and common arrears using appropriate chemicals Apply approved pesticides, herbicides to control rodents, bees, termites and other pests and pest attacks within KWS | KWS Hqs. Central Workshop, KWS Air Wing, Nairobi Safariwalk, Nairobi Animal Orphanage | Monthly/ on a need basis |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|---------------------------|----------|-----------|
| | premises | | |

GUIDELINES FOR WORK SCHEDULES

LOT 2 – PROVISION OF GROUND MAINTENANCE GARBAGE COLLECTION SERVICES

Without limiting the generality of Paragraph 3 (3.1), the successful contractor shall provide the following

14 EXTERIOR SERVICES;

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|---|--|-----------|
| 1. | Sweep and cart away rubbish, leaves, twigs, and all unwanted litter | <ul style="list-style-type: none"> a. KWS bus park and adjacent areas b. Sebastian Parking and adjacent areas c. KWS Hqs Car parks and adjacent areas d. VIP car parks and adjacent areas e. Kifaru Car Park f. Ranger's Car Park and adjacent areas g. All other Access roads h. Heroes Monument and adjacent areas i. Ranger's Statue and adjacent areas j. Murram Road to the staff quarters and adjacent areas k. Murram Road to the Compo Stores and adjacent areas including the adjacent concrete slab. l. Paved walkways within the KWS complex m. Nairobi Safarivalk paved and boardwalk ways n. Nairobi Animal Orphanage Walkways o. KWS Air wing Parking, Access road and adjacent areas p. Central Workshop Main gate and adjacent areas, Fuel point NNP Yard, and all adjacent areas. | Daily |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|---|--|--------------|
| | | q. Central workshop car park areas including all open grounds at the front and back of the workshop, NNP yard and offices | |
| 2. | Sweep , clean, de-silt and service all storm drains, Drainage channels, rain gutters, within the KWS Hqs. Complex and ensure there is no stagnant water | a. KWS bus park and adjacent areas b. Sebastian Parking and adjacent areas c. KWS Hqs Car parks and adjacent areas d. VIP car parks and adjacent areas e. Kifaru Car Park f. Ranger's Car Park and adjacent areas g. All other Access roads h. Heroes Monument and adjacent areas i. Ranger's Statue and adjacent areas j. Murram Road to the staff quarters and adjacent areas k. Murram Road to the Compo Stores and adjacent areas including the adjacent concrete slab. l. All Paved walkways within the KWS complex m. Central Workshop Main gate and adjacent areas, Fuel point NNP Yard, and all adjacent areas. n. Central workshop car park areas including all open grounds at the front and back of the workshop, NNP yard and offices | Monthly |
| 3. | a. Mow grass to a height of 50mm from the ground level and maintain it well-manicured, watered and lush at all times. b. Rake and cart away unwanted dry leaves, twigs, litter etc. to designated collection point c. Plant carpet grass to patch identified bare grounds d. Apply approved manure to maintain the grass lawns lush at all times | KWS Complex, KWS Air wing, Central Workshop, Nairobi Safariwalk, Nairobi Animal Orphanage | At all times |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|--|------------|----------------|
| 4. | <p>a. Trim, cut, remove and maintain all trees, hedges and shrubs presentable as may be directed by the Head of Administration from time to time</p> <p>b. Cart away unwanted and fallen trees branches, twigs, shrubs and overgrown flowers etc. to designated disposal areas.</p> | As 3 above | As directed. |
| 5. | <p>a. Apply appropriate fertilizers that Promotes lush foliage, blooming and development healthy root systems</p> <p>b. Apply red soil and farmyard manure on flowers and grass lawns</p> <p>c. Make compost pits for production of compost manure for top dressing</p> | As 3 above | Twice Annually |
| 6. | <ul style="list-style-type: none"> •Apply approved pesticides, herbicides to control rodents, bees, termites and other pests and pest attacks within KWS premises •Remove termite nests, mole hills, remove pests by and make good all defects | As 3 above | Monthly |
| 7. | <p>a. Weed out all weeds in all flower gardens, rock gardens lawns, walkways, orchards hedges etc.</p> <p>b. Maintain flowers well watered, lush and trimmed as appropriate to provide an ambient environment</p> <p>c. Replace old, dry and weakly flowers from time to time as directed</p> <p>d. Apply appropriate compost manure on flower beds to ensure healthy flowers throughout the year.</p> <p>e. Use approved herbicides to control pests, diseases and vermicides attack.</p> | As 3 above | At all times |
| 8. | <p>a. Use approved herbicides to control unwanted weeds in the</p> | As above | Monthly. |

| NO. | DESCRIPTION OF ACTIVITIES | LOCATION | FREQUENCY |
|-----|---|---------------|--|
| | paved walkways, open terraces etc. b. Use approved weed selector herbicides to kill and control unwanted weeds on grass lawns. | | |
| 9. | Collect and cart away all garbage from the Garbage collection point and dispose as per the regulations | As in 3 above | Twice weekly |
| 10. | • Water all grass lawns, flowers, flower beds, Tree Nurseries, grass nurseries, flower nurseries and maintain them lush at all times by use of sprinklers, hoses etc. | As in 3 above | During the dry season and when appropriate |
| 11. | a. Establish and maintain nurseries for the propagation of various flowers, carpet grass species and tree seedlings for replanting. | KWS HQs | As Directed |

Inspection / Evaluation and Reports

- The Successful contractors shall accord the Head of Administration or his representatives' ample opportunity to inspect any work or service performed by the contractor to satisfy himself of the quality and standard of the work. The Contractor shall provide and permit routine free and unhindered audits, survey and inspection of the works performed as per definitions and descriptions of the contract
- KWS Inspection and acceptance committee shall conduct routine and random inspection of the services provided by the contractor, to provide a performance report.
- The contractor shall be informed in writing of any shortcoming in the performance of contract and shall further discuss the report and required improvements, with the both the Head of Administration and a representative from procurement department.

6. Consumable Materials

The Successful contractor for either of the LOTS will be required to provide the following and any other consumables that may be deemed necessary for use in providing contracted services;

LOT 1

- Insecticides
- Vermicides
- Signages
- Wheel barrows
- Spades/shovels
- Fork jembes / hoes
- Dustbins
- Gardening Equipments
- Brooms
- Pesticides
- Rakes
- Manure and/or fertilizers

- m) Tree seedlings
- n) Flower and flowers seedlings
- o) Potted plants
- p) Pruning saws

LOT 2

- a) Signages
- b) Paper towels
- c) Floor Polish
- d) Toilet paper
- e) Air fresheners
- f) Toilet moth balls
- g) Disinfectants
- h) Detergents
- i) Insecticides
- j) Vermicides
- k) Sanitary bins
- l) Toilet soaps
- m) Window Cleaners
- n) Brooms
- o) Brushes
- p) Toilet bowl brushes

7. Equipment

The Successful contractor will be required to provide a list of equipment and the quantities for use in providing the contracted services

9. Staff uniform and Identification badges

The Successful contractor shall provide his employee with smart uniform, name tags and personal protective gear for the purpose of both identification and safety during performance of their duties.

10. Transport

The Successful contractor will be required to provide his employees with transport to and from the work stations.

13. DETERMINATION OF RATES FOR PROVISION OF SANITATION AND CLEANING SERVICES

The prospective contractor is required to inspect all the potential areas that could be covered in this contract and provide in their proposal, a brief description of the services and the level of standards they are able to offer and maintain under each area.

Secondly, in submitting the bids, prospective contractors should provide unit rates for provision of cleaning and sanitation services in the proposed areas as here under:

PRICE SCHEDULE LOT 1-CLEANING AND SANITATION SERVICES

| | ITEM | Description Of Works | UNIT | Rate Per Unit | Amount (Ksh) |
|----|---|--|------|---------------------|-----------------|
| 1. | Toilets <i>Provide sanitation and cleaning services</i> | Toilets facilities in Office blocks and courts (<i>specify number of male and female toilets</i>) | | | |
| | | Public Toilets at Bus Park | | | |
| | | Public Toilets at Nairobi Safari walk Car Park | | | |
| 2. | Buildings-interiors | <p>Provide ground maintenance services to floors, furniture, interior walls and other surfaces of:</p> <ul style="list-style-type: none"> • Three courts housing the Head offices – <ul style="list-style-type: none"> -Chui, -Ndovu, -Simba courts - Main Reception • Prefabricated KTF Building • Store – Timber Prefabricated Building • Education Block, safari walk and orphanage • Education Offices • Red-tiled Kifaru Court adjacent to Nairobi Park Offices/gate • White House • Airwing • Central Workshop | | | |
| 3. | Other Surfaces | Floors – Mazera Stone, PVC, Wood, Terrazzo, Tiled and Red Oxide | | | |
| | | Glasses and windows | | | |
| | | Mirrors | | | |

| | | | | | |
|-----------------------|--|--------------------------------|--|--|--|
| | | Ceilings | | | |
| | | Terrazzo Staircases | | | |
| | | Office and Toilet Walls | | | |
| | | Furniture and office equipment | | | |
| Total For LOT 1 | | | | | |
| Add 16% VAT | | | | | |
| Grand total For LOT 1 | | | | | |

**PRICE SCHEDULE FOR GROUND MAINTAINANCE AND GARBAGE COLLECTION SERVICES:
LOT 2**

| | Item | Description of works | Area | Rate per unit (kshs) | Amount (kshs) |
|----|-------------------------|---|------|----------------------------|------------------|
| 1. | Buildings- Exteriors | <p>Provide Ground maintenance services around the areas of:</p> <ul style="list-style-type: none"> • Three courts housing the Head offices – <ul style="list-style-type: none"> -Chui, -Ndovu, -Simba courts - Main Reception • Prefabricated KTF Building • Store – Timber Prefabricated Building • Education Block, orphanage and safari walk • Education Offices • Red-tiled Kifaru Court adjacent to Nairobi Park Offices/gate • White House • Airwing | | | |

| | | | | | |
|-----------------------|--|--|--|--|--|
| 2. | Parking Lots | Bus Park | | | |
| | <i>Provide cleaning service as described in paragraph 4</i> | Visitors Parking Lots in front of Reception | | | |
| | | KWS Staff Parking Lots in front of Reception | | | |
| | | Ranger's Restaurant and Kifaru Shop Parking | | | |
| | | Security and Kifaru Court parking lot | | | |
| | | Nairobi Safari Walk Parking Lot Airwing and Central Workshop | | | |
| 3. | Gardens and Fences | Central Flower Gardens in Chui, Ndovu and Simba Courts | | | |
| | <i>Provide gardening service as described in paragraph 4</i> | Central Water fountain at Ndovu Court | | | |
| | | Grounds on both sides of and isles on Visitor and Staff and Rangers parking lots | | | |
| | Grounds | Grounds on both sides of Bus Park | | | |
| | | Grounds behind Ndovu Court | | | |
| | | Grounds behind and in front KTF prefab buildings | | | |
| | | Grounds behind in front of prefab Combo store buildings | | | |
| | | | | | |
| 4. | Other Surfaces | Pavements | | | |
| | | Walkways | | | |
| | | Tarmac drive ways | | | |
| Total For LOT 1 | | | | | |
| Add 16% Vat | | | | | |
| Grand Total For LOT 1 | | | | | |

17 BILL OF MATERIALS

The Tenderer is required to provide a bill of materials for the contracted services - listing consumables, their quantities, and costs on monthly and annual basis.

| | Quantity | Cost per Unit –KES | Total per Month -KES | Total per Annum – KES |
|---|-----------------|---------------------------|-----------------------------|------------------------------|
| Paper towels | | | | |
| Floor Polish | | | | |
| Toilet paper | | | | |
| Air fresheners | | | | |
| Toilet balls | | | | |
| Window cleaners | | | | |
| Detergents | | | | |
| Insecticide | | | | |
| Vermicides | | | | |
| Step-on dust bins | | | | |
| Toilet soaps | | | | |
| Sanitary bins in all Ladies Toilets and to be collected | | | | |
| Dustbins | | | | |
| Dusters | | | | |
| List of relevant tools and equipment | | | | |
| Brooms | | | | |
| Window cleaners | | | | |
| Toilet brushes | | | | |
| Mops | | | | |
| Compost Manure | | | | |
| Garbage Collection | | | | |
| Grease Stripper etc | | | | |
| General Labourers (Wages) as per wage guidelines | | | | |
| Total | | | | |
| Add 16% Vat | | | | |

| | | | | |
|-------------|--|--|--|--|
| Grand total | | | | |
|-------------|--|--|--|--|

TECHNICAL EVALUATION CRITERIA

| | | |
|--|--|-------------------------------------|
| | <p><u>Experience to provide similar services and Evidence of similar ongoing work</u></p> <ul style="list-style-type: none"> • <u>Successful or desirable service providers are expected to demonstrate adequate experience in providing similar cleaning, sanitation and gardening services to be provided as per the tender.</u> • <u>Ideal service providers should provide at least 3 similar contracts with references from reputable organizations/clients/institutions-Private, parastatal, NGOs and government ministries performed.</u> | <p>5</p> <p>5</p> |
| | <p><u>Qualification and technical expertise of key personnel to administer and execute the contract.</u></p> <ul style="list-style-type: none"> • <u>Desirable service providers are expected to have a qualified and experienced management team to oversee the contract. Ideal firms should have their senior management including Managing Directors/General Managers, Operation Managers, Personnel Managers and Financial Managers with academic qualification from a Masters Degree to a minimum of a National Diploma in relevant fields. Those with additional professional qualifications in their specialization will have added advantage.</u> • <u>Ideal firms should have their key staff with the following relevant academic and professional qualifications; HR Management, House Keeping, Institutional Management, Business Administration and Finance.</u> • <u>Additional professional qualifications include: first aid, firefighting, pest control, florists etc.</u> • <u>Management structure with clear reporting lines.</u> | <p>5</p> <p>4</p> <p>2</p> <p>3</p> |
| | <p><u>Compliance with Nairobi City County solid waste management act</u></p> <p><u>Provide evidence on compliance with Nairobi City County Solid Waste management act</u></p> | <p>5</p> |
| | <p><u>Operational Plan and work schedules:</u></p> <ul style="list-style-type: none"> • <u>Desirable firms should provide detailed work plan outlining the specific areas of operation, nature of tasks, frequency of tasks and manpower and equipment requirements. The schedule so provided will indicate how the service provider intends to deploy his staff and</u> | <p>5</p> |

| | | |
|---------|---|-------------------------------------|
| | <p><u>equipment daily and throughout the contract period.</u></p> <ul style="list-style-type: none"> <u>While a clear identification of operational areas, nature of tasks and frequency of operation will provide an indication of how well the specifications and desirable standards of service will be attained.</u> <u>Waste management – Demonstration of how the service provider will undertake waste collection and disposal in designated allowable areas (Garbage Collection).</u> | <p>5</p> <p>5</p> |
| | <p><u>Manpower Strength</u></p> <ul style="list-style-type: none"> <u>Ideal firms should have in their employment adequate staff to man operations of the contracted services. They should have adequate; Toilet cleaners, gardeners, general cleaners, Supervisors and service auditors, site managers, stores, repair and maintenance staff etc (Minimum 50 Staff).</u> <u>Ideal firms should have in place a clear organization structure describing work relations and functional relations between its staffs. (Provide an organogram).</u> | <p>5</p> <p>5</p> |
| 1. 7 | <p><u>Equipment and staff Transport</u></p> <ul style="list-style-type: none"> <u>Successful candidates are expected to provide proof of ownership, lease or hire of adequate and serviceable equipment to undertake the contracted services and physically verified/checked. Cars, mowers etc.</u> <p>a. _____ Staff</p> <p>Transport</p> <p>b. _____ Clean</p> <p>ing/ Gard ening Equip ment s</p> <p>c. _____ Garb</p> <p>age Colle ction Truck s</p> <p>d. _____ Prese</p> <p>ntabl e Staff</p> | <p>5</p> <p>5</p> <p>5</p> <p>5</p> |

| | | |
|------------|---|------------|
| | <u>Unifor</u> | |
| <u>1.8</u> | <u>Financial capability of the Company to provide the required services</u> <ul style="list-style-type: none"> <u>Suitable service providers are expected to demonstrate financial ability to provide services described in the bid document;</u> <u>Service providers are expected to show ability as demonstrated by their total annual business turnover over the past five years; Indicative business turnover – volume from past contracts performed.</u> | 8 7 |

GROSS TOTAL MAXIMUM MARKS SCORED FOR PART: 100 %

Only firms that score a minimum of 80% at this stage will be considered for financial evaluation

a. FINANCIAL EVALUATION

The evaluation committee will determine whether the financial proposals are complete. The cost of items not priced shall be assumed to be included in other costs in the proposal. In all cases, the total price of the financial proposal as submitted shall prevail and shall include All the Applicable Taxes. Kenya wildlife service will use least cost selection(LCS), which selects the lowest priced proposal, which meets the KWS technical requirements as per section 124(6)b of PPDA 2015

3 Tender Evaluation (ITT 35)

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 KWS 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 tenderer

OPTION 2

The KWS 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.

5 Alternative Tenders (ITT 15.1)

An alternative if permitted under ITT 13.1, will be evaluated as follows:

The KWS shall consider Tenders offered for alternatives as specified in Part 2- KWS's requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the KWS.

6 MARGIN OF PREFERENCE

No margin will be used.

6 Post qualification and Contract award (ITT 39), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
 - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings_____.
 - ii) Minimum average annual construction turnover of Kenya Shillings_____ [insert amount], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last_____ [insert of year] years.
 - iii) At least_____ (insert number) of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime service provider , or joint venture member or sub-service provider each of minimum value Kenya shillings _____ equivalent.
 - iv) Service provider 's Representative and Key Personnel, which are specified as _____

 - v) Service provider s key equipment listed on the table “Service provider 's Equipment” below and more specifically
listed as [specify requirements for each lot as applicable] _____

vi) Other conditions depending on their seriousness.

a) History of non-performing contracts:

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

b) Pending Litigation

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

c) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last

_____(*Specify years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the year's specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

SECTION IV - TENDERING FORMS

1. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

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

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

ITT No.: _____ *[insert number of ITT process]*

Alternative No.: _____ *[insert identification No if this is a Tender f or an*

alternative] **To:** _____ *[insert complete name of KWS]*

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the KWS based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT21;
- d) **Conformity:** We offer to provide the Non-Consulting Services in conformity with the tendering document of the following: *[insert a brief description of the Non-Consulting Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item(f) below is: *[Insert one of the options below as appropriate]*

Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*;

Or

Option 2, in case of multiple lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;

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

- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1(as amended if applicable),and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender Per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture member or as a subservice provider , and meet the requirements of ITT4.3, other than alternative Tenders submitted in accordance with ITT14;
- j) **Suspension and Debarment:** We, along with any of our subservice provider s, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other]*
[We are not a state-owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];
- l) **Commissions, gratuities and 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, r gratuity].*

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

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

- a) *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- m) **Binding Contract:** 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;
- n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **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.
- q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- Tenderer's Eligibility; Confidential Business Questionnaire—to establish we are not in any conflict to interest.
 - Certificate of Independent Tender Determination—to declare that we completed the tender without colluding with other tenderers.

- 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.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “**Appendix 1- Fraud and Corruption**” attached to the Form of Tender.

Name of the Tenderer:..... *[insert complete name of person signing the Tender]

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]

i) TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

a) Tenderer's details

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

General and Specific Details

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

Name in full _____ Age _____

Nationality _____ Country of Origin _____

Citizenship _____

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

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

d) Registered Company, provide the following details.

i) Private or public Company _____

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

Nominal Kenya Shillings (Equivalent)

Issued Kenya Shillings (Equivalent)

iii) Give details of Directors as follows.

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

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

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

If yes, provide details as follows.

| | Names of Person | Designation in the KWS | Interest or Relationship with Tenderer |
|---|-----------------|------------------------|--|
| 1 | | | |
| 2 | | | |
| 3 | | | |

ii) Conflict of interest disclosure

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|----------------------|--|
| 1 | Tenderer is directly or indirectly controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, | | |

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|----------------------------|--|
| | or influence the decisions of the KWS 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 KWS 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 KWS who would be involved in the implementation or supervision of the Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the KWS throughout the tendering process and execution of the Contract? | | |

f) Certification

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

Full Name _____

Title or Designation _____

(Signature)

(Date)

ii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the _____
_____ KENYA WILDLIFE SERVICE for: _____

_____ [Name and number of tender] in response to the request for
tenders made by: _____ [Name of Tenderer] do hereby make the following statements
that I certify to be true and complete in every respect:

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

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

Name _____

Title _____

Date _____

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

iii) SELF-DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/ Managing Director /Principal Officer/Director of
..... (*insert name of the Company*) who is a Bidder in respect of
Tender No. for.....(*insert tender
title/description*) for
.....(*KENYA WILDLIFE SERVICE*) and duly authorized and competent to make this
statement.
2. THAT the aforesaid Bidder, its Directors and subservice provider s have not been debarred from
participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder Official

Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of
..... (*insert name of the Company*) who is a Bidder in respect of Tender No.....
..... for(*insert tender title/description*) for*KENYA WILDLIFE SERVICE* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subservice provider s 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..... *KENYA WILDLIFE SERVICE* which is the Procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subservice provider s have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... *KENYA WILDLIFE SERVICE*
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

.....
..... (Title)
(Signature) (Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....
.....

Position.....

Office address.....

Telephone..... E-mail.....
.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....
.....

Sign.....

Date.....

iv) APPENDIX1-FRAUDANDCORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Service provider s and Suppliers; any Sub-service provider s, 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 1.1above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted be low highlight Kenya's policy of no tolerance for such practices and behavior:
- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
 - 2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
 - 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
 - 4) The voiding of a contract by the KWS under subsection (7) does not limit any legal remedy the KWS may have;
3. An employee or agent of the KWS or a member of the Board or committee of the KWS 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 subservice provider for the tender to whom was awarded contract, or a member of the group of tenders to whom the contract was awarded, but the subservice provider appointed shall meet all the requirements of this Act.
4. An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the KWS;
- 4.1 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the a warding officer. etc.
- a) In compliance with Kenya's laws, regulations and policies mentioned above, the KWS:
 - b) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) "obstructive practice" is:
 - a) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - b) acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
 - c) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the KWS or the tenderer or the service provider , 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 he KWS of the benefits of free and open competition.

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

¹For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and rendering, either directly or as a nominated sub-service provider, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such

contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the KWS to address specific matters related to investigations/ audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/ audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

2. TENDERER INFORMATION FORM

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

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

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

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

1. Tenderer's Name:*[insert Tenderer's legal name]*

2 In case of JV, legal name of each member:*[insert legal name of each member in JV]*

3 Tenderer's actual or intended country of registration:*[insert actual or intended country of registration]*

4. Tenderer's year of registration:*[insert Tenderer's year of registration]*

6 Tenderer's Address in country of registration:*[insert Tenderer's legal address in country of registration]*

7 Tenderer's Authorized Representative Information

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

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

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

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

8 Attached are copies of original documents of..... *[check the box(es) of the attached original documents]*

☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.

☐ In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. In case of state-owned enterprise or institution, in accordance with ITT4.6 documents establishing:

i) Legal and financial autonomy

ii) Operation under commercial law

iii) Establishing that the Tenderer is not under the supervision of the agency of the KWS

☐ A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the Kenya Revenue Authority in accordance with ITT 4.14.

9 Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

TENDER-SECURING DECLARATION FORM

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

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

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

To:.....[insert complete name of

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

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

Signed:.....

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

.....

Name:

..... Duly

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

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

Seal or stamp

6. FORM PER - 1

Service provider 's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Service provider 's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Service provider ' Representative and Key Personnel

| | | |
|----|--|--|
| 1. | Title of position: Service provider 's Representative | |
| | Name of candidate: | |
| | Duration of appointment: | <i>[insert the whole period (start and end dates) for which this position will be engaged]</i> |
| | Time commitment: for this position: | <i>[insert the number of days/week/months/ that has been scheduled for this position]</i> |
| | Expected time schedule for this position: | <i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i> |
| 2. | Title of position: [_____] | |
| | Name of candidate: | |
| | Duration of appointment: | <i>[insert the whole period (start and end dates) for which this position will be engaged]</i> |
| | Time commitment: for this position: | <i>[insert the number of days/week/months/ that has been scheduled for this position]</i> |
| | Expected time schedule for this position: | <i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i> |
| 3. | Title of position: [_____] | |
| | Name of candidate: | |
| | Duration of appointment: | <i>[insert the whole period (start and end dates) for which this position will be engaged]</i> |
| | Time commitment: for this position: | <i>[insert the number of days/week/months/ that has been scheduled for this position]</i> |
| | Expected time schedule for this position: | <i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart]</i> |

| | | |
|----|---|--|
| 4. | Title of position: [_____] | |
| | Name of candidate: | |
| | Duration of appointment: | [insert the whole period (start and end dates) for which this position will be engaged] |
| | Time commitment: for this position: | [insert the number of days/week/months/ that has been scheduled for this position] |
| | Expected time schedule for this position: | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |
| 5. | Title of position: [insert title] | |
| | Name of candidate | |
| | Duration of appointment: | [insert the whole period (start and end dates) for which this position will be engaged] |
| | Time commitment: for this position: | [insert the number of days/week/months/ that has been scheduled for this position] |
| | Expected time schedule for this position: | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |

7. FORM PER-2:

Resume and Declaration - Service provider 's Representative and Key Personnel.

| |
|------------------|
| Name of Tenderer |
|------------------|

| | | |
|--|--|--|
| Position [# 1]: <i>[title of position from Form PER-1]</i> | | |
| Personnel information | Name: | Date of birth: |
| | Address: | E-mail: |
| | | |
| | Professional qualifications: | |
| | Academic qualifications: | |
| | Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i> | |
| Details | | |
| | Address of KWS: | |
| | Telephone: | Contact (manager / personnel officer): |
| | Fax: | |
| | Job title: | Years with present KWS: |

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

| Project | Role | Duration of involvement | Relevant experience |
|-------------------------------|---|--------------------------------|--|
| <i>[main project details]</i> | <i>[role and responsibilities on the project]</i> | <i>[time in role]</i> | <i>[describe the experience relevant to this position]</i> |
| | | | |
| | | | |
| | | | |

DECLARATION

I, the undersigned.....*[insert either "Service provider 's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:-

| Commitment | Details |
|-------------------------------------|---|
| Commitment to duration of contract: | <i>[insert period (start and end dates) for which this Service provider 's Representative or Key Personnel is available to work on this contract]</i> |
| Time commitment: | <i>[insert period (start and end dates) for which this Service provider 's Representative or Key Personnel is available to work on this contract]</i> |

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Service provider's Representative or Key Personnel: _____*[insert name]*

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

11. FORM CON –2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name:_____

Date:_____

JV Member's Name_____

ITT No. and title:_____

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

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

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

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

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

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

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

| Year of dispute | Amount in dispute (currency) | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|--|---|---|--|
| | | Contract Identification: _____ Name of Procuring Entity: Kenya Wildlife Service Address of KWS: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____ | |
| | | Contract Identification: Name of Procuring Entity: Kenya Wildlife Service Address of KWS: Matter in dispute: Party who initiated the dispute: Status of dispute: | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | |
| <input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below. | | | |
| Year of award | Outcome as percentage of Net Worth | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |

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

1 NOTIFICATION OF INTENTION TO AWARD

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

Name:[insert Authorized Representative's name]

Address:[insert Authorized Representative's Address]

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

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

[IMPORTANT: INSERT THE DATE THAT THIS NOTIFICATION IS TRANSMITTED TO TENDERERS. THE NOTIFICATION MUST BE SENT TO ALL TENDERERS SIMULTANEOUSLY. THIS MEANS ON THE SAME DATE AND AS CLOSE TO THE SAME TIME AS POSSIBLE.]

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

KWS:[insert the name of the KWS]

Contract title:..... [insert the name of the contract]

ITT No:[insert ITT reference number from Procurement Plan]

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Tender, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

I). The successful Tenderer

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

II). *OTHER TENDERERS* [INSTRUCTIONS: INSERT NAMES OF ALL TENDERERS THAT SUBMITTED A TENDER. IF THE TENDER'S PRICE WAS EVALUATED INCLUDE THE EVALUATED PRICE AS WELL AS THE TENDER PRICE AS READ OUT.]

| Name of Tenderer | Tender price | Evaluated Tender price (if applicable) |
|-------------------------|------------------------------|---|
| <i>[insert name]</i> | <i>[insert Tender price]</i> | <i>[insert evaluated price]</i> |
| <i>[insert name]</i> | <i>[insert Tender price]</i> | <i>[insert evaluated price]</i> |
| <i>[insert name]</i> | <i>[insert Tender price]</i> | <i>[insert evaluated price]</i> |
| <i>[insert name]</i> | <i>[insert Tender price]</i> | <i>[insert evaluated price]</i> |
| <i>[insert name]</i> | <i>[insert Tender price]</i> | <i>[insert evaluated price]</i> |

iii). How to request a debriefing

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

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

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

Attention:*[insert full name of person, if applicable]*

Title/position:*[insert title/position]*

Agency:*[insert name of KWS]*

Email address:..... *[insert email address]*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

iv. How to make a complaint

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

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

Attention:.....*[insert full name of person, if applicable]*

Title/position:..... *[insert title/position]*

Agency:*[insert name of KWS]*

Email address:..... *[insert email address]*

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

1. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.
3. You must submit the complaint within the period stated above.
4. You must include, in your complaint, all of the information required to support the complaint.

5. The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be

refundable (information available from the Public Procurement Authority at complaints@ppra.go.ke

info@ppra.go.ke or

v). Standstill Period

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

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

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

On behalf of the KWS:

Signature:_____

Name:_____

Title/position:_____

Telephone:_____

Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (KWS)

Request for review of the decision of the..... (Name of the KWS ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary

3. LETTER OF AWARD

[Form head paper of the KWS]

.....[date]

To:.....[name and address of the Service Provider]

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

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the tender document.

Please return the attached Contract duly signed

Authorized Signature:.....

.....

Name and Title of Signatory:.....

Name of Agency:.....

Attachment: Contract

4. FORM OF CONTRACT *[Form*

head paper of the KWS] **LUMP SUM**

REMUNERATION

This CONTRACT (herein after called the "Contract") is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[KENYA WILDLIFE SERVICE]* (herein after called the "KWS") and, on the other hand, *[name of Service Provider]* (hereinafter called the "Service Provider").

[Note: *In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows:* "... (herein after called the "KWS") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the KWS for all the Service Provider's obligations under this Contract, namely, *[name of Service Provider]* and *[name of Service Provider]* (herein after called the "Service Provider").]

WHEREAS

- a) The KWS has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the "Services");
- b) the Service Provider, having represented to the KWS that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
 - a) The Form of Acceptance;
 - b) The Service Provider's Tender
 - c) The Special Conditions of Contract;
 - d) The General Conditions of Contract;
 - e) The Specifications;
 - f) The Priced Activity Schedule; and
 - g) The following Appendices: **[Note:** *If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*

Appendix A: Description of the
Services Appendix B: Schedule of
Payments Appendix C:
Subservice provider s Appendix D:
Breakdown of Contract Price

Appendix E: Services and Facilities Provided by the KWS

2. The mutual rights and obligations of the KWS and the Service Provider shall be as set forth in the Contract, in particular:
 - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - b) The KWS shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf *[KENYA WILDLIFE SERVICE]*

_____ *[Authorized Representative]*

For and on behalf of *[name of Service Provider]*

_____ *[Authorized Representative]*

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

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

..... *[name of member]*

..... *[Authorized Representative]*

..... *[name of member]*

..... *[Authorized Representative]*

4 FORM OF TENDER SECURITY (TENDER BOND) [The Surety shall fill in

this Tender Bond Form in accordance with the instructions indicated.] BOND NO.

BY THIS BOND [name of Tenderer] as Principal (herein after called "the Principal"), and [name, legal title, and address of surety], **authorized to transact business in Kenya**, as Surety (hereinafter called "the Surety"), are held and firmly bound unto [name of KWS] as Obligee (hereinafter called "the KWS") in the sum of [amount of Bond][amount in words], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHERE AS the Principal has submitted or will submit a written Tender to the KWS dated the _____ day of _____, 20_____, for the supply of [name of Contract](herein after called the "Tender").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- c) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Form of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or
- d) having been notified of the acceptance of its Tender by the KWS during the Tender Validity Period or any extension there to provide 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 KWS's tendering document.

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extension thereto provided by the Principal.

IN TESTIMONY WHERE OF, the Principal and the Surety have caused these presents to be executed in the irrelative names this _____ day of _____ 20_____.

Principal: _____
Corporate Seal (where appropriate)

Surety: _____

(Signature) _____

_____ (Signature)

(Printed name and title)

(Printed name and title)

5. FORM OF TENDER-SECURING DECLARATION

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date:.....*[date (as day, month and year)]*

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

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

To:..... *[complete name of KWS]* We, the undersigned, declare

that: We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the KWS for the period of time of *[number of months or years]* starting on *[date]*, if we are in breach of our obligation(s) under the Tender conditions, because we:

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) having been notified of the acceptance of our Tender by the KWS during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name of the Tenderer* _____

Name of the person duly authorized to sign the Tender on behalf of the Tenderer** _____

Title of the person signing the Tender _____

Signature of the person named above _____

Date signed _____ day of _____, _____

*: In the case of the Tender submitted by 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 attached to the Tender

[Note: *In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.*

PART II – KWS'S REQUIREMENTS

SECTION V - ACTIVITY SCHEDULE

Objectives

The objectives of the Activity Schedule are

- a) to provide sufficient information on the quantities of Services to be performed to enable Tenders to be prepared efficiently and accurately; and
- b) when a Contract has been entered into, to provide a priced Activity Schedule for use in the periodic valuation of Services executed.

In order to attain these objectives, Services should be itemized in the Activity Schedule in sufficient detail to distinguish between the different classes of Services, or between Services of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Activity Schedule should be as simple and brief as possible.

Day work Schedule

A Day work Schedule should be included only if the probability of unforeseen work, outside the items included in the Activity Schedule, is high. To facilitate checking by the KWS of the realism of rates quoted by the Tenderers, the Day work Schedule should normally comprise the following:

- a) A list of the various classes of Services, labor, materials, and plant for which basic day work rates or prices are to be inserted by the Tenderer, together with a statement of the conditions under which the Service Provider will be paid for services delivered on a day work basis.
- b) Nominal quantities for each item of Day work, to be priced by each Tenderer at Day work rates as Tender. The rate to be entered by the Tenderer against each basic Day work item should include the Service Provider's profit, over heads, supervision, and other charges.

Provisional Sums

The estimated cost of specialized services to be carried out, or of special goods to be supplied, by other Service Providers should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the KWS to select such specialized Service Providers. To provide an element of competition among the Tenderers in respect of any facilities, amenities, attendance, etc., to be provided by the successful Tenderer as prime Service Provider for the use and convenience of the specialist service providers, each related provisional sum should be followed by an item in the Activity Schedule inviting the Tenderer to quote a sum for such amenities, facilities, attendance, etc.

These Notes for Preparing an Activity Schedule are intended only as information for the KWS or the person drafting the tendering document. They should not be included in the final documents.

PERFORMANCE SPECIFICATIONS AND DRAWINGS

(Describe Outputs and Performances, rather than Inputs, wherever

possible) Notes on Specifications

A set of precise and clear specifications is a prerequisite for Tenderers to respond realistically and competitively to the requirements of the KWS without qualifying or conditioning their Tenders. In the context of international competitive Tendering, the specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of workmanship, materials, and performance of the goods and services to be procured. Only if this is done will the objectives of economy, efficiency, and fairness in procurement be realized, responsiveness of Tenders be ensured, and the subsequent task of Tender evaluation facilitated. The specifications should require that all goods and materials to be incorporated in the Services be new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract.

Samples of specifications from previous similar projects in the same country are useful in this respect. The use of metric units is encouraged. Most specifications are normally written specially by the KWS to suit the Contract in hand. There is no standard set of Specifications for universal application in all sectors in all countries, but there are established principles and practices, which are reflected in this document

There are considerable advantages in standardizing General Specifications for repetitive Services in recognized public sectors, such as education, health, sanitation, social and urban housing, roads, ports, railways, irrigation, and water supply, in the same country or region where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in the provision of Services, although not necessarily to be used in a particular Services Contract. Deletions or addenda should then adapt the General Specifications to the particular Services.

Care must be taken in drafting specifications to ensure that they are not restrictive. In the specification of standards for goods, materials, Services, and workmanship, recognized international standards should be used as much as possible. Where other particular standards are used, whether national standards of Kenya or other standards, the specifications should state that goods, materials, Services and workmanship that meet other authoritative standards, and which ensure substantially equal or higher quality than the standards mentioned, will also be acceptable.

If technical alternatives for parts of the Services are permitted in the tendering document, these parts shall be described in this Section.

These Notes for Preparing Specifications are intended only as information for the KWS or the person drafting the tendering document.

PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

A. General

Provisions Definitions

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

- a) The Adjudicator is the person appointed jointly by the KWS and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- c) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the KWS
- d) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- e) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- f) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- g) "KWS" means the KWS or party who employs the Service Provider
- h) "Foreign Currency" means any currency other than the currency of Kenya;
- i) "GCC" means these General Conditions of Contract;
- j) "Government" means the Government of Kenya;
- k) "Local Currency" means Kenya shilling;
- l) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the KWS under this Contract;
- m) "Party" means the KWS or the Service Provider, as the case maybe, and "Parties" means both of them;
- n) "Personnel" means persons hired by the Service Provider or by any Subservice provider as employees and assigned to the performance of the Services or any part there of;
- o) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the KWS;
- p) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the KWS
- q) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- r) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the KWS
- s) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- t) "Subservice provider" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- u) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.
- v) "Project Manager" shall the person appointed by the KWS to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the KWS and notified to the Service provider .

w) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as are respecified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the KWS may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the KWS or the Service Provider may be taken or executed by the officials **specified in the SCC**.

1.7 Inspection and Audit by the PPRA

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its sub contract or sand sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subservice provider s' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

1.8 Taxes and Duties

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

2 Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

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

2.2 Commencement of Services

2.2.1 Program

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

2.2.2 Starting Date

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

2.3 Intended Completion Date

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

2.4 Modification

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

2.4.1 Value Engineering

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

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) A full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the KWS may incur in implementing the value engineering proposal; and
- c) A description of any effect(s) of the change on performance/functionality.

The KWS may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the KWS; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the KWS, without compromising the necessary functions of the Facilities.

If the value engineering proposal is approved by the KWS and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
(a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

2.5 Force Majeure

2.5.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and(b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time

Any period with in which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.6 Termination

2.6.1 By the KWS

The KWS may terminate this Contract, by not less than thirty(30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through

(d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the KWS may have subsequently approved in writing;
- b) if the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the KWS has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract

2.6.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the KWS, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and

(b) of this Sub-Clause 2.6.2:

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

2.6.3 Payment up on Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the KWS shall make the following payments to the Service Provider:

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

3 Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Service provider to the Services, as faithful adviser to the KWS, and shall at all times support and safeguard the KWS's legitimate interests in any dealings with Subservice provider s or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Service provider the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Service provider to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subservice provider s, and agents of either of them similarly shall not receive any such additional remuneration.

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

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

3.2.3 Prohibition of Conflicting Activities

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

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subservice provider s shall hire public employees' inactive duty or on any type of leave, to perform any activity under this Contract;
- c) After the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Service Provider, its Subservice provider s, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the KWS's business or operations without the prior written consent of the KWS.

3.4 The Service Provider (a) shall take out and maintain, and shall cause any Subservice provider s to take out and maintain, at its (or the Sub service provider s', as the case may be) own cost but on terms and conditions approved by the KWS, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the KWS's request, shall provide evidence to the KWS

showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring KWS's Prior Approval

The Service Provider shall obtain the KWS's prior approval in writing before taking any of the following actions:

- a) Entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subservice provider s"),
- c) changing the Program of activities; and
- d) Any other action that may be **specified in the SCC**.

3.6 Reporting Obligations

The Service Provider shall submit to the KWS the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the KWS

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the KWS, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the KWS, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the KWS at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The KWS may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

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

3.8.3 Lack of performance penalty

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

3.9 Performance Security

The Service Provider shall provide the Performance Security to the KWS no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the KWS, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

The KWS requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The KWS requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.11 Sustainable Procurement

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

4 Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subservice provider s listed by title as well as by name in Appendix Care hereby approved by the KWS.

4.2 Removal and/or Replacement of Personnel

- a) Except as the KWS may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the KWS finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the KWS's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the KWS.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5 Obligations of the KWS

5.1 Assistance and Exemptions

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

5.2 Change in the Applicable Law

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

5.3 Services and Facilities

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

6 Payments to the Service Provider

6.1 Lump-Sum Remuneration

The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subservice provider s' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub- Clauses2.4and6.3.

6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) Price may be payable in foreign currency, if so allowed in this document.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.3.2 If the **SCC so specify**, the service provider shall be paid performance incentive compensation asset out in the Performance Incentive Compensation appendix.

6.3.3 Where the contract price is different from the corrected tender price, in order to ensure the service provider is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price–tender price)/tender price X100*.

6.4 Terms and Conditions of Payment

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

6.5 Interest on Delayed Payments

If the KWS has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider foreach day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

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

$$P_c = A_c + B_c L_{mc} / L_{oc} + C_c I_{mc} / I_{oc}$$

Where:

P_c is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

A_c , B_c and C_c are coefficients specified in the **SCC**, representing: A_c the non-adjustable portion; B_c the adjustable portion relative to labor costs and C_c the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

L_{mc} is the index prevailing at the first day of the month of the corresponding invoiced ate and L_{oc} is the index prevailing28 days before Tender opening for labor; both in the specific currency "c".

I_{mc} is the index prevailing at the first day of the month of the corresponding invoice date and I_{oc} is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Z_0/Z_n will be applied to the respective component factor of p_n for the formula of the relevant currency. Z_0 is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Z_n is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account to fall changes in cost due to fluctuations in costs.

6.7 Day works

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the KWS has given written instructions in advance for additional services to be paid in that way.

- 6.7.2** All work to be paid for as Day works shall be recorded by the Service Provider on forms approved by the KWS. Each completed form shall be verified and signed by the KWS representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.
- 6.7.3** The Service Provider shall be paid for Day works subject to obtaining signed Day works forms as indicated in Sub-Clause 6.7.2

7 Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the KWS shall be as **indicated in the SCC**. The KWS shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The KWS may instruct the Service Provider to search for a Defect and to uncover and test any service that the KWS considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

Correction of Defects, and Lack of Performance Penalty

- a) The KWS shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.
- b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the KWS's notice.
- c) If the Service Provider has not corrected a Defect within the time specified in the KWS's notice, the KWS will assess the cost of having the Defect corrected, the Service Provider will pay this amount and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8 Settlement of Disputes

8.1 Service provider 's Claims

- 8.1.1** If the Service provider considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Service provider shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Service provider became aware, or should have become aware, of the event or circumstance.
- 8.1.2** If the Service provider fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Service provider shall not be entitled to additional payment, and the KWS shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clauses shall apply.
- 8.1.3** The Service provider shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all s relevant to such event or circumstance.
- 8.1.4** The Service provider shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the KWS's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or instruct the Service provider to keep further contemporary records. The Service provider shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
- 8.1.5** Within 42 days after the Service provider became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Service provider and approved by the Project Manager, the Service provider shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- 8.1.5.1** This fully detailed claim shall be considered as interim;
- a) The Service provider shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and

- b) The Service provider shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Service provider and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Service provider, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause

3.5[Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Service provider is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Service provider shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contract or fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

8.2 Matters that may be referred to arbitration

8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the KWS and the Service provider agree otherwise in writing.

8.3 Amicable Settlement

8.3.1 Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall

disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.4 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.4.5 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.5 Arbitration with proceedings

8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

a) Law Society of Kenya or

b) Chartered Institute of Arbitrators (Kenya Branch)

8.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

8.5.3 The arbitration maybe on the construction of this Service provider on any matter or thing of what so ever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Service provider may claim to been titled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

8.6 Failure to Comply with Arbitrator's Decision

8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

9.1 The Adjudicator

9.1.1 Should the Adjudicator resign or die, or should the KWS and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the KWS and the Service Provider. In case of disagreement between the KWS and the Service Provider, within 30days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

- 9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the type's **specified in the SCC**, and the cost shall be divided equally between the KWS and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

B. SPECIAL CONDITIONS OF CONTRACT**SECTION VII - SPECIAL CONDITIONS OF CONTRACT**

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|----------------------------|---|
| 1.1(a) | The Adjudicator is _____ |
| 1.1(v) | Project Manager is _____ |
| 1.1(d) | The contract name is _____. |
| 1.1(g) | The KWS is _____ |
| 1.1(l) | The Member in Charge is _____ |
| 1.1(o) | The Service Provider is _____ |
| 1.4 | <p>The addresses are:</p> <p>KWS: _____</p> <p>Attention: _____</p> <p>Telex: _____</p> <p>Service Provider: _____</p> <p>Attention: _____</p> <p>Email address _____</p> |
| 1.6 | <p>The Authorized Representatives are:</p> <p>For the KWS: _____</p> <p>For the Service Provider: _____</p> |
| 2.1 | The date on which this Contract shall come into effect is _____. |
| 2.2.2 | The Starting Date for the commencement of Services is _____. |
| 2.3 | The Intended Completion Date is _____. |
| 2.4.1 | If the value engineering proposal is approved by the KWS the amount to be paid to the Service Provider shall be ____% (insert appropriate percentage. The percentage is normally up to 50%) of the reduction in the Contract Price. |
| 3.2.3 | Activities prohibited after termination of this Contract are: _____ _____ |
| 3.4 | <p>The risks and coverage by insurance shall be:</p> <p>(i) Third Party motor vehicle _____</p> <p>(ii) Third Party liability _____</p> |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---------------------|--|
| | <p>(iii) KWS's liability and workers' compensation _____</p> <p>(iv) Professional liability _____</p> <p>(v) Loss or damage to equipment and property _____</p> |
| 3.5(d) | The other actions are _____.] |
| 3.7 | Restrictions on the use of documents prepared by the Service Provider are: _____ |
| 3.8.1 | <p>The liquidated damages rate is _____ per day</p> <p>The maximum amount of liquidated damages for the whole contract is _____ percent of the final Contract Price.</p> |
| 3.8.3 | The percentage _____ to be used for the calculation of Lack of performance Penalty(ies) is _____. |
| 5.1 | The assistance and exemptions provided to the Service Provider are: _____ |
| 6.2(a) | The amount in Kenya Shillings _____. |
| 6.3.2 | <p>The performance incentive paid to the Service Provider shall be: _____</p> <p>_____</p> <p>—</p> |
| 6.4 | <p>Payments shall be made according to the following schedule:</p> <ul style="list-style-type: none"> • Advance for Mobilization, Materials and Supplies: _____ percent of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. • Progress payments in accordance with the milestones established as follows, subject to certification by the KWS, that the Services have been rendered satisfactorily, pursuant to the performance indicators: <p>_____ (indicate milestone and/or percentage) _____</p> <p>_____ (indicate milestone and/or percentage) _____</p> <p>and</p> <p>_____ (indicate milestone and/or percentage) _____</p> <p>Should the certification not be provided, or refused in writing by the KWS within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date.</p> • The amortization of the Advance mentioned above shall commence when the progress payments have reached 25% of the contract price and be completed when the progress payments have reached 75%. • The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized. |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---------------------|--|
| 6.5 | <p>Payment shall be made within _____ days of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within _____ days in the case of the final payment.</p> <p>The interest rate is _____.</p> |
| 6.6.1 | <p>Price adjustment is _____ in accordance with Sub-Clause 6.6.</p> <p>The coefficients for adjustment of prices are _____:</p> <p>(a) For local currency:</p> <p style="padding-left: 40px;">A_L is _____</p> <p style="padding-left: 40px;">B_L is _____</p> <p style="padding-left: 40px;">C_L is _____</p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from _____</p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for _____ from _____</p> <p>(b) For foreign currency</p> <p style="padding-left: 40px;">A_F is _____</p> <p style="padding-left: 40px;">B_F is _____</p> <p style="padding-left: 40px;">C_F is _____</p> <p style="padding-left: 40px;">L_{mc} and L_{oc} are the index for Labor from _____</p> <p style="padding-left: 40px;">I_{mc} and I_{oc} are the index for _____ from _____</p> |
| 7.1 | <p>The principle and modalities of inspection of the Services by the KWS are as follows: _____</p> <p>The Defects Liability Period is _____.</p> |
| 9.1 | <p>The designated Appointing Authority for a new Adjudicator is _____</p> |
| 9.2 | <p>The Adjudicator is _____. Who will be paid a rate of _____ per hour of work? The following reimbursable expenses are recognized: _____</p> |

C. APPENDICES

Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by KWS, etc.

Appendix B - Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."

Appendix C - Breakdown of Contract Price

List here the elements of cost used to arrive at the breakdown of the lump-sum price:

- 1. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel).*
- 2. Reimbursable expenditures.*

This appendix will exclusively be used for determining remuneration for additional Services.

Appendix D - Services and Facilities Provided by the KWS

D. FORMS

SECTION VIII -CONTRACT FORMS

FORM NO. 1 - PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee)

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____ *[insert name and Address of KWS]*

Date:_____ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.:_____

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

1. We have been informed that _____ (hereinafter called "the Applicant") 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, a performance guarantee is required.
3. At the request of the Applicant, we as Guarantor, hereby irrevocably under take to pay the Beneficiary any sum or sums not exceeding in total an amount of _____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 theDay of....., 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, 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(ies) 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 KWS should note that in the event of an extension of this date for completion of the Contract, the KWS 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. In preparing this guarantee, the KWS might consider adding the following text to the form, at the end of the pen ultimate paragraph: "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."*

FORM No. 2 - PERFORMANCE SECURITY OPTION 2 – (Performance Bond)

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

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of KWS]*

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 Service provider”) and _____] as Surety (herein after called “the Surety”), are held and firmly bound unto _____] as Obligee (herein after called “the KWS”) 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 Service provider and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Service provider has entered into a written Agreement with the KWS 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 Service provider 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 Service provider shall be, and declared by the KWS to be, in default under the Contract, the KWS having performed the KWS's obligations there under, the Surety may promptly remedy the default, or shall promptly:
 - 1) Complete the Contract in accordance with its terms and conditions; or
 - 2) Obtain a tender or tenders from qualified tenderers for submission to the KWS for completing the Contract in accordance with its terms and conditions, and upon determination by the KWS and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and KWS 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 KWS to Service provider under the Contract, less the amount properly paid by KWS to Service provider ; or
 - 3) pay the KWS the amount required by KWS 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 KWS named herein or the heirs, executors, administrators, successors, and assigns of the KWS.
6. In testimony whereof, the Service provider has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day __ of _____ 20 .

SIGNED ON _____ on behalf
of by _____ in the capacity
of In the presence of

SIGNED ON _____ on behalf
of By _____ in the capacity
of In the presence of

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

[Guarantor letter head or SWIFT
identifier code] [Guarantor letter head or
SWIFT identifier code]

Beneficiary: _____[Insert name and Address of KWS]

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 Applicant") 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 _____() is to be made against an advance payment 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 __() 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:
 - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
 - b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant 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 Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of , 2, ² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

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 amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the KWS.*

² *Insert the expected expiration date of the Time for Completion. The KWS should note that in the event of an extension of the time for completion of the Contract, the KWS 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. In preparing this guarantee, the KWS might consider adding the following ext. to the form, at the end of the penultimate paragraph: "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."*

FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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. 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 Tenderer by meeting one or more of the following conditions:

Tender Reference No.: _____ [insert identification

no] Name of the Assignment: _____ [insert name of the
assignment] to: _____ [insert complete name of KWS]

In response to 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 hereby provide the following beneficial ownership information.

DETAILS OF BENEFICIAL OWNERSHIP

| Identity of Beneficial Owner | Directly or indirectly holding 25% or more of the shares | Directly or indirectly holding 25 % or more of the Voting Rights | Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer |
|---------------------------------|--|---|---|
| | | | |

| | (Yes / No) | (Yes / No) | (Yes / No) |
|---|------------|------------|------------|
| <i>[include full name (last, middle, first), nationality, country of residence]</i> | | | |

OR

- ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]"

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]

