



**TENDER FOR LEASING AND MANAGEMENT OF MALINDI GUESTHOUSE SITE IN  
MALINDI STATION.**

**TENDER NO: KWS/ONT/BDM/124/2025 - 2026**

**ELIGIBILITY: OPEN TO ALL**

**CLOSING DATE: 29<sup>th</sup> April, 2026**

**CLOSING TIME: 11:00 HRS E.A.T**

**KENYA WILDLIFE SERVICE  
P.O. BOX 40241 – 00100  
NAIROBI, KENYA**

**Email: [hps@kws.go.ke](mailto:hps@kws.go.ke)**

**Website: [www.kws.go.ke](http://www.kws.go.ke)**

## TABLE OF CONTENTS

<b>INVITATION TO TENDER</b> .....	<b>4</b>
<b>PART 1 - TENDERING PROCEDURES</b> .....	<b>5</b>
<b>SECTION I - INSTRUCTIONS TO TENDERERS</b> .....	<b>6</b>
<b>A General Provisions</b> .....	<b>6</b>
<b>1. Scope of Tender and Definitions</b> .....	<b>6</b>
<b>2. Fraud and Corruption</b> .....	<b>6</b>
<b>3. Eligible Tenderers</b> .....	<b>6</b>
<b>4. Eligible lease sites</b> .....	<b>8</b>
<b>5. Sections of Tendering Document</b> .....	<b>8</b>
<b>PART 1 Tendering Procedures</b> .....	<b>8</b>
<b>PART 2 Supply Requirements</b> .....	<b>9</b>
<b>PART 3 Contract</b> .....	<b>9</b>
<b>6. Clarification of Tendering Document</b> .....	<b>9</b>
<b>7. Amendment of Tendering Document</b> .....	<b>9</b>
<b>C. Preparation of Tenders</b> .....	<b>9</b>
<b>8. Cost of Tendering</b> .....	<b>9</b>
<b>9. Documents Comprising the Tender</b> .....	<b>10</b>
<b>11. Form of Tender and Price Schedules</b> .....	<b>10</b>
<b>12. Alternative Tenders</b> .....	<b>10</b>
<b>13. Tender Prices and Discounts</b> .....	<b>10</b>
<b>14. Currencies of Tender and Payment</b> .....	<b>10</b>
<b>15. Documents Establishing the Eligibility and Qualifications of the Tenderer</b> .....	<b>10</b>
<b>16. Period of Validity of Tenders</b> .....	<b>12</b>
<b>A. Submission and Opening of Tenders</b> .....	<b>12</b>
<b>Section II - Tender Data Sheet (TDS)</b> .....	<b>20</b>
<b>SECTION III - EVALUATION AND QUALIFICATION CRITERIA</b> .....	<b>22</b>
<b>TECHNICAL EVALUATION CRITERIA</b> .....	<b>23</b>
<b>Section IV - Tendering Forms</b> .....	<b>27</b>
<b>FORM OF TENDER</b> .....	<b>28</b>

**TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE.....31**

**CERTIFICATE OF INDEPENDENT TENDER DETERMINATION .....34**

**SELF-DECLARATION FORMS.....36**

**FORM SD1 .....36**

**FORM SD2 .....37**

**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS.....38**

**APPENDIX 1- FRAUD AND CORRUPTION .....39**

**Tenderer Information Form .....42**

**Tenderer's JV Members Information Form .....43**

    Name of Tender Signed by the Tenderer Dated .....44

**PART 2 - LEASE REQUIREMENTS .....45**

**SECTION VI - SCHEDULE OF REQUIREMENTS .....46**

**INVESTMENT GUIDELINES .....47**

**PART 3 - CONTRACT .....47**

**SECTION VII - GENERAL CONDITIONS OF CONTRACT .....47**

**Section VIII - Special Conditions of Contract.....55**

**SECTION IX - CONTRACT FORMS .....66**

FORM No 1: NOTIFICATION OF INTENTION TO AWARD .....67

FORM NO. 2 - REQUEST FOR REVIEW .....70

NO 3: LETTER OF AWARD .....70

FORM NO. 4 LETTER OF AWARD .....72

FORM NO 5 - CONTRACT AGREEMENT .....72

FORM NO. 6 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee] .....74

FORM No. 7 - PERFORMANCE SECURITY [Option 2– Performance Bond] .....75

FORM NO. 8 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee].....77

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE .....79

## INVITATION TO TENDER

**PROCURING ENTITY: KENYA WILDLIFE SERVICE.**

**CONTRACT NAME AND DESCRIPTION: TENDER FOR LEASING AND MANAGEMENT OF MALINDI GUESTHOUSE SITE IN MALINDI STATION.**

1. KENYA WILDLIFE SERVICE invites sealed tenders for **LEASING AND MANAGEMENT OF MALINDI GUESTHOUSE SITE IN MALINDI STATION.**
2. Tendering will be conducted under direct procurement using a standardized tender document
3. Qualified and interested tenderers may obtain further information through email to [hps@kws.go.ke](mailto:hps@kws.go.ke) and the Tender Documents and all relevant communication regarding this tender will be posted at [www.kws.go.ke](http://www.kws.go.ke).
4. Tender documents may be downloaded for free from the website. [www.kws.go.ke](http://www.kws.go.ke) and <https://tenders.go.ke/portal> Tenderers who download the tender document must forward their particulars immediately to [hps@kws.go.ke](mailto:hps@kws.go.ke) to facilitate any further clarification or addendum.
5. Completed tenders must be delivered to the address below on or before **29<sup>th</sup> April, 2026 11.00Hrs EAT**. Electronic Tenders will not *be* permitted.
6. 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 and late tenders will be rejected.
7. The tenderer shall chronologically serialize all pages of the tender documents submitted including any attachments.
8. The addresses referred to above are:
  - A. **Address for obtaining further information**  
  
Kenya Wildlife Service  
Deputy Director-Supply Chain Management  
P.O Box 40241- 00100 Nairobi  
Tel: 0726 610 508  
Email:[hps@kws.go.ke](mailto:hps@kws.go.ke)
  - B. **Address for Submission of Tenders.**  
Kenya Wildlife Service  
P.O Box 40241- 00100 Nairobi  
Main Reception Lobby, Main Entrance, KWS Headquarters, Langata Road
  - C. **Address for Opening of Tenders.**  
Kenya Wildlife Service  
P.O Box 40241- 00100 Nairobi  
Vet Boardroom, KWS Headquarters, Langata Road

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**DIRECTOR GENERAL**

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**PART 1 - TENDERING PROCEDURES**

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## SECTION I - INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1. Scope of Tender and Definitions

1.1 Kenya Wildlife Service invites tenders for **LEASING AND MANAGEMENT OF MALINDI GUESTHOUSE SITE IN MALINDI STATION.**

Throughout this tendering document:

- 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 Procuring Entity) with proof of receipt;
- b) If the context so requires, “singular” means “plural” and vice versa;
- 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 Procuring Entity. It excludes official public holidays.

#### 2. Fraud and Corruption

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

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal 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.

2.3 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 Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

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

#### 3. Eligible Tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution, 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 letter 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. A firm that is a Tenderer (either individually or as a JV member) may participate in more than one

Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number members shall be specified in the **TDS**.

- 3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3 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 Procuring Entity regarding this Tendering process; or
  - e Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Tender; or
  - f Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g Has a close business or family relationship with a professional staff of the Procuring Entity who: are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or
  - h Would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.
- 3.4 A Tenderer shall not be involved in corrupt, coercive, obstructive, collusive, or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.
- 3.5 A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontract or in more than one Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions provided in this ITT. 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 subcontractors or sub- consultants for any part of the Contract including related Services.
- 3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to be prequalified for a tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public

administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

- 3.9 Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of Lease sites or contracting for supply of Lease sites or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 For purposes of granting a margin of preference, a tender is considered a national tenderer if it is registered in Kenya, has more than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as national tenderers and eligible for national preference only if the individual member firms are registered in Kenya or have more than 51percent ownership by nationals of Kenya, and the JV shall be registered in Kenya. The JV shall not subcontract to foreign firms more than10 percent of the contract price, excluding provisional sums.
- 3.11 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the Leases under this Invitation for tenders.
- 3.12 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](http://www.cak.go.ke).
- 3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **4. Eligible lease sites**

**For purposes of this ITT, the term “Lease site” includes LEASING AND MANAGEMENT OF MALINDI GUESTHOUSE SITE IN MALINDI STATION**

#### **5. Sections of Tendering Document**

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

#### **PART 1 Tendering Procedures**

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

## **PART 2 Supply Requirements**

- v) Section V - Schedule of 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

- 5.1 The Specific Procurement Notice, Invitation to Tenders Notice, issued by the Procuring Entity is not part of this tendering document.
- 5.2 Unless obtained directly from the Procuring Entity, the Procuring Entity 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 Procuring Entity shall prevail.
- 5.3 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.

### **6. Clarification of Tendering Document**

A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified in the **TDS**. The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 6 including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT 10.

### **7. Amendment of Tendering Document**

- 7.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.
- 7.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 7.1.
- 7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 20.

## **C. Preparation of Tenders**

### **8. Cost of Tendering**

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

#### **8.1 Language of Tender**

The Tender, as well as all correspondence and documents relating to the Tender exchanged by the

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

## 9. Documents Comprising the Tender

9.1 The Tender shall comprise the following:

- a **Form of Tender** prepared in accordance with ITT 10;
- b **Price Schedules:** completed in accordance with ITT 10 and ITT 13;
- c **Alternative Tender:** if permissible, in accordance with ITT 12;
- d **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 18.3;
- e **Qualifications:** documentary evidence in accordance with ITT 16 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
- f **Tenderer Eligibility:** documentary evidence in accordance with ITT 16 establishing the Tenderer eligibility to tender;
- g Any other document required **in the TDS.**

9.2 In addition to the requirements under ITT 16, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter 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.

9.3 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.

## 10. Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 22. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.

11.2 Each lease sites on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Lease Site not priced for full quantity on the Schedule of Requirements will be rejected. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE LEASE SITES ON THE SCHEDULE OF REQUIREMENTS. Tenders will be evaluated and awarded on basis of each lease site.

## 12. Alternative Tenders

12.1 Unless otherwise specified **in the TDS**, alternative Tenders shall be considered.

## 13. Tender Prices and Discounts

13.1 The rent quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified.

## 14. Currencies of Tender and Payment

14.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings unless otherwise specified **in the TDS**

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

- 15.1 To establish Tenderer eligibility in accordance with ITT 3, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 15.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- (a) That, if required **in the TDS**, in case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out prescribed obligation in the Conditions of Contract and/or Technical Specifications; and
  - (b) That the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.
- 15.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular lessee or group of lessees qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 15.4 The purpose of the information described in ITT 16.3 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 Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 15.5 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 16.3. 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.
- 15.6 All information provided by the Tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 15.7 If a Tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a Tenderer pursuant to these requirements, then the tender will be rejected.
- 15.8 If information submitted by a Tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the Tenderer will be disqualified from the procurement process.
  - ii) If the contract has been awarded to that Tenderer, the contract award will be set aside.
  - iii) The Tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.
- 15.9 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 ITT 16.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any

such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## **16. Period of Validity of Tenders**

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 (as prescribed by the Procuring Entity in accordance with ITT 20.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

17 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested, 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, except as provided in ITT 18.3. Format and Signing of Tender

17.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 10 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 12, shall be clearly marked "ALTERNATIVE."

17.2 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.

17.3 The original Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation **as specified in the TDS** and shall be attached to the Tender. 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.

17.4 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.

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

### **A. Submission and Opening of Tenders**

## **18 Sealing and Marking of Tenders**

18.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- a in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT1; and
- b if alternative Tenders are permitted in accordance with ITT 12, and if relevant:
  - i. in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and

The inner envelopes or packages or containers shall:

- a) Bear the name and address of the Procuring Entity.
- b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

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

## **19 Deadline for Submission of Tenders**

19.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**.

19.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 10, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **20 Late Tenders**

The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 20. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **21 Withdrawal, Substitution, and Modification of Tenders**

21.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 18.3, (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:

- a prepared and submitted in accordance with ITT 19 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 20.

21.2 Tenders requested to be withdrawn in accordance with ITT 22.1 shall be returned unopened to the Tenderers.

21.3 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.

## **22 Tender Opening**

22.1 Except as in the cases specified in ITT 24, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives.

22.2 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.

22.3 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.

- 22.4 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.
- 22.5 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 rates, per site (if applicable, including alternative Tenders; and any other details as the Procuring Entity may consider appropriate.
- 22.6 Only Tenders, alternative Tenders that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the rates Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS**.
- 22.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 21).
- 22.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b The Tender rates per site,
  - c Any alternative Tenders;
- 22.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the opening register shall be distributed to all Tenderers upon request.

#### **D. Evaluation and Comparison of Tenders**

#### **23 Confidentiality**

- 23.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 39.
- 23.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 23.3 Notwithstanding ITT 24.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

#### **24 Clarification of Tenders**

- 24.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall besought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 29.
- 24.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring

Entity's request for clarification, its Tender may be rejected.

## **25 Deviations, Reservations, and Omissions**

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.

## **26 Determination of Responsiveness**

- 26.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.
- 26.2 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 Contract; or
    - ii. Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or
  - b if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 26.3 The Procuring Entity 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, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 26.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## **27 Non-conformities, Errors and Omissions**

- 27.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender.
- 27.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the rates of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
- 27.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender rates. To this effect, the Tender rates shall be adjusted, for comparison purposes only, to reflect the rates of a missing or non-conforming item or component in the manner specified in the **TDS**.

## **28 Correction of Arithmetical Errors**

- 28.1 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 anyway by any person or entity.

28.2 Provided that the Tender is substantially responsive, the Procuring Entity 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 rates, 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, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail

## **29 Conversion to Single Currency**

Currency to be used shall either be Kenya Shillings or US dollars

## **30 Margin of Preference and reservations**

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

## **31 Evaluation of Tenders**

31.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Most Advantageous 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 highest evaluated cost.

31.2 To evaluate a Tender, the Procuring Entity shall consider the additional evaluation factors specified in Section III, Evaluation and Qualification Criteria.

31.3 In this tender, the Tenderers are allowed to tender for one or more lease sites.

31.4 The Procuring Entity's evaluation of a Tender will include and consider all requirements as per section III

31.5 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender rates quoted in accordance with ITT 13. These factors may be related to the characteristics, performance, and terms and conditions of Lease and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified **in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITT 32.2

## **32 Comparison of Tenders**

32.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the highest evaluated cost. The comparison shall be on the basis of the total of tender rate quoted per site each site.

## **33 Abnormally Low Tenders and Abnormally High**

**Tenders.**

33.1 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.

- 33.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity 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.
- 33.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

- 33.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 33.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 33.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before re-tendering.

### **34 Qualification of the Tenderer**

- 34.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the highest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 34.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 16. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.
- 34.3 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 Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next highest evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

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

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

### **E. Award of Contract**

#### **38. Award Criteria**

The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the offer with the highest technical proposal and highest rates.

#### **39. Notice of Intention to enter into a Contract/Notification of award**

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

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

#### **40. Standstill Period**

- 40.1 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.
- 40.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

#### **41 Debriefing by the Procuring Entity**

On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 39, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

#### **42 Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 40, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **43 Signing of Contract**

- 43.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon

the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

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

#### **44 Performance Security**

- 44.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, shall furnish the Performance Security in accordance with the GCC 17, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Procuring Entity. 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 Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.
- 44.2 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 performance Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Most Advantageous Tender.
- 44.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

#### **45 Publication of Procurement Contract**

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

- a) name and address of the Procuring Entity;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract rates, the contract duration.
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender rates as read out at Tender opening.

#### **45 Procurement Related Complaint and Administrative Review**

- 45.1 The procedures for making a Procurement-related Complaint are as specified in the **TDS**.
- 45.2 A request for administrative review shall be made in the form provided under contract forms

## Section II - Tender Data Sheet (TDS)

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

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>A. General</b>	
<b>ITT 1.1</b>	The reference number of the Invitation for Tenders is: <b>KWS/ONT/BDM/124/2025 - 2026</b> The Procuring Entity is: <b><i>KENYA WILDLIFE SERVICE.</i></b> The name of the Contract is: <b><i>TENDER FOR LEASING AND MANAGEMENT OF GUEST HOUSE SITE IN MALINDI STATION.</i></b> Successful tenderer shall be contracted for a term of; Open use -30yrs (renewable);
<b>ITT 3.1</b>	Maximum number of members in the Joint Venture (JV) shall be 3:
<b>B. Contents of Tendering Document</b>	
<b>ITT 6.</b>	For Clarification of Tender purposes only, the Procuring Entity's address is: For Tender submission purposes only the following procuring entity address is approved: Name of procuring Entity: KENYA WILDLIFE SERVICE Postal address and name of officer to be intentioned: DEPUTY DIRECTOR -SUPPLY CHAIN MANAGEMENT. P.O BOX 40241-00100 NAIROBI. Physical address for hand courier delivery of tender security only to our office: KENYA WILDLIFE SERVICE HEADQUARTERS BUILDING LANG'ATA ROAD Clarification for the bidders be sent through <a href="mailto:hps@kws.go.ke">hps@kws.go.ke</a> not later than three days of tender opening.
<b>C. Preparation of Tenders</b>	

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 10	The Tenderer shall submit the following additional documents in its Tender: <b><i>DOCUMENTS AS PROVIDED EVALUATION AND QUALIFICATION CRITERIA AS PER SECTION III</i></b>
ITT 12	Alternative Tenders <b>shall/shall not</b> be considered.- N/A
ITT 13	Rates quoted by the Tenderer <b>shall be fixed</b> during the contract period.
ITT 14	Tenderers <b>may</b> tender in other currencies which are used in international trade.
ITT 17	The Tender validity period shall be <b>126</b> days.
ITT 18.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <b><i>power of Attorney</i></b>
<b>D. Submission and Opening of Tenders</b>	
ITT 19	For tender submission purposes only, the procuring entity address is; KENYA WILDLIFE SERVICE HEADQUARTERS BUILDING LANGATA ROAD MAIN RECEPTION ENTRANCE AT THE TENDER BOX.  Completed tender document and its attachment submitted on or before the closing date 29 <sup>th</sup> April, 2026 at 11.00Hrs EAT
ITT 23	The Form of Tender and Price Schedules shall be initialed by tender opening committee members who are representatives of the Procuring Entity conducting Tender opening. <b><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 Procuring Entity, etc.</i></b>
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 32	The factors selected and expressed in monetary terms to facilitate comparison of Tenders are to be based on the highest evaluated bidder.
<b>F. Award of Contract-</b>	
ITT 38	The contract shall be awarded to the highest evaluated bidder subject to meeting the mandatory and technical specifications.
ITT 46.1	<b>The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>.</b>  If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:  For the attention: MARY MAJAU Title/position: DEPUTY DIRECTOR - SUPPLY CHAIN MANAGEMENT Procuring Entity: KENYA WILDLIFE SERVICE

<b>ITT Reference</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
	Email address: <a href="mailto:hps@kws.go.ke">hps@kws.go.ke</a> In summary, a Procurement-related Complaint may challenge any of the following: 1. the terms of the Tendering Documents; and 2. KWS 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:
- For business turnover or 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 is to be converted) was originally established.
  - Value of single contract- Exchange rate prevailing on the date of the contract signature.
  - 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 Procuring Entity.
- 1.2 This section contains the criteria that the Procuring Entity shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

### 1.3 Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the highest 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 highest Evaluated Tender price shall be selected for award of contract.

## 2 Preliminary examination for Determination of Responsiveness

- 2.1 The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

### *Mandatory preliminary evaluation criteria*

S/N	Mandatory Eligibility criteria
1.	Copy of Certificate of Incorporation or Business Registration name under the Companies Act or Partnership Deed Duly Certified by a Commissioner for Oaths.
2.	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 for Oaths.

3.	Valid Business permit issued by the County Government certified by Commissioner for Oaths.
4.	Copy of a valid Tax Compliance Certificate from Kenya Revenue Authority (KRA) as at the time of tender opening/closing.
5.	Certified Bank statements for Six months or certified audited account for 1 year
6.	Duly filled, signed and stamped Form of Tender (in company's letter head)
7.	Duly filled, signed and stamped Certificate of Independent Tender determination
8.	Duly filled, Signed and stamped Self-Declarations of the tenderer Form (SD 1)
9.	Duly filled, Signed and stamped Self-declaration indicating that the person/tenderer will not engage in any corrupt or fraudulent practice Form (SD 2)
10.	Duly filled, signed and stamped Self-Declaration That the Person/Tenderer Is Not Debarred In The Matter Of the Public Procurement and Asset Disposal Act 2015
11.	Duly filled signed and stamped Self-Declaration that the tenderer Will Not Engage In Any Corrupt Or Fraudulent Practice
12.	Duly filled, signed and stamped Declaration and Commitment to the Code of Ethics
13.	Duly filled, signed and stamped Tender Information Form
14.	Duly filled, signed and stamped Confidential Business Questionnaires
15.	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: A POWER OF ATTORNEY
16.	All the pages of the bid document <b>MUST</b> be chronologically serialized from cover page t to the last page in THE FORMAT 1, 2, 3.... . And <b>MUST</b> be TAPE/BOOK BOUND (Spiral Bound or other forms of binding will not be accepted). Loose document is not accepted. Tenderers who fail to comply with this criterion will be disqualified

## TECHNICAL EVALUATION CRITERIA

Bidders that attain the minimum score of 80% at the Technical evaluation stage are eligible to proceed to the financial evaluation.

#	Criteria	Maximum Score (%)	Scoring (1-5)
<b>1</b>	<b>Business Model</b>	<b>15</b>	
	Business type	2	
	Lease model	2	
	Pricing model	2	
	Evidence of experience and capacity in managing similar businesses	3	
	Detailed of financial (Capital) and Revenue sources	3	
	Intended customer base	3	
<b>2</b>	<b>Economic Viability</b>	<b>5</b>	
	Strategies ensuring competitiveness	3	
	Impact for the park and surrounding communities	2	
<b>3</b>	<b>Benefit Sharing Options</b>	<b>5</b>	
	Empowerment of the community	3	
	Benefit distribution	2	
<b>4</b>	<b>Size of Project, Low Footfall and High Revenue</b>	<b>5</b>	
	Accommodation Capacity	1	
	Area utilized by enterprise	1.5	

	Footfall vs revenue generation	1.5	
	Visitor amenities and staff accommodation	1	
<b>5</b>	<b>Cultural and Social Impact</b>	<b>5</b>	
	Integration of cultural aspects	2	
	Job Creation	2	
	Social equity	1	
<b>6</b>	<b>Environmental Impact</b>	<b>15</b>	
	Adoption of environmentally safe designs and operational practices, green building certification	4	
	Programs for pollution prevention (Air, Water, Soil, light, Noise)	4	
	Ethical employment practices	2	
	Land reclamation.	2	
	Use of Sustainable Transportation	2	
	Use of Native Plants	1	
<b>7</b>	<b>Resource Efficiency</b>	<b>5</b>	
	Public Utilities Use Reduction	1	
	Renewable energy integration	2	
	Waste management	2	
<b>8</b>	<b>Wildlife Disturbance Mitigation</b>	<b>5</b>	
	Monitoring and reporting system for wildlife disturbance or proliferation	2	
	Corrective or enhancement measures	2	
	Buffer Zones and Restricted Areas	1	
<b>9</b>	<b>Visitor Services</b>	<b>5</b>	
	Provision of pre-departure information	2	
	Availability of accurate interpretation and educational materials	2	
	Guided Tour Practices	1	
<b>10</b>	<b>Regulatory Compliance</b>	<b>5</b>	
	Adherence to Park Regulations	2.5	
	Compliance with all permits for international, national and county governments	2.5	
<b>11</b>	<b>Overall Impression</b>	<b>15</b>	
	Aesthetics, Architectural Style, Innovation and Uniqueness in design and landscaping	10	
	Alignment, Integration & Harmonization of the design to the given site and in tune with natural environment	5	
<b>12</b>	<b>Visitor Safety and Security</b>	<b>5</b>	
	High standards of safety and security for guests from natural, wildlife and humans	2.5	
	Ensuring high standards of safety and security for staff from natural, wildlife and humans	2.5	

<b>13</b>	<b>Marketing Strategy</b>	<b>5</b>	
	Marketing strategy for the enterprise	2.5	
	Innovative tourism products/visitor experiences	2.5	
<b>14</b>	<b>Risk Analysis</b>	<b>5</b>	
	Detailed risk analysis report.	5	
	<b>Total Weighted Score: (Sum of all Weighted Scores)</b>	<b>100%</b>	

## FINANCIAL EVALUATION

Bidders are required to propose monthly rates payable per site provided in the format below: -

S/NO.	FACILITY TYPE	MONTHLY RATE (KES/USD)	ANNUAL RATE (KES/USD)
1.	GUEST HOUSE SITE		

**Note: Bidder is advised to propose rates that are based on prevailing market value. Payments shall be made monthly or quarterly in arrears**

## AWARD CRITERIA

The highest evaluated bidder.

Bidder is hereby notified that due diligence shall be carried out on the information provided by the bidder which includes but not limited to physical visits to existing facilities and offices and all other references provided by the bidder in the tender. Any false information provided will lead to automatic disqualification.

3 **Price evaluation for each item:** in addition to the criteria listed in ITT 32 the following criteria shall apply: NOT APPLICABLE

a) Any additional evaluation factors as per ITT 33.2 (e) specified as follows:

\_\_\_\_\_

\_\_\_\_\_

b) **Deviation in payment schedule.** *[insert one of the following]*

i) *Tenderers shall state their Tender price for the payment schedule outlined in the SCC. Tenders shall be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in Tender price they wish to offer for such alternative payment schedule. The Procuring Entity may consider the alternative payment schedule and the reduced Tender price offered by the tenderer selected on the basis of the base price for the payment schedule outlined in the SCC.*

ii) *The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum **[insert adjustment rate]**.*

*This clause is not applicable for this tender.*

NAME OF THE PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER

.....  
TITLE OF THE PERSON SIGNING THE TENDER.....

SIGNATURE OF THE PERSON NAMED ABOVE.....

DATE SIGNED.....DAY OF.....MONTH.....YEAR.....

#### **4 Multiple Contracts**

Multiple contracts will be permitted. Tenderers are evaluated on basis of lease sites and the highest evaluated tenderer identified for each lease site. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

##### **OPTION 1**

- i) If a tenderer wins only one site, the tenderer will be awarded a contract for that site, provided the tenderer meets the Eligibility and Qualification Criteria for that site.
- ii) If a tenderer wins more than one site, the tenderer will be awarded contracts for all won sites, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the sites. The tenderer will be awarded the combination of sites for which the tenderer qualifies and the others will be considered for award to second highest tenderers.

##### **OPTION 2**

The Procuring Entity will consider all possible combinations of won sites and determine the combinations with the highest 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 sites.

#### **5 Alternative Tenders (ITT 12.1)**

*An alternative if permitted under ITT 12.1, will be evaluated as follows:*

“A tenderer may submit an alternative Tender with or without a Tender for the base case. The Procuring Entity shall consider Tenders offered for alternatives as specified in the Technical Specifications of Section VII, Schedule of Requirements. All Tenders received, for the base case, as well as alternative Tenders meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITT 32 to determine the highest Evaluated Tender.”

#### **6 Qualification (ITT 34)**

6.1 After determining the substantially responsive Tender which offers the highest-evaluated cost in accordance with ITT 33, and, if applicable, the assessment of any Abnormally Low or high Tender (in accordance with ITT34) the Procuring Entity shall carry out the post-qualification of the tenderer.

6.2 After determining the substantially responsive Tender which offers the highest evaluated cost the Procuring Entity shall carry out the post-qualification using the following criteria:

a) **History of non-performing lease 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 2 *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 (a) 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 2 *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 years 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**

- i) Form of Tender
- ii) Tenderer Information Form
- iii) Tenderer JV Members Information Form
- iv) Price Schedule -Schedule of Requirements (Lease sites).
- v) Form of Tender Security – Demand Guarantee
- vi) Form of Tender Security (Insurance Guarantee)
- vii) Form of Tender- Securing Declaration
- viii) Owner's Authorization

**Other Forms to be completed**

- i) Tenderer's Eligibility- Confidential Business Questionnaire
- ii) Certificate of Independent Tender Determination
- iii) Self-Declaration Form
- iv) Appendix 1- Fraud and Corruption

## FORM OF TENDER

### INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letter head 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 and TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender.*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - *Tenderer's Eligibility- Confidential Business Questionnaire*
  - *Certificate of Independent Tender Determination*
  - *Self-Declaration of the Tenderer*

**Date of this Tender submission:** .....[insert date (as day, month and year) of Tender submission] **Tender Name and Identification:** *TENDER FOR LEASING AND MANAGEMENT OF GUESTHOUSE SITE IN MALINDI STATION* .....[insert identification]

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

To: *KENYA WILDLIFE SERVICE*..... [insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal- Securing Declaration:**  
We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 3.7;
- d) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- e) **Conformity:** We offer to lease in conformity with the Tendering Document and in accordance with the lease period, the Lease Site specified in the Schedule below:

### LIST OF LEASE SITES AND RATES

S/NO.	FACILITY TYPE	MONTHLY RATE (KES/USD)	ANNUAL RATE (KES/USD)
1.	Malindi Guesthouse Site		

- f) **Tender Price:** The tender price is the quoted annual rate per site as provided in the table (e) above.
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (as

amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 20.1 (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) **Suspension and Debarment:** We, along with any of our subcontractors, Lessors, 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 Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- j) **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 3.8];*
- k) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- l) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the highest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and
- m) **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.
- n) **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.
- o) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from [www.pppra.go.ke](http://www.pppra.go.ke) during the procurement process and the execution of any resulting contract.
- p) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
  - i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - iii) Self-Declaration of the Tenderer—to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - iv) Declaration and commitment to the code of ethics for Persons Participating in Public Procurement and Asset Disposal Activities in Kenya,

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 the tenderer]*

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

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

**Signature of the person named above:** *[insert signature of person whose name and capacity*

*are shown above]* **Date signed** *[insert date of signing]* **day of** *[insert month], [insert year]*

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

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

## TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE.

### Instruction to Tenderer

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

#### a) Tenderer's details

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

#### General and Specific Details

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

Name in full \_\_\_\_\_

Age \_\_\_\_\_ Nationality \_\_\_\_\_

\_\_\_\_\_

Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

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

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
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.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

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

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

If yes, provide details as follows.

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

ii) **Conflict of interest disclosure**

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

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

**f) Certification**

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

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

(Signature)

\_\_\_\_\_

(Date)

\_\_\_\_\_

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_  
\_\_\_\_\_ [Name of Procuring  
Entity] for: \_\_\_\_\_ [Name and number  
of tender] in response to the request for tenders made by: \_\_\_\_\_ [Name of  
Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

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

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

**SELF-DECLARATION FORMS**

**FORM SD1**

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

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

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

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

**FORM SD2**

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....  
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** ..... for  
..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*)  
and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to 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  
Activities in Kenya and my responsibilities under the Code.

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

Name of Authorized

signatory.....

Sign.....

Position.....

Office address.....

Telephone.....

EMail.....

Name of the Firm/Company.....

Date.....

*(Company Seal/ Rubber Stamp where applicable)*

Witness

Name.....

Sign.....

Date.....

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

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

### 2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
  1. A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
  2. A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  3. Without limiting the generality of the subsection (1) and(2), the person shall be—
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  4. The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  5. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
    - a) Shall not take part in the procurement proceedings;
    - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
    - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
  - 7 An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
  - 8 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person

in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

2.3 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) "obstructive practice" is:

Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

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

- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> 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.

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<sup>1</sup>*For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

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

## Tenderer Information Form

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

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

**Tender Name and Identification:** ..... *[insert identification]*

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.1. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.14. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law  2. Establishing that the tenderer is not under the supervision of the Procuring Entity  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Tenderer's JV Members Information Form

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

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

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

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1.	Tenderer's Name: <i>[insert Tenderer's legal name]</i>
2.	Tenderer's JV Member's name: <i>[insert JV's Member legal name]</i>
3.	Tenderer's JV Member's country of registration: <i>[insert JV's Member country of registration]</i>
4.	Tenderer's JV Member's year of registration: <i>[insert JV's Member year of registration]</i>
5.	Tenderer's JV Member's legal address in country of registration: <i>[insert JV's Member legal address in country of registration]</i>
6.	Tenderer's JV Member's authorized representative information Name: <i>[insert name of JV's Member authorized representative]</i> Address: <i>[insert address of JV's Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Member authorized representative]</i> Email Address: <i>[insert email address of JV's Member authorized representative]</i>
7.	Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.1  <input type="checkbox"/> Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.
8.	Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## LIST OF LEASE SITES

[The tenderer shall fill in this Price Schedule in accordance and insert in Form of Tender as instructed. The list of line items in Columns 1 and 2 as per the prospectus in the <https://www.kws.go.ke/tenders> provided ]

1	2	3	4	4	5	6
Lease Item N°	Description of Site	Unit	Location of Use (Park)	Duration of Lease (in Months)	Monthly rates per Month (KES) or (USD)	Total price for the annual rate (KES) or (USD)
	<i>Example Sebastian Cafe</i>	<i>ITEM</i>	<i>Nairobi NATIONAL WILDLIFE SANCTUARY</i>	<i>240 months</i>	<i>KES. XXX USD. XXX</i>	<i>KES. XXX USD. XXX</i>

Name of Tenderer \_\_\_\_\_

Signed by the Tenderer \_\_\_\_\_

Dated \_\_\_\_\_

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## **PART 2 - LEASE REQUIREMENTS**

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## SECTION VI - SCHEDULE OF REQUIREMENTS

### NOTES FOR PREPARING THE SCHEDULE OF REQUIREMENTS

The Schedule of Requirements shall be included in the Tendering document by the Procuring Entity, and shall cover, at a minimum, a description of the Lease Sites and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT 42.1.

The date or period for lease should be carefully specified, considering (a) the implications of lease terms stipulated in the Instructions to tenderers; (b) the date prescribed here in from which the Procuring Entity's payment obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit, etc.

### 2 Technical Specifications

- 2.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Lease Sites required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:
- i) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.
  - ii) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the

### 3 Descriptions of Sites

NO.	NATIONAL WILDLIFE SANCTUARY	INVESTMENT SITE	TYPE OF INVESTMENT	SITE INFORMATION
	MALINDI STATION	MALINDI GUEST HOUSE	GUESTHOUSE	Malindi Guest House- Plot 686 Opposite Lawfords Hotel  This was formerly an area with a restaurant and guest rooms. Then Later the building was turned to Deputy Warden's residence. The plot touches the shoreline (beach). Second phase from Malindi –Lamu road. Potential for tourism investment with its proximity to hospitals, Malindi CBD, Banks and Shops. The plot

NO.	NATIONAL WILDLIFE SANCTUARY	INVESTMENT SITE	TYPE OF INVESTMENT	SITE INFORMATION
				is approximately 0.15ha (0.371 acres). Titled with no disputes.

#### INVESTMENT GUIDELINES

ITEM	SELF CATERING ACCOMMODATION (GUESHOUSE)
<b>Design and Construction</b>	Are typically Self-catering accommodation facilities with a maximum of 12beds in separated or joined individual visitor units. Constructed of steel reinforced concrete foundation with permanent or semi-permanent solid walls
<b>Visitor Amenities and Service</b>	Approved amenities include (but are not limited to), a reception area, communal kitchen, dining area, gazebos and caretaker office.
<b>Lease Duration</b>	30 years, renewable
<b>Acreage</b>	0.371 acres depending on location
<b>Insurance</b>	Tenant to insure the premises
<b>RENT (Approx.)</b>	Fixed rent as per KWS guidelines, payable monthly or quarterly in advance.  Variable rent of USD 10 – 25 per bed night depends on locations as per KWS guidelines, payable quarterly in advance.
<b>Capacity</b>	Minimum guest services such as laundry, catering and beverages provided and only essential staff is accommodated on site. Staff accommodation shall be located outside the protected area.
<b>Rent Free Period</b>	Construction - 12 months Rent free
<b>Escalation</b>	4% per year
<b>Tender Performance Guarantee</b>	6 Months' Bond applicable from the signing of the lease contract

### PART 3 - CONTRACT

#### SECTION VII - GENERAL CONDITIONS OF CONTRACT

##### 1. Definitions

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

- a) "Contract" means the Contract Agreement entered into between the Procuring Entity and the Lessee, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- c) "Contract Price" means the price payable to the Lessor as specified in the Contract Agreement, subject to such additions and adjustments there to or deductions there from, as may be made pursuant to the Contract.
- d) "Day" means calendar day.

- e) “GCC” means the General Conditions of Contract.
- f) “Procuring Entity” means the Procuring Entity leasing the Site as specified in the SCC
- g) “SCC” means the Special Conditions of Contract.
- h) “Site means” means Eco lodges, tented camp, Restaurants, Open Use or such other real estate the procuring entity may lease to the lessee under the Contract.
- i) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom execution of any part the Contract is subcontracted by the Lessee.
- j) “Lessor” means the Procuring Entity who has accepted the Tender for the Lease Contract and is named as such in the Contract Agreement as “Procuring Entity”.
- k) “Lessee” means the person, private or government entity, or a combination of the above, whose Tender for the Lease Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.

## 2. Lease Sites Contract Documents

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

## 3. Fraud and Corruption

- 3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.
- 3.2 The Procuring Entity requires the Lessee to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## 4 Interpretation

4.1 If the context so requires it, singular means plural and vice versa

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

### 4.3 Amendment

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

### 4.4 Non-waiver

- a Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- b Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### 4.5 Severability

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

#### 5 Language

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

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

#### 6 Joint Venture, Consortium or Association

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

#### 7 Eligibility

7.1 The Lessee and its Subcontractors shall have the nationality of an eligible country. A Lessee or Sub-Lessee shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

#### 8 Notices

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

#### 9 Governing Law

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

#### 10 Settlement of Disputes

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

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

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

## **11 Inspections and Audit by the Procuring Entity**

- 11.1 The Lessor shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease sites in such form and details as will clearly identify relevant time changes and costs.
- 11.2 Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Lessor shall permit and shall cause its subcontractors and sub consultants to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Lessor's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

## **12 Completion of works on the lease site**

Subject to GCC Sub-Clause 32 completion of works on the lease site shall be in accordance with the Completion Schedule specified in the Schedule of Requirements. The details of Lease and other documents to be furnished by the Lessor are specified in the SCC.

## **13 Lessor's Responsibilities**

The Procuring Entity shall point out and handover the Site for the Lessee's possession.

## **14 Contract Price**

Prices charged by the Lessor for the Lease Sites under the Contract shall not vary from the prices quoted by the Lessor in its Tender, with the exception of any price adjustments authorized in the SCC.

## **15 Terms of Payment**

- 15.1 The Contract Price, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessor under this Contract shall be those in which the Tender price is expressed.
- 15.2 The Lessee shall pay to the Procuring Entity the sum stated in the SCC on or before the day of each month as stated in the SCC until the expiration of this lease.
- 15.3 If the Lessee fails to pay all amounts due within the number of days specified in the SCC of their due dates, then the Lessor may terminate the contract under this lease and take back possession and control of the Site(s). In the event of termination for non-payment, the lessee shall remain liable for the balance due under this lease.
- 15.4 If the Procuring Entity fails to make a payment on or before its due date, a late fee of an amount specified in the lease agreement shall be due and payable immediately to Lessor.

## **16 Taxes and Duties**

The Procuring Entity shall be responsible for paying all taxes levied in Kenya as if the Site was bear.

## **17 Performance Security**

- 17.1 If required as specified in the SCC, the Lessor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 17.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Lessee's failure to complete its obligations under the Contract.
- 17.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another form at acceptable to the Procuring Entity.
- 17.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Lessor not later than twenty-eight (28) days following the termination of the Lessee's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

## **18 Copyright**

- 18.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Lessee herein shall remain vested in the Lessee, or, if they are furnished to the Procuring Entity directly or through the Lessee by any third party, including Lessee's of materials, the copyright in such materials shall remain vested in such third party

## **19 Confidential Information**

- 19.1 The Procuring Entity and the Lessee shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Lessee may furnish to its Sub-Lessee such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Lessee to perform its work under the Contract, in which event the Lessee shall obtain from such Sub Lessee an undertaking of confidentiality similar to that imposed on the Lessee under GCC Clause 20.
- 19.2 The Procuring Entity shall not use such documents, data, and other information received from the Lessee for any purposes unrelated to the contract. Similarly, the Lessee shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.
- 19.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- a the Procuring Entity or the Lessee need to share with other arms of Government or other bodies participating in the financing of the Contract;
  - b now or hereafter enters the public domain through no fault of that party;
  - c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - d otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 19.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Contract or any part thereof.
- 19.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **20 Subcontracting**

- 20.1 The Lessee shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessee from any of its obligations, duties, responsibilities, or liability under the Contract.
- 20.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **21 Specifications and Standards**

### Technical Specifications and Drawings

- a) The Lease sites provided under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Lease sites' country of origin.
- b) The Procuring Entity shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Lessee, by giving a notice of such disclaimer to the lessee.

## **22 Packing and Documents**

No packing services and documents are needed, and if any, they are specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

## **23 Insurance**

- 22.1 Unless otherwise specified in the **SCC**, the Lease sites under the Contract shall be fully insured by the Lessee during the lease period.

## **24 Lease Site Inspections**

- 24.1 The Lessee shall before submitting their tender and at its own expense and at no cost to the Procuring Entity carry out all such inspections of the Lease sites as are specified in the **SCC**.
- 24.2 During the lease period, the Procuring Entity or its designated representative shall be entitled to inspect the Sites as shall be specified in the **SCC**.
- 24.3 Whenever the Procuring Entity is ready to carry out any such inspection, it shall give a reasonable advance notice, including date and time, to the Lessee.
- 24.4 The Procuring Entity may require the Lessee to carry out any inspections not required by the Contract but deemed necessary to verify that Site fits technical specifications provided. The Lessee shall provide the Procuring Entity with a report of the results of any such inspection.
- 24.5 The Procuring Entity may reject any part of the report that do not conform to the specifications. The Lessee shall then rectify the anomalies pointed out by the Procuring Entity.
- 24.6 The Lessee agrees that neither the execution of an inspection of the Lease sites or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub- Clause 24.4, shall release the Lessee from any warranties or other obligations under the Contract.

## **25 Liquidated Damages**

Except as provided under GCC Clause 32, if the Lessee fails to perform any obligation within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the performance security as liquidated damages. Once the maximum is reached,

the Procuring Entity may terminate the Contract pursuant to GCC Clause 33.

## **26 Warranty**

The Procuring Entity warrants that he has capacity to lease out the Site under the Lease agreement.

## **27 Limitation of Liability**

27.1 Except in cases of criminal negligence or willful misconduct,

- a The Procuring Entity shall not be liable to the Lessee, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Lessee to pay liquidated damages to the Procuring Entity, and
- b The aggregate liability of the Lessee to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defaced sites, or to any obligation of the Lessee to indemnify the Procuring Entity with respect to patent infringement.

## **28 Change in Laws and Regulations**

Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Lessor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

## **29 Force Majeure**

- 29.1 The Lessee shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 29.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Lessor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessor. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 29.3 If a Force Majeure situation arises, the Lessee shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Lessor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **30 Change Orders and Contract Amendments**

- 30.1 Both parties may agree to amend the contract as provided in law.
- 30.2 The Procuring Entity may at any time order the Lessee through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any drawings, designs or specifications submitted by the Lessee. In any event these changes cause a variation in the contract price, parties will agree to make the variation as maybe provided in law.

## **31 Extensions of Time**

- 31.1 If at any time during performance of the Contract, the Lessee or its subcontractors should encounter conditions impeding timely completion of works on the Lease Site or payment of the rent, the Lessee shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessee's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Lessor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 31.2 Except in case of Force Majeure, as provided under GCC Clause 29, a delay by the Lessee in the performance of its obligations shall render the Lessee liable to the imposition of liquidated damages pursuant to GCC Clause 25, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 31.1.

## **32 Termination**

### **32.1 Termination for Default**

- a The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessee, may terminate the Contract in whole:
- i. if the Lessee fails to pay rent, take up possession of the Site, complete the works within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity as specified in the SCC;
  - ii. if the Lessee fails to perform any other obligation under the Contract; or
  - iii. if the Lessee, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b In the event the Procuring Entity terminates the Contract, pursuant to GCC Clause 32.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate performance of the Contract. Any sums payable to the Lessee shall be made upon procuring of the Site.

### **32.2 Termination for Insolvency.**

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

### **33.3 Termination for Convenience.**

- a) The Procuring Entity, by notice sent to the Lessee, may terminate the Contract, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Lessee under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Procuring Entity shall value the Site and make payments to the Lessee upon successful procurement of the Site to a third party. Assignment.
- c) Alternatively, if the Lessee owes any monies to the Procuring Entity, the said sums shall be made to the Procuring Entity without deductions.

- 35 Neither the Procuring Entity nor the Lessee shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## Section VIII - Special Conditions of Contract

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

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
GCC 1.1(h)	<p>The Procuring Entity is: Kenya Wildlife Service</p> <p>The Final Destination(s) is/are: Provided in the prospectus <a href="http://www.kws.go.ke">www.kws.go.ke</a></p>
GCC 4.2	<p>The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by: N/A</p>
GCC 8.1	<p>For <b>notices</b>, the Procuring Entity’s address shall be:            Attention: Director General            Postal address 40241-00100            Physical Address KWS Headquarters, Langata Road, Nairobi.            Telephone: 0726610509 , 0800597000            Electronic mail address: <a href="mailto:hps@kws.go.ke">hps@kws.go.ke</a></p>
GCC 10.2	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:</p> <p><i>“Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Lessee and clause 10.2 (b) shall be retained in the case of a Contract with a national of Kenya”]</i></p> <p><b>(a) Contract with foreign Lessee:</b>  <i>[For contracts entered into with foreign Lessees, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Procuring Entity may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]</i></p> <p><b>(i) If the Procuring Entity chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</b></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><b>(ii) If the Procuring Entity chooses the Rules of ICC, the following sample clause should be inserted:</b></p> <p>GCC 10.2 (a)—All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(iii) <i>If the Procuring Entity chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:</i></p> <p>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.</p> <p>(iv) <i>If the Procuring Entity chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:</i></p> <p>GCC 10.2 (a)—Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p> <p><i>(b) Contracts with Lessee who is a national of Kenya:</i></p> <p>In the case of a dispute between the Procuring Entity and a Lessor who is a national of Kenya, the dispute shall be referred to arbitration in accordance with the laws of Kenya.</p>
<p><b>GCC 15.1</b> <b>GCC 15.2</b> <b>GCC 15.3</b></p>	<p>(a) The rates for the Sites shall be made quarterly in arrears. (b) the rates shall be paid by the fifth day of the first month of the quarter when the arrears fall due. (c) If the Lessee fails to pay the arrears within 60 days of demand</p>
<b>GCC 17.1</b>	A Performance Security shall be an equivalent of six months’ rent payable for the Site
<b>GCC 17.3</b>	<p>If required, the Performance Security shall be in the form of a Performance Bond”</p> <p>If required, the Performance security shall be denominated in USD or “KES in accordance with their portions of the Contract Price”</p>
<b>GCC 17.4</b>	Discharge of the Performance Security shall take place: <i>[ insert date if different from the one indicated in sub clause GCC 18.4]</i>
<b>GCC 24</b>	<p>a) The inspections and tests shall be in form of site visits.</p> <p>b) The Procuring Entity shall make the first inspection of the Site, six months after the handover to verify ground breaking by the lessee.</p> <p>c) The Procuring Entity shall inspect the Site after confirmation of completion of works by the Lessee which shall not be less than eighteen months after the handover.</p> <p>d) The Lessor shall during the term of the lease, conduct environmental inspections.</p>

<b>Number of GC Clause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
<b>GCC 32.1</b>	<p>The Procuring Entity may terminate the contract and/or take possession of the Site if</p> <p>(a) the Lessee fails to commence works on the Site within six (6) months from the date of signing of the handover or complete works within 18 months from the handover.</p> <p>(b) If the Lessee fails to pay rent within three months when it falls due.</p> <p>(c) If the Lessee fails to be on the Lease Site or fails to operate business for accumulative period of three months.</p>

## SECTION IX - CONTRACT FORMS

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

### **Table of Forms**

Notification of Intention to Award

Request for Review

Letter of Award

Contract Agreement

Performance Security

Advance Payment Security

Beneficial Ownership Disclosure

**FORM No 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 Tender Information Form on the format below.

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-----

**FORMAT**

1. For the attention of Tenderer's Authorized Representative
  - i) Name: .....[insert Authorized Representative's name]
  - ii) Address: .....[insert Authorized Representative's Address]
  - iii) Telephone: .....[insert Authorized Representative's telephone/fax numbers]
  - iv) Email Address: .....[insert Authorized Representative's email address]

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*
2. Date of transmission: ..... [email] \_\_\_\_\_ on.....[date] \_\_\_\_\_ (local time)

This Notification is sent by (Name and designation)

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

3. Notification of Intention to Award
  - i) Procuring Entity: .....[insert the name of the Procuring Entity]
  - ii) Project: .....[insert name of project]
  - iii) Contract title: .....[insert the name of the contract]
  - iv) Country: .....[insert country where ITT is issued]
  - v) 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:

4. Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

- a) The successful tenderer
  - i) Name of successful Tender \_\_\_\_\_  
\_\_\_\_\_
  - ii) Address of the successful Tender \_\_\_\_\_  
\_\_\_\_\_

iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_  
 (in words \_\_\_\_\_)

b) Other Tenderers

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. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

	Description of the Site	Tender Price as read out	Tender's evaluated price	One Reason Why not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on
- b) 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 (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: *[insert full name of person, if applicable]*
  - ii) Title/position: *[insert title/position]*
  - iii) Agency: *[insert name of Procuring Entity]*
  - iv) Email address: *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) 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 (3) 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.
- e) 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.
- f) 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) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight.
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: MS. MARY MAJAU

- ii) Title/position: DEPUTY DIRECTOR-SUPPLY CHAIN MANAGEMENT
- iii) Agency: KENYA WILDLIFE SERVICE
- i) Email address: hps@kws.go.ke
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke) or email [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) 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.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

**7. Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

**Signature:**\_\_\_\_\_ **Name:**\_\_\_\_\_

**Title/position:**\_\_\_\_\_ **Telephone:**\_\_\_\_\_ **Email:**\_\_\_\_\_

**FORM NO. 2 - REQUEST FOR REVIEW**

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

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

**BETWEEN**

.....**APPLICANT**

**AND**

.....**RESPONDENT (Procuring Entity)**

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.

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

- 1.
- 2.

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

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

**SIGNED**

**Board Secretary**

**NO 3: LETTER OF AWARD**

*[letter head paper of the Procuring Entity]*

.....*[date]*

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

This is to notify you that your Tender dated *[date]* for execution of the..... *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount..... *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by..... *(name of Procuring*

*Entity*).

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

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement*

**FORM NO. 4 LETTER OF AWARD**

*[use letterhead paper of the Procuring Entity]*

.....*[date]*

To: .....*[name and address of the Lessor]*

Subject: **Notification of Award Contract No.**.....

This is to notify you that your Tender dated.....*[insert date]* for the Lease sites on the list below is hereby accepted by our Agency.

**OFFERED ITEMS AND PRICES**

<b>1</b>	<b>2</b>	<b>3</b>
<b>Lease Item N°</b>	<b>Description of Lease Item and Related Services.</b>	<b>Tender Price</b>
1		
2		
3		
4		
<b>Total Tender Price</b>		<b>Xxxx</b>

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

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

**Attachment: Contract Agreement**

**FORM NO 5 - CONTRACT AGREEMENT**

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

THIS AGREEMENT made the *[insert: number]* day of *[insert: month]*, *[insert: year]*. BETWEEN

- (1) *[insert complete name of Procuring Entity and having its principal place of business at [insert: address of Procuring Entity]* (herein after called “Procuring Entity”), of the one part;  
and
- (2) *[insert name of Lessor]*, a corporation incorporated under the laws of *[insert: country of Lessor]* and having its principal place of business at *[insert: address of Lessor]* (herein after called “the Lessor”), of the other part.
- 3. WHEREAS the Procuring Entity invited Tenders for certain Lease sites and ancillary services, viz., *[insert brief description of Lease sites and Services]* and has accepted a Tender by the Lessor for the supply of those Lease sites and Services, the Procuring Entity and the Lessor agree as follows:
  - i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
  - ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.

- a) the Letter of Acceptance
- b) the Letter of Tender
- c) the Addenda Nos.\_\_\_\_(if any)
- d) Special Conditions of Contract
- e) General Conditions of Contract
- f) the Specification (including Schedule of Requirements and Technical Specifications)
- g) the completed Schedules (including Price Schedules)
- h) any other document listed in GCC as forming part of the Contract

iii) In consideration of the payments to be made by the Procuring Entity to the Lessor as specified in this Agreement, the Lessor hereby covenants with the Procuring Entity to provide the Lease sites and Services and to remedy defects the rein inconformity in all respects with the provisions of the Contract.

4. The Procuring Entity hereby covenants to pay the Lessor inconsideration of the provision of the Lease sites and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

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

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

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

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

in the presence of .....*[insert identification of official witness]*

**FORM NO. 6 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]**

[Guarantor letterhead]

**Beneficiary:** \_\_\_\_\_ [insert name and Address of Procuring

Entity] **Date:** \_\_\_\_\_ [Insert date of issue]

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with (name of Procuring Entity) \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (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 Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of (in words ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the..... Day of....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request 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.**

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

<sup>2</sup>*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procurement Entity should note that in the event of an Extension of this date for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM No. 7 - 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 Procuring Entity]* **Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE BOND No.:** \_\_\_\_\_

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

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_] as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_] as Obligee (hereinafter called “the Procuring Entity”) in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the day of, 20, for in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity'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 Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
  - 3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking - Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6 In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly 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. 8 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]**

*[Guarantor letterhead]*

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

**Date:** \_\_\_\_\_ *[Insert date of issue]*

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

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words \_\_\_\_\_) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words \_\_\_\_\_) <sup>1</sup> 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 Contract or on its account number at.....
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of \_\_, 2, 2, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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\_\_\_\_\_  
*[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.**

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

<sup>2</sup>*Insert the expected expiration date of the Time for Completion. The Procurement Entity should note that in the event of an extension of the time for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE**

**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:*

- Directly or indirectly holding 25% or more of the shares.*
- Directly or in directly 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.*

Tender Reference No.: \_\_\_\_\_ [insert identification no] Name of the Assignment: \_\_\_\_\_ [insert name of the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]

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 here by provide the following beneficial ownership information.

Details of beneficial ownership

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)</b>	<b>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)</b>
<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]*

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