



**TENDER F O R L E A S E O F SWIMMING POOL FACILITY ALONGSIDE THE ADJACENT FOOD COURT  
AT TAITA TAVETA UNIVERSITY- MAIN CAMPUS**

**TENDER REF NO: TTU/OT/01/2023-2024**

**(RE-TENDER)**

**CLOSING DATE: 1<sup>ST</sup> MARCH, 2024**

**AT 11:00 AM**

## **INVITATION TO TENDER**

Taita Taveta University, off Voi – Taveta Road P.O. Box 635-80300 Voi – Kenya

### **CONTRACT NAME AND DESCRIPTION: Lease of Swimming Pool Facility alongside the adjacent Food Court at the Main Campus**

Taita Taveta University invites sealed tenders for the ***Lease of Swimming Pool Facility alongside the adjacent Food Court at the Main Campus***

TENDER REFERENCE	TENDER DESCRIPTION	TENDER SECURITY AMOUNT
TTU/OT/01/2023-2024	<b><i>Leasing of Swimming Pool Facility Alongside The Adjacent Food Court At The Main Campus</i></b>	<b>KES 10,000.00</b>

1. Tendering will be conducted under open tender method using a standardized tender document. Tendering is open to all qualified and interested tenderers
2. Tenderers will be allowed to tender for one or more
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours *9.00am-4.00pm on week days* at the address given below.
4. A complete set of tender documents may be purchased or obtained by interested tenderers upon payment of a non-refundable fees of Ksh. 1000.00 in cash or Banker's Cheque and payable to the address given below. Tender documents may also be obtained electronically from the Website [www.ttu.ac.ke](http://www.ttu.ac.ke). Or PPRA Portal (ppip). Tender documents obtained electronically will be free of charge.
5. The Tenderer shall chronologically serialize all pages of the tender documents submitted. Completed tenders must be delivered to the address below on or before 1<sup>st</sup> March, 2024.
6. Electronic Tenders: - **Will not be permitted.**
7. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
8. Late tenders will be rejected.
9. The addresses referred to above are:

#### **Address for obtaining further information and for obtaining tender documents**

Taita Taveta University, Off Voi – Taveta Road  
P.O. Box 635-80300 Voi

#### **Address for Submission of Tenders.**

The Vice Chancellor  
Taita Taveta University, Off Voi – Taveta Road  
P.O. Box 635-80300 Voi

#### **Address for Opening of Tenders.**

Taita Taveta University,  
Off Voi – Taveta Road,  
P.O. Box 635-0300, Voi

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## PART 1 - TENDERING PROCEDURES

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### SECTION I: INSTRUCTIONS TO TENDERERS

#### A General Provisions

##### 1 Scope of Tender – Lease of Swimming Pool Facility alongside the adjacent Food Court

11 Taita Taveta University **invites** tenders for Lease of Swimming Pool and adjacent Food Court and, if applicable, any Related Services incidental thereto, as specified in Section V, Supply Requirements. The name, identification, and number of lots (contracts) of this Tender Document are specified in the **TDS**.

12 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

21 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.

22 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.

23 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.

##### 3 Eligible Tenderers

31 A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT3.7, 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. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender.

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. The maximum number of JV members shall be specified in the **TDS**.

- 32 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.
- 33 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 - representative or ownership 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) or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
  - f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **TDS** ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or has a close business or family relationship with a professional staff of the Procuring Entity (or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or (ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.
- 34 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.
- 35 A firm that is a Tenderer (either individually or as a JV member) shall not submit more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a 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.
- 36 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in

conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub consultants for any part of the Contract including related Services.

- 37 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the [PPRA's website www.ppra.go.ke](http://www.ppra.go.ke)
- 38 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. Public employees and their close relatives are not eligible to participate in the tender.
- 39 Tenderers 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 goods or contracting for supply of goods 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 Procurement Entity, as the Procurement Entity shall reasonably request.
- 310 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 Procurement Entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 311 Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the **TDS**
- 312 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).
- 313 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **4 Eligible Goods and Related Services**

- 41 All the Goods and Related Services to be supplied under the Contract shall have their origin in any country that is eligible in accordance with ITT 3.9.
- 42 For purposes of this ITT, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” include services such as insurance, installation, training, and initial maintenance.
- 43 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing,

or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

- 44 A Procurement Entity shall ensure that the items listed below shall be sourced from Kenya and there shall be no substitutions from foreign sources. The affected items are:
- a) Motor vehicles, plant and equipment which are assembled in Kenya;
  - b) Furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather, agro- processed products, sanitary products, and other goods made in Kenya; or
  - c) Goods manufactured, mined, extracted or grown in Kenya.
- 45 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## **5 Sections of Tendering Document**

- 51 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 ITT8.

### **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

- 52 The notice of Invitation to Tender or the notice to the prequalified Tenderers issued by Procurement Entity is not part of the tendering document.
- 53 Unless obtained directly from the Procurement Entity, the Procurement 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 ITT7.
- 54 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**

- 61 A Tenderer requiring any clarification of the Tender Document shall contact the Procurement Entity in writing at the Procurement Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 6.4. Procurement Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procurement Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 5.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procurement 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 Tender Documents, the Procurement Entity shall amend the Tender Documents following the procedure under ITT 7.

- 62 The Procurement Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Tenderer's designated representative is invited to attend a pre-Tender meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 63 The Tenderer is requested to submit any questions in writing, to reach the Procurement Entity not later than the period specified in the **TDS** before the meeting.
- 64 Minutes of the pre-Tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.
- 65 The Procurement Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-Tender meeting at the web page identified **in the TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procurement Entity exclusively through the issue of an Addendum pursuant to ITT 7 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

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

- 71 At any time prior to the deadline for submission of Tenders, the Procurement Entity may amend the tendering document by issuing addenda.
- 72 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tender document from the Procurement Entity in accordance with ITT 6.3. The Procurement Entity shall also promptly publish the addendum on the Procurement Entity web page in accordance with ITT 7.1.
- 73 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procurement Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

## **C. *Preparation of Tenders***

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

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

### **9 *Language of Tender***

- 91 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procurement 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.

### **10 *Documents Comprising the Tender***

- 101 The Tender shall comprise the following:
- a) Form of Tender prepared in accordance with ITT11;
  - b) Price Schedules: completed in accordance with ITT 11 and ITT13;
  - c) Tender Security or Tender-Securing Declaration, in accordance with ITT 18.1;
  - d) Alternative Tender: if permissible, in accordance with ITT12;
  - e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT19.3;
  - f) Qualifications: documentary evidence in accordance with ITT 16.2 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
  - g) Tenderer Eligibility: documentary evidence in accordance with ITT16.1 establishing the Tenderer eligibility to tender;
  - h) Eligibility of Goods and Related Services: documentary evidence in accordance with ITT 15, establishing the eligibility of the Goods and Related Services to be supplied by the Tenderer;
  - i) Conformity: documentary evidence in accordance with ITT15.2 that the Goods and Related Services conform to the tender document; and
  - j) Any other document required in the TDS.
- 102 In addition to the requirements under ITT 10.1, 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.
- 103 The Tenderer shall furnish in the Form of Tender information on commissions gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Tender.

## **11 Form of Tender and Price Schedules**

- 111 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. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialized pages of all tender documents submitted.

## **12 Alternative Tenders**

- 121 Unless otherwise specified **in the TDS, alternative** Tenders shall not be considered.

## **13 Tender Prices and discounts**

- 131 The prices quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below.
- 132 All lots (contracts) and items must be listed and priced separately in the Price Schedules.
- 133 The price to be quoted in the Form of Tender in accordance with ITT10.1 shall be the total price of the Tender, including any discounts offered.
- 134 The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.
- 135 Prices quoted by the Tenderer shall be fixed during the performance of the Contract and not subject to variation on any account, unless otherwise specified **in the TDS**.



A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 28. However, if in accordance with **the TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

- 136 If specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise specified **in the TDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 13.4 provided the Tenders for all lots (contracts) are opened at the same time.
- 137 The terms EXW, CIP, CIF, DDP and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by the International Chamber of Commerce.
- 138 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procurement Entity. This shall not in any way limit the Procurement Entity's right to contract on any of the terms offered. In quoting prices, the Tenderer shall be free to use transportation through carriers registered in any eligible country. Similarly, the Tenderer may obtain insurance services from any eligible country in accordance with ITT 3.6, Eligible Tenders. Prices shall be entered in the following manner:
- a) For Goods manufactured in Kenya:
    - i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the- shelf, as applicable) final destination point indicated in the **TDS**, including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
    - ii) any sales tax and other taxes which will be payable in Kenya on the Goods if the Contract is awarded to the Tenderer; and
    - iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination specified **in the TDS**.
  - b) For Goods manufactured outside Kenya, to be imported:
    - i) the price of the Goods, quoted CIP named place of destination, in Kenya, as specified **in the TDS**;
    - ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination specified **in the TDS**;
  - c) For Goods manufactured outside Kenya, already imported:
    - i) the price of the Goods, including the original import value of the Goods; plus, any mark-up (or rebate); plus, any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported;
    - ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
    - iii) any sales and other taxes levied in Kenya which will be payable on the Goods if the Contract is awarded to the Tenderer; and
    - iv) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination

(Project Site) specified in the TDS.

- d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements, the price of each item comprising the Related Services (inclusive of any applicable taxes).

**14 Currencies of Tender and Payment**

- 141 The currency (ies) of the Tender, the currency (ies) of award and the currency (ies) of contract payments shall be the same.
- 142 The Tenderer shall quote in Kenya shillings. If allowed in the TDS, the Tenderer may express the Tender price in any currency, provided it shall use no more than two foreign currencies in addition to the Kenya Shilling.
- 143 The rates of exchange to be used by the Tenderer shall be based on the exchange rates provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening.

**15 Documents Establishing the Eligibility and Conformity of the Goods and Related Services**

- 151 To establish the eligibility of the Goods and Related Services in accordance with ITT 15, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.
- 152 To establish the conformity of the Goods and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 153 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 154 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the TDS following commencement of the use of the goods by the Procurement Entity.
- 155 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procurement Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procurement Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

**16 Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 161 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 162 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procurement Entity's satisfaction:
  - a) that, if required in the TDS, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Kenya;
  - b) that, if required in the TDS, in case of a Tenderer not doing business within the Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
  - c) that, the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

## **17. Period of Validity of Tenders**

- 171 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 Procurement Entity in accordance with ITT 21.1). A Tender valid for a shorter period shall be rejected by the Procurement Entity as non-responsive.
- 172 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procurement Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 18, 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 17.3.
- 173 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:
- a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified **in the TDS**;
  - b) In the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

## **18 Tender Security**

- 181 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 182 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 183 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer option:
- i) cash;
  - ii) a bank guarantee;
  - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
  - iv) a letter of credit; or
  - v) guarantee by a deposit taking micro-finance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.
- 184 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procurement Entity has agreed in writing, prior to tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procurement Entity prior to Tender submission. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 17.2.
- 185 If a Tender Security is specified pursuant to ITT 18.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procurement Entity as non-responsive.
- 186 If a Tender Security is specified pursuant to ITT 18.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46. The Procurement Entity shall also promptly return the tender security to the tenderers

where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

- 187 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.
- 188 The Tender Security may be forfeited or the Tender Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
  - b) if the successful Tenderer fails to:
    - i) sign the Contract in accordance with ITT 45; or
    - ii) Furnish a Performance Security in accordance with ITT 46.
- 189 Where tender securing declaration is executed, the Procurement Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 1810 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 3.1 and ITT 10.2.
- 1811 A tenderer shall not issue a tender security to guarantee itself.

#### **19. Format and Signing of Tender**

- 191 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 12, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 192 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.
- 193 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as **specified in the TDS** and shall be attached to the Tender. 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.
- 194 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 each members' legally authorized representatives.
- 195 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

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

##### **20 Sealing and Marking of Tenders**

- 201 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the tender, addressed to the Procurement 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 ITT 11; and
- b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- c) if alternative Tenders are permitted in accordance with ITT 12, and if relevant:
  - i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and
  - ii) in the envelope or package or container marked "COPIES-ALTERNATIVE TENDER", all required copies of the alternative Tender.

202 The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procurement Entity.
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

203 Where a tender package or container cannot fit in the tender box, the Procurement Entity shall:

- a) Specify in the **TDS where** such documents should be received.
- b) Maintain a record of tenders received and issue acknowledgement receipt note to each tenderer specifying time and date of receipt.
- c) Ensure all tenders received are handed over to the tender opening committee for opening at the specified opening place and time.

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

## **21. Deadline for Submission of Tenders**

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

212 The Procurement Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 7, in which case all rights and obligations of the Procurement Entity and Tenderer Previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **22. Late Tenders**

221 The Procurement Entity shall not consider any Tender that arrives after the deadline for submission of Tenders. Any Tender received by the Procurement Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **23. Withdrawal, Substitution, and Modification of Tenders**

231 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 19.3, (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 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and
- b) received by the Procurement Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.



233 Tenders requested to be withdrawn in accordance with ITT 23.1 shall be returned unopened to the Tenderers.

234 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.

#### **24 Tender Opening**

241 Except as in the cases specified in ITT 23, the Procurement Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives who choose to attend, including to attend any specific electronic tender opening procedures if electronic tendering is permitted in accordance with ITT 21.1, shall be as specified **in the TDS**.

242 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.

243 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.

244 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.

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

246 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procurement Entity to sign shall be specified in the **TDS**.

247 The Procurement Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 22.1).

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

- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) the Tender Price, per lot (contract) if applicable, including any discounts;
- c) any alternative Tenders;
- d) the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required;
- e) number of pages of each tender document submitted.

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



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

### ***25. Confidentiality***

- 251 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 41.
- 252 Any effort by a Tenderer to influence the Procurement Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 253 Notwithstanding ITT 25.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procurement Entity on any matter related to the Tendering process, it should do so in writing.

### ***26. Clarification of Tenders***

- 261 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procurement 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 Procurement Entity shall not be considered. The Procurement Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procurement Entity in the Evaluation of the Tenders, in accordance with ITT 30.

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

### ***27. Deviations, Reservations, and Omissions***

- 271 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.

### ***28. Determination of Responsiveness***

- 281 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 28.2.
- 28 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 Goods and Related Services specified in the Contract; or
    - ii) limit in any substantial way, inconsistent with the tendering document, the Procurement 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.
- 282 The Procurement Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 15 and ITT 16, in particular, to confirm that all

requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

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

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

- 291 Provided that a Tender is substantially responsive, the Procurement Entity may waive any non-conformities in the Tender.

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

- 293 Provided that a Tender is substantially responsive, the Procurement Entity shall rectify quantifiable nonmaterial non- conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified **in the TDS**. The adjustment shall be based on the **average** price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procurement Entity shall use its best estimate.

## **30 Arithmetical Errors**

- 301 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

- 302 Provided that the Tender is substantially responsive, the Procurement 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 price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail.

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

## **31 Conversion to Single Currency**

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

## **32 Margin of Preference and Reservations**

A margin of preference may be allowed on locally manufactured goods only when the contract is open to international tendering, where the tender is likely to attract foreign goods and where the contract exceeds the threshold specified in the Regulations.

- 321 For purposes of granting a margin of preference on locally manufactured goods under international competitive tendering, a Procurement Entity shall not subject the items listed below to international tender and hence no margin of preference shall be allowed. The affected items are:
- a) motor vehicles, plant and equipment which are assembled in Kenya;
  - b) furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather agro- processing, sanitary products, and other goods made in Kenya; or
  - c) goods manufactured, mined, extracted or grown in Kenya.
- 322 A margin of preference shall not be allowed unless it is specified in the **TDS**.
- 323 Contracts procured on basis of international competitive tendering shall not be subject to reservations to specific groups as provided in ITT 32.5.
- 324 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, a Procurement Entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender as specified in the **TDS**. No tender shall be reserved to more than one group. If not so stated in the Tender documents, the invitation to tender will be open to all interested tenderers.

### **33 Evaluation of Tenders**

- 33.1 The Procurement 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 Procurement Entity shall determine the Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:
- a) substantially responsive to the tender documents; and
  - b) the lowest evaluated price.

Price evaluation will be done for Items or Lots (contracts), as specified **in the TDS**; and the Tender Price as quoted in accordance with ITT 14. To evaluate a Tender, the Procurement Entity shall consider the following:

- c) price adjustment due to unconditional discounts offered in accordance with ITT 13.4;
  - d) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31;
  - e) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 29.3; and
  - f) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.
- 332 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 333 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 33.2. The methodology to determine the lowest evaluated tenderer or tenderers based on one lot (contract) or based on a combination of lots

(contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

- 334 The Procurement Entity's evaluation of a Tender will include and consider:
- a) in the case of Goods manufactured in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer;
  - b) in the case of Goods manufactured outside Kenya, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Tenderer;
- 335 The Procurement Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods 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 additional Criteria and methodologies to be used shall be as specified in ITT 33.2(d).

### **34 Comparison of Tenders**

- 34.1 The Procurement Entity shall compare the evaluated prices of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the highest evaluated tender price. The comparison shall be on the basis of total cost (place of final destination) prices for all goods and all prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Kenya, together with prices for any required installation, training, commissioning and other services.

### **35 Abnormally Low Tenders**

- 35.1 An Abnormally Low Tender is one where the Tender price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns with the Procurement Entity as to the capability of the Tenderer to perform the Contract for the offered Tender price.
- 35.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procurement Entity shall seek written clarification from the Tenderer, including a detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, delivery schedule, allocation of risks and responsibilities and any other requirements of the tendering document.
- 35.3 After evaluation of the price analysis, in the event that the Procurement Entity determines that the Tenderer has failed to demonstrate its capability to perform the contract for the offered Tender price, the Procurement Entity shall reject the Tender.

### **36 Abnormally High Tenders**

- 36.4 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procurement Entity is concerned that it (the Procurement Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 36.5 In case of an abnormally high tender price, the Procurement 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 Procurement Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procurement Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procurement Entity may accept or not accept the tender depending

on the Procurement Entity's budget considerations.

- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procurement 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 maybe.

36.6 If the Procurement 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 Procurement Entity shall reject all Tenders and shall institute or cause relevant Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **37. *Post-Qualification of the Tenderer***

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

37.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 15 and 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.

37.3 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 Procurement Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

### **38. *Lowest Evaluated Tender***

38.1 Having compared the evaluated prices of Tenders, the Procurement Entity shall determine the highest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

- a) most responsive to the Tender document; and
- b) the highest evaluated price.

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

39.1 The Procurement 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 notification Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

### ***F. Award of Contract***

#### **40. *Award Criteria***

40.1 The Procurement Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender in accordance with procedures in Section 3: Evaluation and Qualification Criteria.

#### **41. *Procuring Entity's Right to Vary Quantities at Time of Award***

41.1 The Procuring Entity reserves the right at the time of Contract award to increase or decrease, by the percentage (s) for items as indicated **in the TDS**.



#### **42. Notice of Intention to enter into a Contract**

Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procurement 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;

#### **43. Standstill Period**

- 431 The Contract shall not be awarded earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied candidate to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.
- 432 Where standstill period applies, it shall commence when the Procurement Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract to the successful Tenderer.

#### **44. Debriefing by the Procuring Entity**

- 441 On receipt of the Procurement Entity's Notification of Intention to Enter into a Contract referred to in ITT 41, an unsuccessful tenderer may make a written request to the Procurement Entity for a debriefing on specific issues or concerns regarding their tender. The Procurement Entity shall provide the debriefing within five days of receipt of the request.
- 442 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

#### **45. Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42, upon addressing a complaint that has been filed within the Standstill Period, the Procurement 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.

#### **46. Signing of Contract**

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

#### **47. Performance Security**

- 471 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procurement Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the



Performance Security Form included in Section X, Contract Forms. 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 Procurement Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procurement Entity has agreed in writing that a correspondent financial institution is not required.

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

473 Performance security shall not be required for a contract, if so specified in the **TDS**.

**48. Publication of Procurement Contract**

481 Within fourteen days after signing the contract, the Procurement Entity shall publish and publicize the awarded contract at its noticeboards, entity website; and on the Website of the Authority in manner and format prescribed by the Authority. At the minimum, the notice shall contain the following information:

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

**49. Procurement Related Complaints and Administrative Review**

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

492 A request for administrative review shall be made in the form provided under contract forms.19.6

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## 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: The Procuring Entity is: <b>Taita Taveta University</b> The name of the Contract : L e a s e Of Swimming Pool Facility Alongside The Adjacent Food Court The number and identification of lots (contracts) comprising this Invitation for Tenders is: O n e
<b>ITT 2.3</b>	The Information made available on competing firms is as follows:  The firms that provided consulting services for the contract being tendered for are: N/A
<b>ITT 3.1</b>	Maximum number of members in the Joint Venture (JV) shall be: N/A
<b>ITT 3.7</b>	A list of debarred firms and individuals is available on the PPRA's website: <a href="http://www.ppra.go.ke">www.ppra.go.ke</a>
<b>ITT 3.11</b>	Tenderers shall be required to be to be registered with N / A
<b>B. Contents of Tendering Document</b>	
<b>ITT 6.1</b>	(a)Address where to send enquiries is  Taita Taveta Univerity, P.O Box 635-80300, Voi To reach n o t later than <b>1<sup>st</sup> March, 2024 at 11.00 am</b>  (b) Taita Taveta Univesity will publish its response at thewebsite <a href="http://www.ttu.ac.ke">www.ttu.ac.ke</a>
<b>ITT 6.2</b>	A pre-tender site visit is optional but necessary before filling the tender
<b>ITT 6.3</b>	The questions to reach the Procuring Entity not later than 28 <sup>th</sup> February, 2024
<b>ITT 6.5</b>	There will be no Minutes of the Pre-Tender meeting visit
<b>C. Preparation of Tenders</b>	
<b>ITT 10 (j)</b>	The Tenderer shall submit the following additional documents inits Tender: <i>[list any additional documents not already listed in ITT 11.1 that must be submitted with the Tender]</i> N/A

ITT 12.1	Alternative Tenders <b>shall not be</b> considered. <i>[If alternatives shall be considered, the methodology shall be defined in Section III – Evaluation and Qualification Criteria. See Section III for further details]</i> <b>N/A</b>
ITT 13.5	The prices quoted by the Tenderer <b>shall not</b> be subject to adjustment during the performance of the Contract.
ITT 13.6	Prices quoted for each lot (contract) shall correspond at least to <b>[insert figure]</b> percent of the items specified for each lot (contract). <b>N/A</b> Prices quoted for each item of a lot shall correspond at least to <b>[insert figure]</b> percent of the quantities specified for this item of a lot. <b>N/A</b>
ITT 13.8 (a) (i) and (iii)	Place of final destination: Taita Taveta University
ITT 13.8 (a) (iii)	Final Destination: Taita Taveta University
ITT 13.8 (b) (i)	Named place of destination, in Kenya is Voi Kenya
ITT 13.8 (b) (ii)	price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination which is – Taita Taveta University
13.8 (c) (iv)	place of final destination (Food court Site) is-Taita Taveta University
ITT 14.2	Foreign currency requirements – <b>Quote in Kenya Shillings</b>
ITT 15.4	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <b>N/A</b>
ITT 16.2 (a)	Manufacturer's authorization is: <b>N/A</b>
ITT 16.2 (b)	After sales service is: <b>N/A</b>
ITT 17.1	The Tender validity period shall be <b>120</b> days.

<b>ITT 17.3</b>	<p>(a) The Number of days beyond the expiry of the initial tendervalidity period will be 30 days.</p> <p>(b) The Tender price shall be adjusted by the following percentagesof the tender price:  By _____% of the local  currency portion of the Contract priceadjusted to reflect local inflation during the period of  extension, and <b>N/A</b>  By _____% the foreign  currency portion of the Contract price adjusted to reflect the international inflation during  the period of extension. <b>N/A</b></p>
<b>ITT 18.1</b>	<p><b><i>[If a Tender Security shall be required, a Tender-SecuringDeclaration shall not be required, and vice versa.]</i></b>  A Tender Security <b>REQUIRED</b>  A Tender-Securing Declaration <b>shall be</b> required.</p>

ITT Refe rence	Particulars Of Appendix To Instructions To Tenders
	If a Tender Security shall be required, the amount and currency of the Tender Security shall be - <b>N/A</b>
ITT 19.1	In addition to the original of the Tender, the number of copies is: <b>One Original Only</b>
	<b>D. Submission and Opening of Tenders</b>
ITT 20.3	A tender package or container that cannot fit in the tender box shall be received as follows: <b>parcel to be kept by our Procurement office.</b>
ITT 21.1	<p>For <b><u>Tender submission purposes</u></b> only, the Procuring Entity's address is  Taita Taveta University, Off Voi – Taveta Road  P.O. Box 635 Voi Kenya  OR  Head of Procurement  Tel no.020-8150257  Email: <a href="mailto:procurement@ttu.ac.ke">procurement@ttu.ac.ke</a></p> <p><b>The deadline for Tender submission is:</b>  Date: <b>1<sup>st</sup> March, 2024</b>  Time 11.00 am</p> <p>Tenderers <b>shall not</b> have the option of submitting their Tenders electronically.  <i>[Note: The following provision should be included and the required corresponding information inserted <u>only</u> if tenderers have the option of submitting their Tenders electronically. Otherwise omit.]</i> <b>N/A</b></p> <p>The electronic Tendering submission procedures shall be: <i>[insert a description of the electronic Tendering submission procedures]</i> <b>N/A</b></p>
ITT 24.1	The Tender opening shall take place at: <b>University Boardroom located at the Administration Block, Taita Taveta University on 1<sup>st</sup> March, 2024 at 11.00 am</b>
ITT 24.6	The number of representatives of the Procuring Entity to sign <b>is at least three(3)</b>
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 29.3	The manner of rectify quantifiable nonmaterial nonconformities described below: _____ <b>N/A</b>

ITT 31.1	<p>The currency that shall be used for Tender evaluation and comparison purposes to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: <b>[KSH]</b></p> <p>The source of exchange rate shall be: <b>[the Central Bank in Kenya. Rate]</b></p> <p>The date for the exchange rate shall be: <b>[the deadline day or Tender opening day].</b></p>
ITT 32.3	<p>A margin of preference and/or reservation <b>shall not</b> apply and specify the details.</p> <p>If a margin of preference applies, the application methodology shall be defined in Section III – Evaluation and Qualification Criteria. <b>N/A</b></p>
ITT 32.5	<p>The invitation to tender is extended to the following group that qualify for Reservations_____NOT APPLICABLE_____</p> <p>_____</p> <p>who shall be duly registered with__NOT APPLICABLE</p> <p>_____</p> <p><i>(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which group qualifies). <b>N/A</b></i></p>
ITT 33.2	<p><b>Price evaluation will be done for L e a s e of Swimming Pool Facility alongside the adjacent Food Court</b></p> <p>_____</p>
ITT 33.2 (d)	<p>Additional evaluation factors are</p>
ITT 33.6	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria: <b>[refer to Section III, Evaluation and Qualification Criteria; insert complementary details if necessary]</b></p> <p><b>SEE EVALUATION CRITERIA BELOW.</b></p> <p>(a) Deviation in Delivery schedule: <b>[insert Yes or No. If yes insert the adjustment factor in Section III, Evaluation and Qualification Criteria]</b></p> <p>(b) Deviation in payment schedule: <b>[insert Yes or No. If yes insert the adjustment factor in Section III, Evaluation and Qualification Criteria]</b></p> <p>(c) the cost of major replacement component, mandatory spare parts, and service: <b>[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]</b></p> <p>(d) the availability in Kenya of spare parts and after-sales services for the equipment offered in the Tender <b>[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]</b></p> <p>(e) Life cycle costs: the costs during the life of the goods or equipment <b>[insert Yes or No. If yes, insert the Methodology and criteria in Section III, Evaluation and Qualification Criteria]</b></p> <p>(f) The performance and productivity of the equipment offered; <b>[Insert Yes or No. If yes, insert the Methodology and criteria]</b></p> <p><b>[insert any other specific criteria in Section III, Evaluation and Qualification Criteria]</b> <b>SEE EVALUATION CRITERIA BELOW.</b></p>



	<b>F. Award of Contract</b>
<b>ITT 41.1</b>	<p>The maximum percentage by which quantities may be increased is: <i>[insert percentage]</i></p> <p>The maximum percentage by which quantities may be decreased is: <i>[insert percentage]</i></p>
<b>ITT 41.1</b>	<p>The Procuring Entity shall increase or decrease the quantity of Goods and Related Services by an amount not exceed _____ and without any change in the unit prices or other terms and conditions of the Tender and the tendering document</p>
<b>ITT 47.3</b>	<p>Performance security if so required shall be in the sum of KES. 30,000.00 of the tender sum</p>
<b>ITT 49.1</b>	<p>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>.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by email or fax), to:</p> <p>For the attention: Title/position: <i>[Hod Procurement]</i></p> <p>Procuring Entity: <i>[Taita Taveta University]</i></p> <p>Email address: <i>[procurement@ttu.ac.ke]</i></p> <p>In summary, a Procurement-related Complaint may challenge any of the following: Tendering Documents; and the Procuring Entity’s decision to award the contract.</p>

## **1. Evaluation of Tenders (ITT 33)**

### **1.1 Successful Tender or Tenders**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate Tenders. By applying these criteria and methodologies, the Procuring Entity shall determine the successful Tender or Tenders which has/have been determined to:

- a) be substantially responsive to the tender documents;
- b) offer the highest evaluated price to the Procuring Entity for all items of Goods to be procured based on either a single Contract or all multiple Contracts combined, as the case may be, in accordance with the ITT 13.6 inviting Tender prices and discounts, and provisions made of the Tender Document for evaluation of tenders and award of contract (s); and
- c) be offered by Tenderer or Tenderers that substantially meet the qualification criteria applicable for Contract or combined Contracts for which they are selected.

### **1.2 Evaluation of Tenders**

#### **Preliminary examination for Determination of Responsiveness**

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

## **PRICE EVALUATION**

Consistent with and in addition to the criteria listed in ITT 33.3 and ITT 29.3; and ITT 34 and its subparagraphs the following criteria shall apply:

### **2.2.1 Evaluation of Technical aspects of the Tender**

The Procuring Entity shall evaluate the Technical aspects of the Tender to determine compliance with the Procuring Entity's requirements under Section V 'Schedule of Requirement' and whether the Tenders are substantially responsive to the Technical Specifications and other Requirements

## **BACKGROUND**

- The Food court facility is situated within the University premises next to the swimming pool and other sporting facilities. The location is convenient for staff, students and other guests from within and without. It is spacious, well ventilated and with sufficient security convenient for modern hotel services. It has a spacious front area ideal for putting up shades to create more

sitting capacity.

- The Food court facility is a permanent building composed of a restaurant, kitchen, service bay, washroom, a store, office and open fenced front space ideal for erecting temporary shades.
- The Food court has a capacity of more than 50 people.
- This facility is well painted and maintained with a scenic view of the magical Sagalla Hills.
- The facility is new and can operate during day up to late in the evening depending on the needs of the customers.
- There is a reliable supply of water and electricity at a cost or metered at own cost.
- The overall security of the facility is provided for by the University.

#### **Notes**

- The successful bidder shall be required to pay a three months (3) deposit before operating the Food court. Prices quoted should be net inclusive of all taxes and must be in Kenya Shillings and shall remain valid for 365 days from the closing date of the tender.
- Inspection - The premises shall be offered on “**as is where is and whatever there is**” basis. The tenderer is expected to have inspected the premises and acquaint himself/herself with the property before placing the bid.
- Extent of area: -For hotel space the premises being offered is on built-up area basis i.e. area of the floor including core area and the peripheral walls on the respective floors and the open secured front space.
- Period of Lease: -The lease shall be for maximum period of 36 months. The Rent is payable monthly in advance plus a security deposit equivalent to 3 months’ rent and service charge interest free and the same shall be refunded after the premise is vacated.
- Agreement may be renewed for a further period of 12 months if both the parties agree
- Commencement of lease: Rent shall be payable from the date of entering into
- Taxes: County taxes as applicable shall be borne by the tenderer / Lessee. Present and future Taxes if any, shall be paid by licensee/lessee only

#### **SECTION V- SCHEDULE OF REQUIREMENTS**

- a) Evaluation shall be carried out in **TWO stages** (Mandatory and Technical evaluations),
- b) Only firms meeting Mandatory requirements shall qualify for the subsequent stages of evaluation.
- c) Technical evaluation shall carry a maximum of 100% of total points.
- d) The minimum technical score will be 70% to proceed to the next stage of evaluation.

## **MANDATORY REQUIREMENTS**

	<b>Stage 1: Preliminary Evaluation /Mandatory Requirements</b> The following requirements MUST be met by the tenderer	
No	<b>REQUIREMENTS</b>	<b>YES/NO</b>
1	Provide a copy of relevant trade license.	
2	Provide Copy of certificate of incorporation/Registration.	
3	Copy of Valid Tax Compliance.	
4	List of directors of the company	
5	Copy of AGPO Certificate ( where applicable)	
6	Physical address/ telephone numbers/ email address.	
7	Must have continuous experience of 2 years and above in running a swimming pool and hotel business	
8	Food handlers medical examination certificates	
9	Certificates for swimming pool personnel; a) Life Saving b) First Aid c)Swimming	

At this stage the tenderer's submission will either be responsive or non- responsive.

The non-responsive submissions will be disqualified from the evaluation process and will not be considered further.

### **Technical Proposals/evaluation criteria**

Technical proposal will account for 100 points of the overall points for this ~~and~~ The proposals will be evaluated using the following criteria:

#### **2. Technical Evaluation**

Item	Description	Max. Point		Raw Points Scored
1	Demonstrate availability of key equipment to run the facility	5	14	
2	Swimming Pool attendant. Certificates for ; a) Life Saving (3 mks) b) First Aid (3 mks) c)Swimming (3 mks)	9		
2	Key Personnel (Attach evidence)			
	Demonstrate possession of the required skills and knowledge of the contact manager and operational staff	10		
	Provide CVs, this should contain qualification of personnel at least 2 qualified cooks with certificates from recognized institutions, diploma qualification will be added advantage, at least two years' experience in similar environment	10	30	

	At least 3 Waiters: Certificate in Food and Beverage Course from a recognized institution, have an experience of 2 years in hospitality in similar environment will be added advantage	10		
3	Demonstrate Continuous experience of 2 years and above in running a hotel business	10		
4	Demonstrate with proof of evidence of a sound financial base with annual turnover of Kshs. 2,000,000.	10		
5	Demonstrate past performance with at least 5 referees where similar services have been successfully undertaken and their current contacts	10		
6	Provide operation plan to cater for convenience of University community	10		
7	Firm's profile			
	a) Physical address- evidence of physical location	3	6	
	b) Telephone numbers- evidence of contact telephone number, Email address	3		
8	Provide Menu offered including their prices (Quality and affordability will count	10		
	TOTAL	100		

**N/B: The University may conduct a due diligence before an award to the successful bidder**

## 1. **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 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..**1<sup>st</sup> March, 2024 at 11.00 am **ITT No.:**

..... *[insert number of ITT process]*

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

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

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with Instructions to Tenderers (ITT 8);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-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 4.8;
- d) **Conformity:** We offer to provide design, supply and installation services in conformity with the tendering document of the following: *[insert a brief description of the IS Design, Supply and Installation Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is: *[Insert one of the options below as appropriate]*  
*[Option 1, in case of one lot:]* Total price is:  
*[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*;  
Or  
*[Option 2, in case of multiple lots:]*  
(a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and  
(b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- (f) **Discounts:** The discounts offered and the methodology for their application are:
  - i) The discounts offered are: *[Specify in detail each discount offered.]*
  - ii) The exact method of calculations to determine the net price after application of



discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts]*;

- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS ITT 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS ITT 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;**Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- h) **One Tender per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 13;
- i) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not in eligible under Laws of Kenya 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 4.7];*
- k) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount

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

- l) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- m) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- n) **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.

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

- o) **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.
- p) **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.

- q) We, the Tenderer, have fully completed 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 of 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 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].*

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_ [Name of Procurement 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 \_\_\_\_\_

The swimming pool facility at the main campus will be leased alongside the adjacent food court which is part of the facility

### **Measurements**

a) **The Swimming pool**

Measurements: 25m x 12.5m with shallow end 1 metre height and deep end with a depth of 2.35m high.

b) **Food court**

**Measurements**

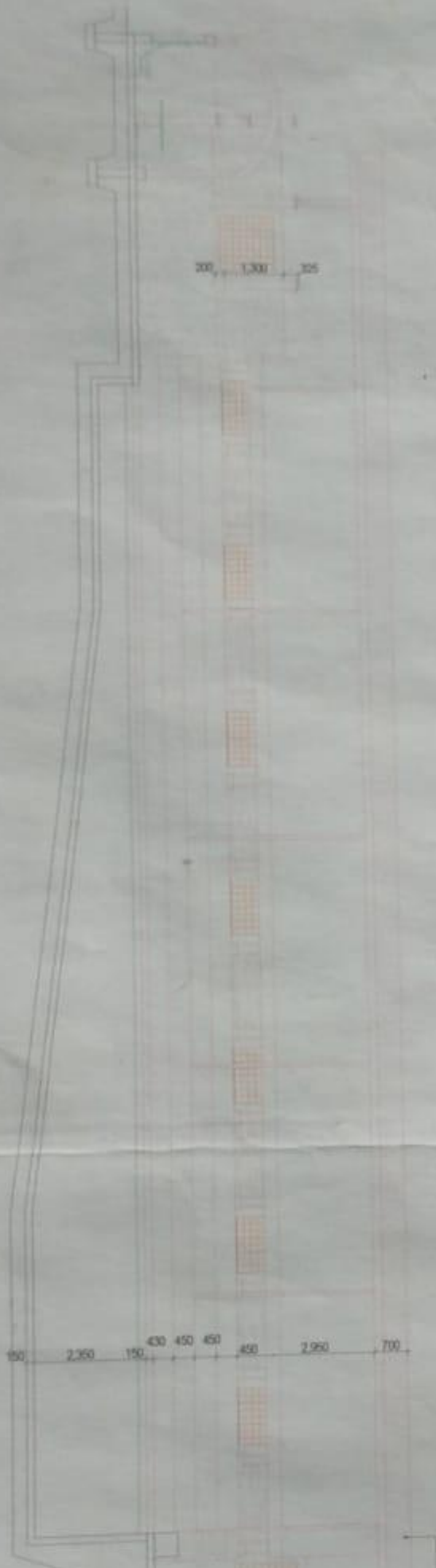
1. Serving area 7.6mx1.7m
2. Cooking area 7.6mx 4.9m
3. Store area 2.0m x 2.5m
4. Office area 4.2m x 2.5m

**Other features of the Food court are;**

1. Two Kitchen worktops with kitchen sinks.
2. Two bathrooms and two toilets.
3. Entrance and exit double doors
4. With an open space outside of approximate area of 30m x 10m
5. The facility has a perimeter fence and a lockable gate.

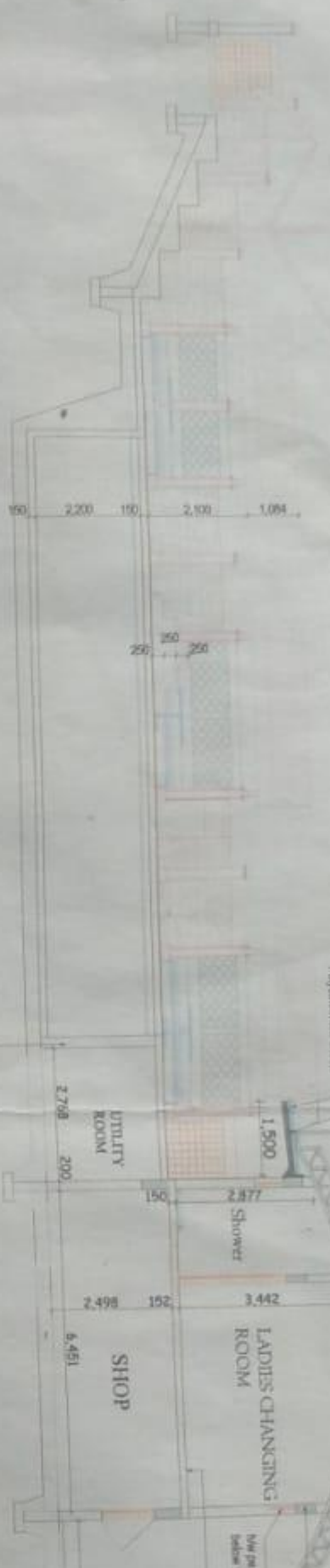
### **Photos Of The Facility**

# Section A-A



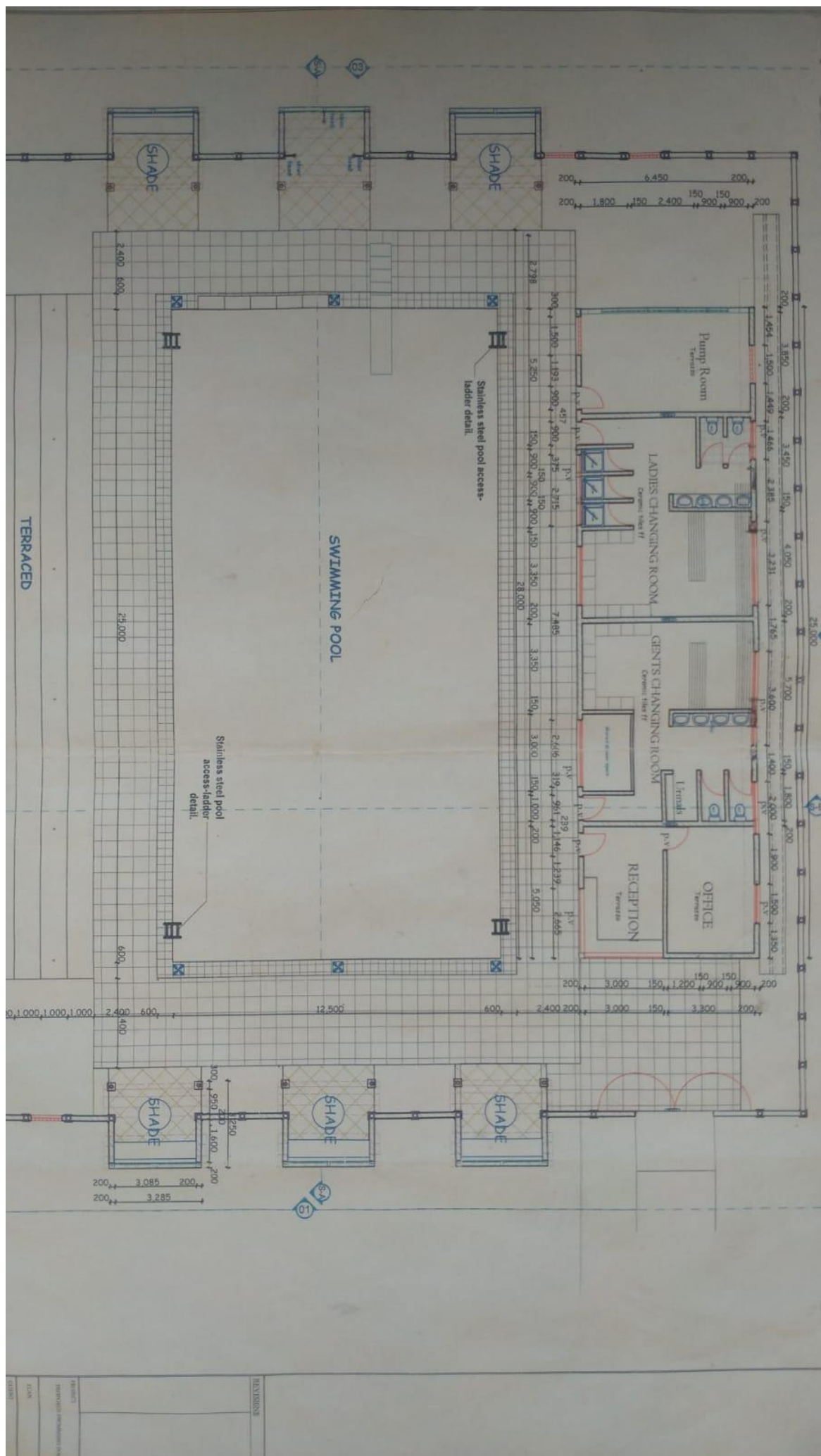
# SECTION B-B

Retaining wall to s.e details















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 unit*) 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 herein above is true to the best of my  
knowledge, information and belief.

.....

.....

.....

(Title)

(Signature)

(Date)

Bidder Official Stamp

## FORM SD2

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of .....  
... (insert name of the Company) who is a Bidder in respect of ..... **Tender No.** .....  
for ..... (Insert tender title/description)  
for ..... (insert name of the Company ) 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 Procurement Entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (name of the procuring Entity).
4. THAT the aforesaid Bidder will not engage/has not engaged in any corrosive practice with other bidders participating in the subject tender.
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....  
(Signature)

Bidder's Official Stamp

## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name ..... of ..... Authorized  
signatory.....  
.....

Sign.....  
.....

Position.....  
.....

Office ..... address.....

Telephone.....

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

Name ..... of ..... the  
Firm/Company.....  
.....

Date.....  
.....

***(Company Seal/ Rubber Stamp where applicable)***

WitnessName

.....

.....

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;
    - c) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 4) 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 bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
  - 5) 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;

- 6) 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.

23 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 debar 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 Procurement 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 thereof 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 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. 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"/> For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue

Authority in accordance with ITT 3.14.

☐ 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 3.4.

☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1.

☐ In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing:

(i) Legal and financial autonomy

(ii) Operation under commercial law

(iii) Establishing that the tenderer is not under the supervision of the Procuring Entity

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

## TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESSQUESTIONNAIRE FORM

a) Instruction to Tenderer

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

### A. Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Name of the Tenderer	
3	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	
8		

### General and Specific Details

b) Sole Proprietor, provide the following details.



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

\_\_\_\_\_

Age\_\_\_\_\_Nationality\_\_\_\_\_

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

=====

c) Partnership, provide the following details.

	<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 an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

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

- (ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provided details of the relationship with Tenderer
1	Tenderer is directly or indirectly controlled by or is under common Control with another tenderer.		
2	Tenderer receives or has received Any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to Influence the tender of another tenderer, 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 contracts 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 Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

(f) Certification

On behalf of the Tenderer, I certify that the information given above is correct.

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

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

(Signature)

(Date)

## SECTION VII - 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
<b>GCC 1.1(h)</b>	The Procuring Entity is: <b>Taita Taveta University</b>
<b>GCC 4.2 (a)</b>	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: <i>[exceptional; refer to other internationally accepted trade terms]</i>
<b>GCC 4.2 (b)</b>	The version edition of Incoterms shall be <i>INCOTERMS2015</i>
<b>GCC 8.1</b>	For <b><u>notices</u></b> , the Procuring Entity's address shall be: Attention: <i>[insert full name of person, if applicable]</i> <b>Taita Taveta University,</b> <b>Off Voi – Taveta Road,</b> <b>P.O. Box 635,</b> <b>Voi – Kenya</b>
<b>GCC 10.4.2</b>	The place of arbitration shall be----- (specify City and Country).
<b>GCC 13.1</b>	Details of Shipping and other Documents to be furnished by the Supplier are <i>[insert the required documents, such as a negotiable bill of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, Manufacturer's or Supplier's warranty certificate, inspection certificate issued by nominated inspection agency, Supplier's factory</i>

	<p><i>shipping details etc.].</i></p> <p>The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 15.1</b>	<p>The prices charged for the Goods supplied and the related Services performed “<b>shall not</b>,” be adjustable.</p> <p>If prices are adjustable, the following method shall be used to calculate the price adjustment <i>[see attachment to these SCC for a sample Price Adjustment Formula]</i></p>
<b>GCC 16.1</b>	<p><b><i>Sample provision</i></b></p> <p>GCC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>A. Payment for Goods supplied from abroad:</b></p> <p>Payment of foreign currency portion shall be made in <i>[insert currency of the Contract Price]</i> in the following manner:</p> <p>(i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and, in the form, provided in the Tendering document or another form acceptable to the Procuring Entity.</p> <p>(ii) <b>On Shipment:</b> Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favour of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 12.</p>

	<p>(iii) <b>On Acceptance:</b> Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Procuring Entity.</p> <p><b>B. Payment of local currency portion of a foreign Supplier shall be made in <u>Kenya shillings</u> within thirty (30) days of presentation of claim supported by a certificate from the Procuring Entity declaring that the Goods have been delivered and that all other contracted Services have been performed.</b></p> <p><b>C. Payment for Goods and Services supplied from within Kenya:</b></p> <p>Payment for Goods and Services supplied from within Kenya shall be made in _____/[ksh], as follows:</p> <p>(i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against an invoice and a bank guarantee for the equivalent amount and in the form provided in the Tendering document or another form acceptable to the Procuring Entity.</p> <p>(ii) <b>On Delivery:</b> Eighty (80) percent of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13. The bank guarantee shall then be released.</p> <p>(iii) <b>On Acceptance:</b> The remaining ten (10) percent of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Procuring Entity.</p>
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<b>GCC 16.5</b>	<p>The payment-delay period after which the Procuring Entity shall pay interest to the supplier shall be <i>[insert number]</i> days.</p> <p>The interest rate that shall be applied is <i>[insert number]</i> %</p>
<b>GCC 18.1</b>	<p>A Performance Security <i>[insert “shall” or “shall not” be required]</i></p> <p><i>[If a Performance Security is required, insert “the amount of the Performance Security shall be: [insert amount]</i></p> <p><i>[The amount of the Performance Security is usually expressed as a percentage of the Contract Price. The percentage varies according to the Procuring Entity’s perceived risk and impact of non-performance by the Supplier. A 10% percentage is used under normal circumstances]</i></p>
<b>GCC 18.3</b>	<p><b>If required, the Performance Security shall be in the form of: <i>[insert “a Demand Guarantee” or” a Performance Bond”]</i></b></p> <p>If required, the Performance security shall be denominated in <i>[insert “a freely convertible currency acceptable to the Procuring Entity” or “the currencies of payment of the Contract, in accordance with their portions of the Contract Price”]</i></p>
<b>GCC 18.4</b>	<p>Discharge of the Performance Security shall take place: <i>[insert date if different from the one indicated in sub clause GCC 18.4]</i></p>
<b>GCC 23.2</b>	<p>The packing, marking and documentation within and outside the packages shall be: <i>[insert in detail the type of packing required, the markings in the packing and all documentation required]</i></p>

<b>GCC 24.1</b>	<p>The insurance coverage shall be as specified in the Incoterms.</p> <p>If not in accordance with Incoterms, insurance shall be as follows:</p> <p><i>[insert specific insurance provisions agreed upon, including coverage, currency and amount]</i></p>
<b>GCC 25.1</b>	<p>Responsibility for transportation of the Goods shall be as specified in the Incoterms.</p> <p>If not in accordance with Incoterms, responsibility for transportation shall be as follows: <i>[insert "The Supplier is required under the Contract to transport the Goods to a specified place of final destination within Kenya, defined as the Project Site, transport to such place of destination in Kenya, including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price"; or any other agreed upon trade terms (specify the respective responsibilities of the Procuring Entity and the Supplier)]</i></p>
<b>GCC 25.2</b>	<p>Incidental services to be provided are:</p> <p><i>[Selected services covered under GCC Clause 25.2 and/or other should be specified with the desired features. The price quoted in the Tender price or agreed with the selected Supplier shall be included in the Contract Price.]</i></p>
<b>GCC 26.1</b>	<p>The inspections and tests shall be: <i>[insert nature, frequency, procedures for carrying out the inspections and tests]</i></p>
<b>GCC 26.2</b>	<p>The Inspections and tests shall be conducted at: <i>[insert name(s) of location(s)]</i></p>
<b>GCC 27.1</b>	<p>The liquidated damage shall be: <i>[insert number]</i> % per week</p>
<b>GCC 27.1</b>	<p>The maximum amount of liquidated damages shall be: <i>[insert number]</i> %</p>
<b>GCC 28.3</b>	<p>The period of validity of the Warranty shall be: <i>[insert</i></p>

	<p><i>number]</i> days</p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be:</p> <p><i>[insert name(s) of location(s)]</i></p> <p><b><i>Sample provision</i></b></p> <p>GCC 28.3—In partial modification of the provisions, the warranty period shall be _____ hours of operation or _____ months from date of acceptance of the Goods or (_____) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either:</p> <p>(a) make such changes, modifications, and/or additions to the Goods or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with GCC 26.7,</p> <p><b>or</b></p> <p>(b) pay liquidated damages to the Procuring Entity with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be(_).</p> <p><i>[The rate should be higher than the adjustment rate used in the Tender evaluation under TDS 34.6(f)]</i></p>
<b>GCC 28.5, GCC 28.6</b>	<p>The period for repair or replacement shall be: <i>[insert number(s)]</i> days.</p>

<b>GCC 33.6</b>	<p>If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Supplier shall be_% (insert appropriate percentage).</p> <p>The percentage is normally up to 50%) of the reduction in the Contract Price.</p>
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## SECTION VIII - CONTRACT FORMS

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

### FORM 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) Employer: \_\_\_\_\_ *[insert the name of the Employer]*
- 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.

S/No.	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	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 atmidnight on [insert date] (local time).
  - 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]
    - ii) Agency:\_\_\_\_\_ [insert name of Employer]
    - iii) 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, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: \_\_\_\_\_ *[insert full name of person, if applicable]*
  - ii) Title/position: \_\_\_\_\_ *[insert title/position]*
  - iii) Agency: \_\_\_\_\_ *[insert name of Employer]*
  - iv) Email address: \_\_\_\_\_ *[insert email address]*
- 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 Fourteen (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 Employer:

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

*Name:*\_\_\_\_\_ *Titl*



**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 ReviewBoard 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/ordersthat:

- 1.
- 2.

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

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—

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

**SIGNED**

**Board Secretary**

**FORM NO. 3 LETTER OF AWARD**

*[Use letter head paper of the Procuring Entity]*

\_\_\_\_\_ *[Date]*

To: \_\_\_\_\_ *[name and address of the Supplier]*

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

This is to notify you that your Tender dated \_\_\_\_\_  
\_\_\_\_\_ ***[insert date]*** for execution of the \_\_\_\_\_ ***[insert name of the contract and identification number, as given in the SCC]*** for the Accepted Contract Amount of ***[insert amount in numbers and words and name of currency]***, as corrected and modified in accordance with the Instructions to tenderers is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 30 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.....

***Attachment: Contract Agreement***

## FORM NO. 4 - 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 Procurement Entity and having its principal place of business at [insert: address of Procuring Entity] (hereinafter called "Procuring Entity")*, of \_\_\_\_\_ the one part; and (2) \_\_\_\_\_ *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at \_\_\_\_\_ *[insert: address of Supplier]* (hereinafter called "the Supplier"), of the other part.

1. WHEREAS the Procurement Entity invited Tenders for certain Goods and ancillary services, viz., \_\_\_\_\_ *[insert]* Procurement Entity and the Supplier 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 Procurement Entity to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Procurement Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
2. The Procurement Entity hereby covenants to pay the Supplier in consideration of the provision of the Goods 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.
3. 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 Supplier**

Signed:\_\_\_\_\_ *[insert signature of authorized representative(s) of the Supplier]* in the  
capacity of \_\_\_\_\_ *[insert title or other appropriate designation]* in the presence of \_\_\_\_\_ *[insert identification of official witness]*

**FORM NO. 5 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of Employer]*

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

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

1. We have been informed that \_\_\_\_\_ (herein after called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with *(name of Employer)* \_\_\_\_\_ (the Employer as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter 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."

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

**FORM No. 6 - PERFORMANCE SECURITY [Option 2- PerformanceBond]**

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

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**\_\_\_\_\_ *[insert name and Address of Employer]* **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 Employer”) 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 Employer dated the \_\_\_\_\_ day of \_\_\_\_\_ 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 Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, 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 Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Employer 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 Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or

- 3) pay the Employer the amount required by Employer 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 Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.
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. 7 - ADVANCE PAYMENT SECURITY [Demand Bank  
Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:**

\_\_\_\_\_ *[Insert name and Address of Employer]*

**Date:**

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

**ADVANCE PAYMENT GUARANTEE No.:**

*Guarantee reference number]*

*[Insert*

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (Hereinafter 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 goods; 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.

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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.

.....

provisional sums, has been certified for payment, or on the \_\_\_ day of \_\_, 2\_\_\_,<sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

guarantee.

*seals/stamps]*

*must be made prior to the expiration date established in the guarantee.*

*shall be deleted from the final product.*

## FORM NO. 8 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

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

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- *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.*

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 ofthe board of the directors or an equivalent governingbody 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], [ins*