



KENYA ELECTRICITY GENERATING COMPANY PLC

KGn-HYD-031-2024

Rfx: 5000015538

TENDER FOR DESIGN, SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF
110VDC RECTIFIER FOR KAMBURU & MASINGA POWER STATIONS(Re-tender)

(CITIZEN CONTRACTORS)

Kenya Electricity Generating Company PLC
Stima Plaza Phase III, Kolobot Road, Parklands
P.O. BOX 47936-00100
NAIROBI.
Website: www.kengen.co.ke

June, 2024

INVITATION TO TENDER

PROCURING ENTITY: KENYA ELECTRICITY GENERATING COMPANY PLC

CONTRACT NAME AND DESCRIPTION: TENDER FOR DESIGN, SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 110VDC RECTIFIER FOR KAMBURU & MASINGA POWER STATIONS(Re-tender)

KenGen PLC invites sealed tenders from eligible candidates for the **Tender for Design, Supply, Installation, Testing and Commissioning of 110VDC Rectifier for Kamburu & Masinga Power Stations**, whose specifications are detailed in the Tender Document

Tendering will be conducted under Open Tendering method to **Citizen Contractors** using a standardized tender document. Tendering is open to all qualified and interested Tenderers.

The tender is specific to **Citizen Contractors**

You may obtain further information and inspect the Tender Documents during office hours between 8am and 5pm starting at the date of advert at the office of:

General manager Supply Chain

Tel: (254) (020) 3666000

Email: tenders@kengen.co.ke; cc ykiili@kengen.co.ke; cc pmuli@kengen.co.ke; cc dambetsa@kengen.co.ke; dgichobi@kengen.co.ke;

The document can be viewed and downloaded for free from the website www.kengen.co.ke and/or on Eprocurement <https://eprocurement.kengen.co.ke:50001/irj/portal> . Tenderers who download the tender document must forward their particulars immediately to (tenders@kengen.co.ke, 0711036000 and P.O.BOX 47936-00100 postal address) to facilitate any further clarification or addendum

Bidders who are unable to download the tender documents from the website may collect them from any KenGen Supply Chain Office upon payment of a non-refundable fee of **KShs.1, 000.00** paid via Mpesa, pay bill no. **400200** and account no. **01120069076000**, then share the MPesa message to KenGen Finance office staff for receipt and issuance of official receipt or through a banker's cheque and payable to the address given below.

All Tenders must be accompanied by a “**Tender Security**”

The Original Tender Security of **KES 600,000.00** or equivalent in a freely convertible currency, in form of:

- Tender Security from a **reputable bank** registered by the Central Bank of Kenya
- Guarantee issued by a **financial institution** approved and licensed by the Central Bank of Kenya.
- A guarantee by an **insurance company** registered and licensed by the Insurance Regulatory Authority listed by the Public Procurement Regulatory Authority.

Valid for 30 days beyond the tender validity period. All tender securities submitted shall be subject to authentication by KenGen and **MUST** be submitted in a plain sealed envelope and clearly marked “**KGN-HYD-031-2024**” - Tender for Design, Supply, Installation, Testing and Commissioning of 110VDC Rectifier for Kamburu & Masinga Power Stations and addressed to:

General Manager, Supply Chain,
Kenya Electricity Generating Company PLC,
Ground Floor, KenGen Pension Plaza I,
Kolobot Road, Parklands,
P.O. Box 47936, 00100

NAIROBI.

Note; The hard copy of the Original Tender Security/ E- Tender securities clearly labeled with tender name and tender description should be dropped at the tender box located on Ground Floor at KenGen, KenGen, RBS building on or before the tender closing Date and Time.

Electronic tender securities are acceptable and shall be authenticated using the QR scanner.

E- Tender securities are acceptable subject to:

- i. Attachment of a scanned copy to the bid document.
- ii. Submission of the e-security to the address indicated below:
 - Such E-Security can be verified by use of a Quick Response (QR) code
 - Such E-Security can be verified via the issuing institution's online portal

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

There shall be a Mandatory Site Visit on 25th June, 2024 at Kamburu & Masinga Power Stations starting at 10.00 a.m. Starting point is Kamburu Power Stations

Completed Tender **must** be submitted online on or before: **9th July, 2024 at 2.00 p.m.**

Electronic submission shall be permitted through our e-procurement platform found at www.kengen.co.ke (<https://eprocurement.kengen.co.ke:50001/irj/portal>) on or before tender closing date and time. Firefox Mozilla is the preferred web browser.

[Hard copies of the tender document shall not be permitted]

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.

Late tenders will be rejected.

1. The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

Physical address for hand Courier Delivery to an office or Tender Box (City, Street Name, Building, Floor Number and Room)

Kenya Electricity Generating Company PLC
Stima Plaza Phase III, Kolobot Road, Parklands
P.O. BOX 47936-00100
Tenders@kengen.co.ke;

B. Address for Opening of Tenders.

General Manager, Supply Chain
Kenya Electricity Generating Company PLC
KenGen RBS, Kolobot Road, Parklands
P.O. BOX 47936-00100
6th Floor

**KenGen adheres to high standards of integrity in its business operations.
Report any unethical behavior immediately to any of the provided anonymous hotline service.**

- 1) Call Toll Free: 0800722626; 2) Free-Fax: 00800 007788;
- 3) Email: kengen@tip-offs.com 4) Website: www.tip-offs.com

GENERAL MANAGER, SUPPLY CHAIN

PART 1 ~ TENDERING PROCEDURES

SECTION I: INSTRUCTIONS TO TENDERERS

A General Provisions

1. Scope of Tender

1.1 The Procuring Entity as defined in the TDS invites tenders for supply of goods 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.

1.2 Throughout this tendering document:

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

2. Fraud and Corruption

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

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

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

3. Eligible Tenderers

3.1 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.

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

Public Officers are also not allowed to participate in any procurement **proceedings**.

- 3.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b) receives or has received any direct or indirect subsidy from another Tenderer; or
 - c) has the same - 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 IIT 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.
- 3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.
- 3.5 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.
- 3.6 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.
- 3.7 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)
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis. Public employees and their close relatives are not eligible to participate in the tender.
- 3.9 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 Procuring Entity, as the Procuring Entity shall reasonably request.

- 3.10 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation **for tenders**.
- 3.11 Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the **TDS**
- 3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.
- 3.13 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

- 4.1 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.
- 4.2 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.
- 4.3 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.
- 4.4 A procuring 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.
- 4.5 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

- 5.1 The tendering document consist of Parts 1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with 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 the Procuring Entity is not part of the tendering document.
- 53 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the minutes of the pre-tender meeting (if any), or addenda to the tendering document in accordance with 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

- 6.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring 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. The Procuring 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 Procuring 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 Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 7.
- 6.2 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Tenderer's designated representative is invited to attend a pre-Tender 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.
- 6.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 6.4 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.
- 6.5 The Procuring 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 Procuring 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

- 7.1 At any time prior to the deadline for submission of Tenders, the Procuring 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 Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 7.1.

73 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 21.2.

C. Preparation of Tenders

8. Cost of Tendering

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

9. Language of Tender

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

10. Documents Comprising the Tender

10.1 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 ITT 13.
- 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

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialise pages of all tender documents submitted.

12. Alternative Tenders

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

13. Tender Prices and discounts

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

13.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.

13.3 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.

13.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.

13.5 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.

13.6 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.

13.7 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.

13.8 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 Procuring Entity. This shall not in any way limit the Procuring 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

- 14.1 The currency (ies) of the Tender, the currency (ies) of award and the currency (ies) of contract payments shall be the same.
- 14.2 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.
- 14.3 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

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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 Procuring Entity.
- 15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring 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 Procuring 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**
- 16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- a) that, if required in the TDS, 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**
- 17.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 21.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 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.
- 17.3 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**
- 18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.
- 18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 18.3 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 Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring 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 Procuring 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 Procuring 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 Procuring 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 ITT3.1 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 initialled 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 member's legally authorized representatives.

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

D. SUBMISSION AND OPENING OF TENDERS

20 Sealing and Marking of Tenders

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

- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in 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.

20.2 The inner envelopes or packages or containers shall:

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

20.3 Where a tender package or container cannot fit in the tender box, the procuring 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.

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

21. Deadline for Submission of Tenders

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

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

22. Late Tenders

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

23. Withdrawal, Substitution, and Modification of Tenders

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the

authorization (the power of attorney) in accordance with ITT19.3, (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 Procuring 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

24.1 Except as in the cases specified in ITT 23, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives who 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**.

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

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

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

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

24.6 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 Procuring Entity to sign shall be specified in the **TDS**.

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

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

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

e) number of pages of each tender document submitted.

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

E. Evaluation and Comparison of Tenders

25. Confidentiality

25.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.

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

25.3 Notwithstanding ITT 25.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

26. Clarification of Tenders

26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 30.

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

27. Deviations, Reservations, and Omissions

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

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

28. Determination of Responsiveness

28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT28.2.

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 Procuring Entity's rights or the Tenderer obligations under the Contract; or
 - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 28.2 The Procuring 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.
- 28.3 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

29. Non-conformities, Errors and Omissions

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

31. Arithmetical Errors

- 31.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 31.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
 - b) Any errors in the submitted tender arising from a miscalculation of unit 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.

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

32. Conversion to Single Currency

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

33. Margin of Preference and Reservations

- 33.1 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.

33.2 For purposes of granting a margin of preference on locally manufactured goods under international competitive tendering, a procuring 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.

33.3 A margin of preference shall not be allowed unless it is specified so in the **TDS**.

33.4 Contracts procured on basis of international competitive tendering shall not be subject to reservations to specific groups as provided in ITT 32.5.

33.5 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 procuring 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.

34. Evaluation of Tenders

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

- a) substantially responsive to the tender documents; and
- b) the lowest evaluated price.

34.2 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 Procuring Entity shall consider the following:

- a) price adjustment due to unconditional discounts offered in accordance with ITT 13.4;
- b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 31;
- c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 29.3; and
- d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

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

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

34.5 The Procuring Entity's evaluation of a Tender will include and consider:

- 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;

- 34.6 The Procuring 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).

35. Comparison of Tenders

- 35.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be 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 Kenya, together with prices for any required installation, training, commissioning and other services.

36. Abnormally Low Tenders

- 36.1 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 Procuring Entity as to the capability of the Tenderer to perform the Contract for the offered Tender price.
- 36.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procuring 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.
- 36.3 After evaluation of the price analysis, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the contract for the offered Tender price, the Procuring Entity shall reject the Tender.

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

38. Post Qualification of the Tenderer

38.1 The Procuring 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.

38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to IIT 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.

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

39. Lowest Evaluated Tender

39.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest 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 lowest evaluated price.

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

40.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to 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

41. Award Criteria

The Procuring 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.

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 Procuring Entity shall issue a Notification of Intention to Enter into a Contract / Notification of award to all tenderers which shall contain, at a minimum, the following information:

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

43. Standstill Period

43.1 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.

- 43.2 Where standstill period applies, it shall commence when the Procuring 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

- 44.1 On receipt of the Procuring 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 Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

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

45. Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

46. Signing of Contract

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

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

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

47. Performance Security

- 47.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring 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 Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

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

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

48. Publication of Procurement Contract

Within fourteen days after signing the contract, the Procuring Entity shall publish and publicize the awarded contract at its notice boards, 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 Procuring Entity;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration.
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening;

49. Procurement Related Complaint

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

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	A. General
ITT 1.1	<p>The reference number of the Invitation for Tenders is: [KGN- HYD-031-2024]</p> <p>The Procuring Entity is: <i>Kenya Electricity Generating Company Plc</i></p> <p>The name of the Contract is: TENDER FOR DESIGN, SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 110VDC RECTIFIER FOR KAMBURU POWER & MASINGA STATIONS.</p>

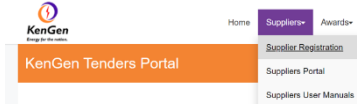
ITT
1.2(a)

Electronic –Procurement System

The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process via [www.kengen.co.ke \(https://eprocurement.kengen.co.ke:50001/irj/portal/\)](https://eprocurement.kengen.co.ke:50001/irj/portal/)

Internet Explorer and Firefox Mozilla are the Preferred web browsers.

1. For suppliers registering for the first time using the link [https://supplierregistration.kengen.co.ke:4302/slc_selfreg\(bD11biZjPTMwMCZkPW1pbg==\)/bspwdapplication.do#VIEW_ANCHOR-ROS_TOP](https://supplierregistration.kengen.co.ke:4302/slc_selfreg(bD11biZjPTMwMCZkPW1pbg==)/bspwdapplication.do#VIEW_ANCHOR-ROS_TOP) ensure the “Public Tender” checkbox is ticked so that the login details are sent to suppliers automatically.



2. It is a mandatory requirement all Documents MUST be uploaded to the SRM System through the link <https://eprocurement.kengen.co.ke:50001/irj/portal> found on www.kengen.co.ke.



After clicking on the Event Number, then click on Register (for Open tenders), then click on ‘Create Response’, bidders to click on ‘Technical RFx Response’ tab to access the cfolder page to upload your document.

Instructions to Bidders: Caution on Uploading Bid Documents

a. Preferred Submission Method: Bidders are advised to use the C-Folder for submitting their tenders. This platform is specifically designed to handle bulky technical bid documents of up to 99MB per file.

b. Exceeding File Size Limit: In the event that the bid response exceeds the 99MB limit: ~

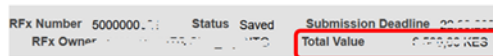
i. Bidders should try to compress the pdf file first to file size less than 99MB and if compressing doesn’t reduce the file size consider option (ii) below.

ii. Split the documents into two or more separate files before submission. This ensures the integrity of the tendering process and accurate evaluation of all necessary information.

c. Bids uploaded on “Notes and Attachments Tab” may have a transmission failure and the bid may not be successfully received through the system and KenGen will not be held accountable for failure to transmit on eProcurement portal.


d. Assistance and Inquiries: For any questions or further assistance, bidders are encouraged to reach out to the team at least 24 hours before submission deadline through eprocurement@kengen.co.ke ; or tenders@kengen.co.ke ; or visit our offices through the Karibu Centre.

• Prices MUST be entered under item tab of the RFx and MUST be similar to the prices in the price/BoQ Schedule.



• Bidders should confirm on the supplier portal that the status of their RFx response shows “Submitted” and not “Saved” to ensure their RFx response is submitted.

Event Number	Event Description	Event Type	Event Status	Start Date	End Date	Response Number	Response Status
5000000000	Test Bid Invite	Open Tendering	Published		22.09.2024	6000000000	Saved
5000000000	Test 4	Open Tendering	Published		15.02.2024	6000000000	Submitted

	<ul style="list-style-type: none"> Bidders who have submitted their bids should not click on WITHDRAW but click on EDIT to amend their bid response with appropriate changes if they desire to do so. Manuals to guide on the bidding process are accessible via the KenGen Tenders Portal. <p>Bidders to note that system challenges/support related to bid submission issues shall be addressed to eprocurement@kengen.co.ke tender closing date and time.</p> 
ITT 3.0	<p>Eligibility</p> <p>This tender is open to Citizen Contractors. Tender eligibility and qualifications Proof of eligibility, qualification documents of evidence (see evaluation criteria)</p>
ITT 3.1	<p>Maximum number of members in the Joint Venture (JV) shall be three (3). No firm can participate in more than one JV for purposes of this tender</p>
ITT 3.7	<p>A list of debarred firms and individuals is available on the PPRA's website: www.ppra.go.ke</p>
ITT 3.11	<p>Tenderers shall be required to be registered with https://supplierregistration.kengen.co.ke:4302/slc_selfreg(bD1lbiZjPTMwMCZkPW1pbg==)/bspwdapplication.do#VIEW_ANCHOR-ROS_TOP and ensure the "Public Tender" checkbox is ticked so that the login details are sent to suppliers automatically.</p> <p>This is for suppliers registering for the first time to enable bidding via e-procurement portal</p>
	<p>B. Contents of Tendering Document</p>
ITT 6.1	<p>For Clarification of Tender purposes only, the Procuring Entity's address is: Attention: <i>General Manager Supply Chain, Kenya Electricity Generating Company PLC, 9th Floor, KenGen Pension Plaza II, Kolobot Road, Parklands, P.O. Box 47936, 00100 NAIROBI.</i></p> <p>tenders@kengen.co.ke; vkili@kengen.co.ke; pmuli@kengen.co.ke; dambetsa@kengen.co.ke; Requests for clarification should be received by the Procuring Entity no later than: <i>7 days before tender closing date.</i> Web page: www.kengen.co.ke.</p>
ITT 6.2	<p>There shall be a Mandatory Site Visit on 25th June, 2024 at Kamburu & Masinga Power Stations starting at 10.00 a.m. Starting point is Kamburu Power Stations</p>
ITT 6.3	<p>The questions to reach the Procuring Entity not later than 7 days before the tender closing date.</p>
	<p>C. Preparation of Tenders</p>
ITT 10 (j)	<p>The Tenderer shall submit the following additional documents in its Tender: as per the Tender Evaluation Criteria detailed in the Tender Document.</p>
ITT 12.1	<p>Alternative Tenders shall not be allowed.</p>
ITT 13.0	<p>Tender Prices Prices indicated in the tender form shall be inclusive of all applicable taxes and insurance</p>
ITT 13.5	<p>The prices quoted by the Tenderer shall not be subject to adjustment during the performance of the Contract.</p>
ITT 13.8 (a) (i)	<p>Place of destination: KAMBURU & MASINGA POWER STATIONS. POWER STATION</p>
ITT 14.2	<p>Foreign currency requirements allowed in a freely convertible currency</p>

ITT 16.2 (a)	Manufacturer's authorization is: Required where tenderer is not the original manufacturer.
ITT 17.1	The Tender validity period shall be 126 days from tender submission date.
ITT 17.3	(a) The Number of days beyond the expiry of the initial tender validity period will be 30 days.
ITT 18.1	<p>All Tenders must be accompanied by a "Tender Security"</p> <p>The Original Tender Security of KES 600,000.00 or equivalent in a freely convertible currency, in form of:</p> <ul style="list-style-type: none"> ➤ Tender Security from a reputable bank registered by the Central Bank of Kenya ➤ Guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya. ➤ A guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Public Procurement Regulatory Authority. <p>Valid for 30 days beyond the tender validity period. All tender securities submitted shall be subject to authentication by KenGen and MUST be submitted in a plain sealed envelope and clearly marked "KGN-HYD-031-2024- Tender for Design, Supply, Installation, Testing and Commissioning of 110VDC Rectifier for Kamburu & Masinga Power Stations Power Station and addressed to:</p> <p>General Manager, Supply Chain, Kenya Electricity Generating Company PLC, Ground Floor, KenGen Pension Plaza I, Kolobot Road, Parklands, P.O. Box 47936, 00100</p> <p>NAIROBI.</p> <p>Note; The hard copy of the Original Tender Security/ E- Tender securities clearly labeled with tender name and tender description should be dropped at the tender box located on Ground Floor at KenGen, KenGen, RBS building on or before the tender closing Date and Time.</p> <p>Electronic tender securities are acceptable and shall be authenticated using the QR scanner.</p> <p>E- Tender securities are acceptable subject to:</p> <ol style="list-style-type: none"> i. Attachment of a scanned copy to the bid document. ii. Submission of the e-security to the address indicated above: <ul style="list-style-type: none"> ➤ Such E-Security can be verified by use of a Quick Response (QR) code ➤ Such E-Security can be verified via the issuing institution's online portal
ITT 19.1	<p><i>Tender submission</i></p> <ul style="list-style-type: none"> • Online submission
ITT 19.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: a <i>Power of Attorney</i>
	D. Submission and Opening 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.

STAGE 1: MANDATORY REQUIREMENTS

No	MANDATORY REQUIREMENTS
MR 1	Copy of Registration Certificate /Certificate of Incorporation
MR 2	Valid copy of the Business Permit
MR 3	Valid KRA tax compliance certificate and PIN Certificate
MR 4	Copy of a valid CR 12 issued within 6 months of tender closure (where applicable)/Not Applicable to sole Proprietors, but attach copy of ID.
MR 5	Duly filled, signed & stamped Tenderer's Eligibility; Confidential Business Questionnaire
MR 6	Submit the Tender Security of KES 600,000.00 valid for 30 days beyond the tender validity period and in the form (s) indicated in the Tender Data Sheet (TDS). The Original Tender Security or e-Tender Security– enclosed in a plain sealed envelope clearly marked with the tender reference number & title- should be dropped at the tender box located on Ground Floor at KenGen Headquarter, RBS building, Parklands, Nairobi. On or before tender closing date and time
MR 7	Duly filled, signed, and stamped Form of Tender
MR 8	Duly filled, signed, and stamped Price Schedule
MR 9	Duly filled and stamped Addendum(s)/Clarification(s) issued must be attached. (where applicable)
MR 10	The Tender MUST be serialized on each page of the bid submitted, Sec.74.1. i. of the PPADA, 2015.
MR 11	The tender has been duly signed by the person lawfully authorized to do so through the Tender-specific <i>Power of Attorney</i>
MR 12	Tender documents Must be submitted through KenGen's <i>e-procurement platform</i> found at www.kengen.co.ke (https://eprocurement.kengen.co.ke:50001/irj/portal)
MR 13	Duly filled, signed, and stamped Self Declaration Form SD1 that the tenderer is not debarred in the matter of PPADA 2015
MR 14	Duly filled, signed, and stamped Self Declaration Form SD2 that the tenderer will not engage in any corrupt or Fraudulent Practice.
MR 15	Duly filled, signed and stamped Certificate of Independent Tender Determination
MR 16	Duly filled, signed and stamped Declaration and Commitment to the Code of Ethics
MR 17	Provide proof of Authorization from manufacturer by providing a Duly filled, signed and stamped Manufacturer's Authorization Letter (if bidder is not the manufacturer)
MR 18	Evidence of attendance to the Mandatory Site Visit (Attach Site Visit Certificate).

MR 19	Valid copy of NCA 8 Electrical Works and above	
MR 20	Annual Accounts The audited financial statements by a registered audit firm for the last 3 years shall be submitted and must demonstrate the current soundness of the Bidder's financial position and its prospective long-term profitability	
MR 21	Financial ratios	Current Ratio: 1:1
		Positive net worth in their audited balance sheet
		Debt to Equity Ratio – Less than 2.33x times
		At least one year out of the recent three years of positive Profit before Tax.
MR 22	<p>Those who do not have capacity can enter into a Joint venture. (where Applicable)</p> <ul style="list-style-type: none"> ▪ In case of JV, Joint venture Agreement MUST be Dully filled, signed and stamped. ▪ The Maximum number of Members in the JV should be Three (3). ▪ Duly filled Tenderer's JV Members Information Form. ▪ Note: In case of Joint venture (JV), Mandatory requirements; MR 1, MR 2, MR 3, MR 4, and MR 5 Shall be applicable to all members in the Joint Venture (JV). The rest of the MRS must be provided by the lead party. <p>In case of a Joint Venture, the members must provide a notarized power of attorney, nominating one member who will be authorized to act on their behalf. The nominated member will have the authority to exercise all rights and fulfill all obligations related to the Contract with the Procuring Entity. This includes without limitation, receiving instructions and handling payments from the Procuring Entity.</p>	

STAGE 2: TECHNICAL EVALUATION ON CAPACITY TO DELIVER THE CONTRACT

Technical evaluation shall be carried out only if the tender is determined to be responsive to the preliminary examination.

Bidder must demonstrate conformance to the all the technical specifications and requirements as per section V of the tender document, and as tabulated below.

ITEM	ITEM DESCRIPTION	Tenderers response (PASS/FAIL)
TR 1	<i>Technical Proposal</i> – showing compliance to technical requirements and supported by detailed technical data sheets, manuals, brochures, catalogues, type test reports and any other manufacturer's technical specifications documents duly stamped in bidders name	
TR 2	<i>Warranty</i> – minimum required warranty period of the parts indicated is twelve (12) months from commissioning date (from first use).	
TR 3	Duly filled, signed and stamped <i>Guaranteed Technical Particulars</i> . <i>Bidders response shall not be ambiguous, with statements such as “fully comply” or “yes”. Actual guarantee figures to be filled in the guarantee technical particulars</i>	
TR 4	<i>Spare parts and after-sales service</i> – documentary evidence and locations of service center(s) and spares	
TR 5	<i>Quality Assurance System of Manufacturer</i> – evidence attached of letter from Manufacturer indicating its conformity to ISO 9001 standard and backing the installations according to the Bidder's QAS	

TR 6	<i>Bidders Implementation Program</i> – detailed description of how the site works will be carried out, and timelines indicated by a Gantt chart, or similar tools attached. The delivery period indicated in the program shall not exceed twelve (12) months inclusive of commissioning.	
TR 7	<i>Curricula Vitae (CVs) / Resumes</i> – CVs of key technical personnel of the Contractor who shall conduct the site works and the site acceptance testing and commissioning, indicating their experience in similar works	
TR 8	Valid certification of the technical representative of the Manufacturer who shall undertake site training	
TR 9	<i>Job Safety Analysis (JSA)</i> – detailing tools and equipment to be used in implementation of site works, potential hazards likely to occur in the implementation and mitigation measures to be taken against these.	
TR 10	Provide 12 months warranty for the equipment valid after commissioning	
TR 11	Valid EPRA (class A1) Annual Practicing Licenses	
TR12	Attachment of detailed specifications, catalogues, and brochures for the products to be supplied	
TR13	Provide Company profile with relevant experience of providing rectifier installation works	

STAGE 3. FINANCIAL EVALUATION

Financial evaluation shall involve checking completeness of financial bids

- Presence of a duly filled signed and stamped tender form and price schedule.
- Award shall be based on the **lowest evaluated compliant Bidder**.
- All prices must be inclusive of all the applicable taxes.
- Consideration of the prevailing market price and value for money
- Tender sum as submitted and read out during tender opening is absolute and final and shall not be subject to correction, adjustment or amendment major deviation shall result in disqualification.

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 (ref Section 74(2) of Public Procurement and Asset Disposal Regulations 2020)

STAGE 4. DUE DILLIGENCE

KenGen May prior to award of the tender determine to its satisfaction whether the selected bids will qualify to perform the contract satisfactorily by carrying out a due diligence visit as required.

SECTION IV ~ TENDERING FORMS

Form of Tender

Certificate of Independent Tender Determination

Self Declaration Form SD1

Self Declaration Form SD2

Declaration and Commitment to the Code of Ethics

Form of Power of Attorney

Appendix I – Fraud and Corruption

Tenderer Information Form

Confidential Business Questionnaire

Tenderer's Joint Venture Members Information Form

Price Schedule

Form of Tender Security

Form of Tender-Securing Declaration

Manufacturer's Authorization Form

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

INSTRUCTIONS TO TENDERERS

- i) *All italicized text is to help the Tenderer in preparing this form.*
- ii) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (s) below.*

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

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

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

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

- a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;
- c) **Tender/Proposal-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration. Or Proposal-Securing Declaration in Kenya in accordance with ITT 3.6;
- d) **Conformity:** We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods: *[insert a brief description of the Goods and Related Services]*;
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:

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 are 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 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in

TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- h) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;
- i) **One Tender per tenderer:** We are not submitting any other Tender(s) as an individual tenderer, and we are not participating in any other Tender(s) as a Joint Venture member, or as a subcontractor, and meet the requirements of ITT 3.9, other than alternative Tenders submitted in accordance with ITT 12;
- j) **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 Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution] / [We are a state-owned enterprise or institution but meet the requirements of ITT 3.7];*
- l) **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, 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.”)

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from _____ (*specify website*) during the procurement process and the execution of any resulting contract.
- q) **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.
- r) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

- s) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest;
 - b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers;
 - c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption; and
 - d) Declaration and Commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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

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

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

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

Signature of the person named above: *[insert signature of person whose name and capacity are shown above]* **Date signed** *[insert date of signing]* **day of** *[insert month]*, *[insert year]*

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

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

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to
Tender for Design, Supply, Installation, Testing and Commissioning of 1 10VDC Rectifier

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

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

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

Name _____ Title _____ Date _____

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 ofin the Republic of.....do hereby make a statement as follows: -

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

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

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized
signatory.....

Sign.....
..

Position.....
....

Office address.....

Telephone.....

Email.....
.....

Name of the
Firm/Company.....

Date.....
.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....
.....

Date.....
.....

FORMAT OF POWER OF ATTORNEY

We..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr. / Mrs. / Ms (name and residential address) who is presently employed with us and holding the position of as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our proposal for the project/goods/works/services“”, including signing and submission of all documents and providing information / responses to the Kenya Electricity Generating Company PLC, ("KenGen"), representing us in all matters before KenGen, and generally dealing with KenGen in all matters in connection with our Proposal for the said project/goods/works/services.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall and shall always be deemed to have been done by us

..... (Signature) (Name, Title and Address)

Accepted

..... (Signature) (Name, Title and Address of the Attorney)

APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

- a) **Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:**
- i) **“Corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;**
 - ii) **“Fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;**
 - iii) **“Collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;**
 - iv) **“Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;**
 - v) **“Obstructive practice” is:**
 - **deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or**
 - **acts intended to materially impede the exercise of the PPRA’s, or the appointed authority’s inspection and audit rights provided for under paragraph 2.3 e. below.**
- b) **Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:**
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) **Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-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 inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and**
 - f) **Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.**

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

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies 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]*

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1.Tenderer'sName <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 the Kenya Revenue Authority in accordance with ITT 3.14. <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT3.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT4.6 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law (iii) Establishing that the tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

TENDERER’S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

a) Instruction to Tenderer

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

A. Tenderer’s details

	ITEM	DESCRIPTION
1.	Name of Procuring Entity	
2.	Name of 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	

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.**

	Name of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) **Registered Company, provide the following details.**

- i) **Private or public Company**
- ii) **State the nominal and issued capital of the Company: - Nominal Kenya Shillings**
 (Equivalent)..... Issued
Kenya Shillings
 (Equivalent).....
- iii) **Give details of Directors as follows.**

	Name of Director	Nationality	Citizenship	% Shares owned
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.

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

ii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1.	Tenderer is directly or indirectly controlled by or is under common control with another tenderer		
2.	Tenderer receives or has received any direct subsidy from another tenderer		
3.	Tenderer has the same legal representative as another tenderer		
4.	Tenderer has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer or influence the decisions of the Procuring Entity regarding this tendering process.		
5.	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender		
6.	Tenderer would be providing goods, works, non – consulting services or consulting services during implementation of the contract specified in this Tender document.		
7.	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and / or the Tender evaluation process of such contract.		
8.	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of such Contract.		
9.	Has the conflict stemming from such relationship stated in item 7 and 8 above been		

resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		
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f) Certification

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

Full Name _____

Title or Designation _____

(Signature)

(Date)

TENDERER’S JV MEMBERS INFORMATION FORM

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

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

Tender Name and Identification:*[insert identification Alternative*

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

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1. Tenderer’s Name: <i>[insert Tenderer’s legal name]</i>
2. Tenderer’s JV Member’s name: <i>[insert JV’s Member legal name]</i>
3. Tenderer’s JV Member’s country of registration: <i>[insert JV’s Member country of registration]</i>
4. Tender’s JV Member’s year of registration: insert JV’s Member year of registration
5. Tenderer’s JV Member’s legal address in country of registration: <i>[insert JV’s Member legal address in country of registration]</i>
6. Tenderer’s JV Member’s authorized representative information Name: <i>[insert name of JV’s Member authorized representative]</i> Address: <i>[insert address of JV’s Member authorized representative]</i> Telephone/ Fax numbers: <i>[insert telephone/ fax numbers of JV’s Member authorized representative]</i> Email Address: <i>[insert email address of JV’s Member authorized representative]</i>
7. Attached are copies of original documents of [check the box (es) of the attached original documents] <ul style="list-style-type: none"> ▪ Articles of Incorporation (or equivalent documents of constitution or association), and/ or registration documents of the legal entity named above in accordance with ITT 4.4 ▪ Incase of a state-owned enterprise or institution, documents establishing legal and financial autonomy of operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity in accordance with ITT 4.6
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

PRICE SCHEDULE

PRICE SCHEDULES – TENDER FOR DESIGN, SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF 110VDC RECTIFIER FOR KAMBURU & MASINGA POWER STATIONS

[The tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the Price Schedules shall coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements.]

General

- i) The tenderer shall complete all schedules. Schedules shall be read in conjunction with the specification.
- ii) The total prices in the Main Summary of price schedules shall be deemed to include for the whole of the contract works in accordance with the specification.
- iii) Any prices omitted from any section or part of prices schedule shall be deemed to have been included in another section of part.
- iv) All prices shall be shown inclusive of duty and of all taxes current at the time of tendering.
- v) Price of spares shall remain valid for two years after expiry of warranty and shall not vary during the two-year maintenance period

MAIN PRICE SCHEDULE

No.	ITEM	UOM	QTY	UNIT PRICE	TOTAL COST
1	110VDC 3 Phase Rectifier/Battery Charger	Pc	3		
2	Free Standing 110V DC Distribution board	Pc	1		
3	Wall Mounted 110V DC Distribution board	Pc	1		
4	Earthing Material and Cable Termination Accessories	Lot	1		
5	Mandatory spares highlighted in Technical Specifications Spares:10.1	Lot	1		
6	Factory Training and Acceptance Testing for 4 KenGen Engineers	AU	1		
7	Installation, testing and commissioning for both stations	AU	1		
8	Site Training for KenGen staff	AU	1		
9	Technical Documentation, software and licenses	Lot	1		
10	Any other service or requirement not mentioned but necessary for completion of works	Lot	1		
Sub-total (exclusive of tax)					
Discount (%) if any					
Tax					
Grand Total (inclusive of tax) DDP Kamburu & Masinga Power Station					

No.	ITEM	UOM	QTY	UNIT PRICE	TOTAL COST
Currency of tender					
3 Phase Rectifier/battery charger Manufacturer's name					
Model					
Country of Origin Rectifier/Charger					

TENDERER'S NAME: _____

TENDERER'S SIGNATURE _____

COMPANY'S RUBBER STAMP _____

DELIVERY PERIOD _____

RECOMMENDED SPARES LIST FOR 3-PHASE RECTIFIER CHARGER

Itemize recommended spares in the table below.

No.	ITEM	UOM	QTY	UNIT PRICE	TOTAL
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
Discount (%) if any					
Total (inclusive of VAT) DDP Kamburu & Masinga Power Station					
Currency of tender					
Warranty Period					

TENDERER'S NAME: _____

TENDERER'S SIGNATURE _____

COMPANY'S RUBBER STAMP _____

Purchasing of the spares shall be at the discretion of the client as and when required. This spares list shall not form part of the financial evaluation.

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

Beneficiary: _____ Request for Tenders
No: _____ Date: _____
Tender Guarantee No.: _____
Guarantor: _____

1. We have been informed that _____ (here in after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here in after called" the Tender") for the execution of _____ under Request for Tenders No. _____ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

FORM OF TENDER SECURITY [Option 2 – Tender Bond]

[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]

BOND NO. _____

1. BY THIS BOND.....[name of tenderer] as Principal (hereinafter called –the Principal), and..... [name, legal title, and address of surety], authorized to transact business in [name of country of Procuring Entity], as Surety (hereinafter called –the Surety), are held and firmly bound unto..... [name of Procuring Entity] as Oblige (hereinafter called –the Procuring Entity) in the sum of.....[amount of Bond]¹[amount in words], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the _____ day of _____, 20_____, for the supply of _____ [name of Contract] (hereinafter called the –Tender).
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (–the Tender Validity Period), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal;
 - (i) failed to execute the Contract agreement; or
 - (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (–ITT) of the Procuring Entity's Tendering document.then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.
4. The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 30 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.
5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this _____ day of _____ 20_____.

Principal:___ Corporate Seal (where appropriate) Surety: _____

(Signature)

(Printed name and title)

and title

(Signature)

(Printed name

¹The amount of the Bond shall be denominated in the currency Kenya shillings or the equivalent amount in a freely convertible currency.

FORM OF TENDER-SECURING DECLARATION

[The Bidder shall complete this Form in accordance with the instructions indicated] Date:.....[insert date (as day, month and year) of Tender Submission] Tender No.:.....[insert number of tendering process]

To:.....[insert complete name of Purchaser] I/We, the undersigned, declare that:

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

Signed:.....

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

Name:.....

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

complete name of Tenderer]. Dated on day of

..... [Insert date of signing].

Seal or stamp.

MANUFACTURER’S AUTHORIZATION FORM

[The tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The tenderer shall include it in its Tender, if so indicated in the TDS.]

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

ITT No.:.....*[insert number of*

ITT process] Alternative No.:.....*[insert identification*

No if this is a Tender for an alternative]

To: *[Insert complete name of*

Procuring Entity] WHEREAS

We..... *[insert complete name of Manufacturer]*, who are official manufacturers of.....*[insert type of goods manufactured]*, having factories at *[insert full address of Manufacturer's factories]*, do hereby authorize *[insert complete name of tenderer]* to submit a Tender the purpose of which is to provide the following Goods, manufactured by us.....*[insert name and or brief description of the Goods]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed:..... *[Insert signature(s) of authorized representative(s) of the Manufacturer]*

Name:.....*[Insert complete name(s) of authorized representative(s) of the Manufacturer]*

Title:..... *[Insert title]*

Dated on _____ day of _____, _____ *[insert date of signing]*

PART 2: SUPPLY REQUIREMENTS

Section V

TECHNICAL SCHEDULE OF REQUIREMENTS

1. INTRODUCTION

KenGen seeks to procure three (3) 3 phase thyristor controlled industrial rectifier & battery chargers for optimized power generation applications. The chargers are to be supplied and installed in two of the power plants i.e. Kamburu and Masinga Power Plant.

2. SCOPE OF WORKS

1. Design manufacture supply install and commission 2 (two) rectifier/battery charger for Kamburu Power Station
2. Design manufacture supply install and commission 1 (one) free standing 110VDC distribution board panel for Kamburu Power Station
3. Design manufacture supply install and commission 1 (one) wall mounted 110VDC distribution board panel for Kamburu Power Station
4. Design manufacture supply install and commission 1 (one) rectifier/battery charger for Masinga Power Station
5. Site training of KenGen staff by accredited equipment manufacturer personnel

In fulfilment of the above, the contractor shall carry out the following activities but not limited to:

1. Studying of existing systems;
2. Design /Engineering services;
3. Factory acceptance testing and training
4. Procure, supply and deliver of all equipment specified to Kamburu and Masinga
5. Disassembly/dismantling of existing systems
6. Erection/Installation
7. Termination of existing cables
8. Civil works that may be necessary during site works
9. On job training during installation and commissioning
10. Site acceptance Testing and Commissioning;
11. Post commissioning site training;
12. Technical documentation provision and Warranty for supplied equipment and systems

All other works that are deemed necessary but not explicitly specified for the execution of the project shall be the responsibility of the contractor. The contractor shall provide any other services or requirements not mentioned or included in this tender but which the contractor deems critical for the completion of the contract. These shall be itemized by the bidder in the offer and price schedule where necessary.

Ratings, characteristics, tests and test procedures, etc. for the electrical equipment encompassed by this Specification shall comply with the provisions and requirements of

1. IEEE Std 2405-2022 Design of Chargers Used in Stationary Battery Applications
2. ANSI C84.1, American National Standard for Electric Power Systems and Equipment—Voltage Ratings
3. IEEE Std 485™, IEEE Recommended Practice for Sizing Lead-Acid Batteries for Stationary
4. IEEE Std 519™, IEEE Recommended Practice and Requirements for Harmonic Control in Electric

3. PROJECT WORK PROGRAMME

1. Work program shall contain refined method statements, quality control program and implementation plan
2. After tender award and prior to contract signing the client and Approved tenderer shall meet, discuss and review the draft work program, the contractor shall subsequently prepare a final work program for client approval.
3. The total project duration shall not exceed 12 months; the duration shall be time period from commencement to final commissioning and issuance of the final take over certificate or as otherwise defined in the conditions of contract
4. Duration of power plant outage required to implement the project shall not exceed:
 - 8 hrs total station outage for system installation and commissioning. This includes removal of existing system, testing of both rectifiers and installation of duty rectifier at Kamburu Power Station
5. The bidder shall furnish sequence of activities to be carried out to avoid / minimize the generation loss, likely to occur during the works. The bidder shall note that work shall be completed within shut down period. The bidder shall also note that there may be uncertainty of Shutdown due to grid exigency. However, no additional cost/ compensation on this account shall be entertained.
6. In formulating the work program, the Contractor shall consider Approval of drawings and designs to be undertaken by the Client: -
7. In executing the Approved Construction Program of this Contract, the Contractor shall co-operate with the Client in order to effect timely completion of the works as a whole.

4. PARTICULAR SPECIFICATION OF 3 PHASE RECTIFIER/CHARGER

4.1 AC INPUT CHARACTERISTICS

- i. Nominal voltage rating of the charger is 415Vrms. The charger shall operate within a range of +10%/–12% of the input nominal voltage
- ii. Nominal frequency of the charger is 50Hz and operation may deviate by $\pm 5\%$ from nominal.
- iii. The loss of any phase of the ac line voltage shall not damage the battery charger.
- iv. The operation of the battery charger with line voltages below the minimum limits including zero shall not cause permanent damage to the battery charger. If an overcurrent protective device (OCPD) activates when a charger operates into a low- or zero-line voltage, performance shall not be degraded when proper levels and the OCPD have been restored.
- v. Charger shall have a 6-pulse rectifier bridge with input isolation transformer
- vi. The DC firing pulses for the thyristors of the three-phase rectifier shall not be obtained by the batteries to be connected on the output side i.e. a separate DC source for the thyristors' firing pulses shall be used, such as a single-phase rectifier.
- vii. The thyristor-controlled rectifier of the charger shall be able to operate without the batteries being connected on the output side.
- viii. The input AC shall be fed through a 4-pole MCCB.
- ix. There shall be an isolation transformer on the input side between the AC source MCCB and the rectifier to provide galvanic isolation between input and output, and also built-in earth fault detection.

4.2 DC OUTPUT CHARACTERISTICS

- i. Nominal output voltage rating of the charger is 125Vdc. Independent controls for float voltage and for equalize voltage shall be provided to enable adjustment of the dc output voltage over the minimum voltage adjustment ranges

- ii. The charger shall be capable of a continuous output current of at least 100% of its rated output current. The current limit may be adjustable to levels above or below the charger rating. Operation of the charger in current limit mode shall not cause actuation of the chargers protective devices, result in any output oscillation nor result in damage to the charger.
- iii. The charger shall be able to operate into a significantly discharged battery, down to zero voltage, without activating protective devices. Connected batteries are 55 cells, 300AH Lead Acid batteries
- iv. Charger DC output shall be through a 3 pole 150A MCCB

4.3 SUPERVISORY CONTROLS AND ALARMS

A minimum of the following alarms shall be provided within the system with provision for dry contacts to interface with existing monitoring systems.

- i. Low output voltage alarm
- ii. High output voltage shutdown
- iii. AC power failure alarm
- iv. Battery charger failure alarm
- v. Ground fault alarm

4.4 The charger shall be mounted on a channel and shall be complete with channel bottom plates, grouting bolts, earthing bolts, washers, cable glands etc.

4.5 There shall be a digital controller of the thyristor-controlled rectifier.

4.6 The charger shall have digital processing capability and setting of all parameters via a front panel HMI with inbuilt intelligent battery management and LEDs to indicate system status

4.7 Rectifier/charger shall be designed for natural cooling on most of the ratings

4.8 Rectifier/charger shall have a built-in intelligent battery management

4.9 Rectifier/charger shall have temperature compensated charge voltage regulation

4.10 Rectifier/charger shall have an alarm and event logger, with a date and time stamped event log memory

5. PARTICULAR SPECIFICATION OF FREE-STANDING D.C. DISTRIBUTION BOARD

5.1 125 (+/- 10%) volt D.C. supply shall be made available from the station storage battery banks and battery chargers. The chargers shall be connected to the load bus of D.C. switchboard through a 200 Amp DC change over switch such that either charger can supply the load in the event that the duty charger fails. The changeover switch shall be manually operated. The battery bank shall be connected through to the load bus through a separate 3-pole 150amp MCCB

5.2 The D.C. distribution board shall be air insulated, fully enclosed with doors for access to the interior, 3.00 mm. thick steel sheet shall be used for the fabrication of the panels. Dimension shall not be more than 1800 mm high with channel base and 750 mm. depth measured from the rear to front face. The back cover of the switch board shall be provided with hinged door with locking arrangement. Width of the panel shall be a minimum of 600mm determined as per no of circuits to be accommodated.

5.3 Doors at the back of the panel shall be provided for inspection with door switch for illumination of the lamp to be provided inside the panel with separate switch fuse unit for controlling the lamp.

5.4 The board shall have copper bus bar. Bolted covers shall be provided for access to horizontal and vertical bus bars and all joints for repair and maintenance. Proper ventilation arrangement shall have to be arranged and that shall be decided by the purchaser at the time of approval. Bus bar shall be designed for adequate continuous rating as well as specified short circuit rating of specific duration, having continuous current density of 1.6 A per sq. mm.

5.5 The DCDB shall be designed to facilitate cable entry from the bottom through entry holes of removable plates provided at the bottom of the cubicle. All the accessories required for termination of cable in the DCDB such as screwed brass cable gland, terminal block etc. shall be within the scope of supply, Gland shall project above the gland plate. Terminating cable shall be armoured and armored rods shall be connected to earth bus. After isolation of power and control circuit

connections it shall be possible to safely carry out maintenance in a compartment with the bus bar and adjacent circuit live. Necessary shrouding arrangement shall be provided for this purpose over the cable terminations located in cable alley.

- 5.6 The connections from bus bars to main switch shall be fully insulated/shrouded and securely bolted. The partition between the feeder compartment and cable alley may be non-metallic and shall allow cable cores with lugs to be easily inserted in the feeder compartment for termination.
- 5.7 Necessary and safe earthing arrangement with supply of all accessories required for safe earthing shall be within the scope of supply.
- 5.8 The earth bus shall have sufficient cross-section to carry momentary short circuit and short line fault currents to earth bus without exceeding the allowable temperature rise. The horizontal earth bus shall be projected out the switchboard ends and shall have predrilled holes for bolted connection between this bus to sub-station earthing conductor. A joint spaced and taps to earth bus shall be made through at least two bolts. All non-current metal works of the switchboard shall be effectively connected to the earth bus.
- 5.9 The DB shall be mounted on a channel and shall be complete with channel bottom plates, grouting bolts, earthing bolts, washers, cable glands etc.
- 5.10 The temperature rise of horizontal and vertical bus bars when carrying rated current along its full run shall not exceed 40°C over an outside ambient temperature of 50°C.
- 5.11 All identical circuit breakers and module chassis of same test size shall be fully interchangeable without doing any modification work

6. GENERAL TECHNICAL SPECIFICATION

6.1 INTERNAL WIRING AND TERMINAL BLOCK:

- i. All connection terminals shall be brought in the terminal block which shall be fixed in such a position as may be readily accessible.
- ii. All panels shall be supplied completely wired.
- iii. All internal wiring shall be carried out with PVC insulated stranded copper conductor single core, 2.5 sq. mm. However, for annunciation scheme wiring may be drawn with 1.5 sq. mm. PVC insulated stranded copper conductor.
- iv. All wiring shall be properly supported, neatly bunched, and readily accessible and securely connected to equipment terminals and terminal blocks.
- v. There shall be ferrule marking at both ends of the connections. Red ferrule with positive marking shall be used for the positive terminals and white ferrule with negative marking for positive terminal for D.C. wiring.
- vi. Each wire shall be continuous and there shall not be any joint within itself. Wiring for meter, relays, instruments and MCCB etc. used shall be brought to the terminal block.
- vii. Terminal blocks shall be of 1100V grade and have continuous rating to carry the maximum expected current on the terminals as well as short circuit current for specified duration. The terminal blocks shall be fully enclosed with removable covers of transparent, non-deteriorating type plastic material. Insulating barrier shall be provided between the terminals. The terminal blocks shall have locking arrangement to prevent its escape from the rails.
- viii. All terminals shall be numbered for identification and grouped according to the function. Engraved white on black labels shall be provided on the terminal blocks.
- ix. Terminal blocks shall be arranged with at least 100 mm. clearance between two sets of terminal block. The minimum clearance between the first row of terminal block and the associated cable gland plate shall be 250 mm.

6.2 NAMEPLATES AND LABELS

- i. ALL supplied panels shall be provided with prominent, engraved identification plates as advised by the project engineer.
- ii. The feeder MCCBs within the DCDB shall be clearly labelled and named with the feeder designation.

6.3 MCCB RATINGS

- i. All the MCCB's & MCB shall be of best quality and easy in operation from Siemens, ABB or Schneider complying with technical specification & relevant IS & IEC. The number of outgoing feeders shall be controlled by suitably rated MCCB.
- ii. Each MCCB shall be provided with trip coil. MCCB shall be capable of safely breaking the fault current of the associated circuit.
- iii. MCCB's shall be provided with thermo-magnetic type release for over current and short circuit protection.
- iv. The setting range of thermal release and breaking capacity of MCCB's are to be specified and shall conform to circuit requirement.
- v. MCCB shall have Mechanical Anti-reclosing and facilities for over load and short circuit setting adjustment. MCCB knob shall indicate the true position of the equipment. MCCB's shall conform to relevant Indian Standard.

6.4 EARTHING (GROUNDING)

- i. There shall be exposed and accessible Earthing bars in all panels connected to the existing station Earthing/grounding system.
- ii. Cables shall be earthed and shielded in accordance with Earthing philosophy worked by contractor.
- iii. All connections between equipment and the Earthing network shall be exposed (not embedded) and easily accessible for checking of the transition points.
- iv. All material for earthing shall be in the scope of supply of the contractor

6.5 PANEL CONSTRUCTION

- i. The panels shall be dust and vermin proof and suitable for use in tropical climate. A suitable rust resisting primer paint shall be applied on the panel after the same is polished and the primer shall be evenly sprayed.
- ii. The colour of the of the panel shall be RAL 7032 or 7035 epoxy powder coated. The colour of the interior panel should be as to provide a colour contrasting background for the wiring inside the cubicle.
- iii. Cable entry for the panels shall be from the bottom.
- iv. The panel shall be made of steel sheet of at least 3 mm thickness.
- v. Lifting hooks shall be provided at the panel top.
- vi. The door of the panel shall have provision of locking.
- vii. The door of the panel shall open up to 180°.
- viii. The power cables shall enter the panel from the bottom.

7. TECHNICAL DOCUMENTATION

7.1 USER MANUALS

- i. The tenderer shall submit in soft copy and 3 bound hard copies of installation, operation and user manuals for each station after commissioning. This shall include hard copies of operation and maintenance manual and as built connection drawings upon works completion for each station.
- ii. The user manuals shall contain at minimum charger specifications, installation instructions, operating instructions, troubleshooting guide, recommended maintenance intervals and spares.
- iii. In addition to the user manuals indicated above, the supplier shall include the type test results, factory test results & reports, site test results and reports and any other report that may be deemed necessary.

7.2 TEST RECORDS

- i. Records shall be made showing all the relevant parameters recorded such as continuous output current of at least 100% with the charger connected to a resistive load bank. 2 copies of the test certificates shall be submitted after successful commissioning.

7.3 SOFTWARE AND LICENCES

- i. Any programming/configuration software for the supplied equipment under the contract shall be handed over to the client installable into two computers. This shall include valid operation license active for the entire operational life span of the rectifier with passwords
- ii. Hardware connections and special equipment necessary to connect the programming laptop to the configurable device supplied shall also be considered to have been included in the bid and will be handed over to the client for each station's rectifier

8. MANUFACTURE, TESTING AND SHIPMENT

8.1 MANUFACTURE

- i. The bidder shall invariably furnish along with his offer the quality assurance plan adopted by in the process of manufacturing of the rectifier/charger and DCDB
- ii. Type test reports for the rectifier, drawings and other related documentation shall be submitted to the project engineer upon successful award for review before approval for manufacture is granted.
- iii. Manufacture shall only commence with written approval by the project manager (or any other client representative). Following review, the supplier must meet and/or remedy the submitted documents as per the client's comments subject to these tender specifications.
- iv. Responsibility for accurate details in the bidder's drawings and overall design required to ensure correct function and operation shall however remain the responsibility of the bidder. The approval of these drawings by KenGen does not relieve the bidder from this responsibility

8.2 FACTORY ACCEPTANCE TESTING & TRAINING

- i. KenGen engineers/ technicians shall attend the factory training and witness the factory testing at the equipment manufacture premises
- ii. The training shall be for a minimum of 2 days followed thereafter by a FAT for a minimum of 2 days
- iii. KenGen shall cater for their accommodation and return transport expenses for the Factory training and FAT. All other costs incurred during the training and testing shall be covered by the contractor including meals and local transport between the training/testing premises and hotel
- iv. The tests to be carried out during the FAT by the manufacturer shall be in the presence of 4 KenGen engineers/technicians
- v. The Contractor shall submit factory training and factory acceptance tests schedule procedures and results sheets for approval. After approval by the Client, the Contractor shall invite the Client's engineers for training and factory acceptance tests. A period of at least one month shall be provided from date of invitation to allow enough time for travelling preparations.
- vi. Acceptance and routine test at manufacturers' works shall be carried out on each rectifier/charger and distribution board.
- vii. A minimum of the following tests on the charger shall be carried out and copies of the test certificates to be submitted to the project engineer for approval before supply as per IEEE 2405-2022
 - a. Current limit
 - b. Dielectric
 - c. Voltage adjustment
 - d. Voltage deviation (regulation)
 - e. Ripple voltage

- viii. The following tests on the DCDB shall be carried out and copies of the test certificates to be submitted to the project engineer for approval before supply.
 - a. Checking of wiring and continuity of the circuit.
 - b. (Power frequency voltage test of 3KV for one minute between wiring and earth terminal.
 - c. Insulation resistance value of all equipment. Connected in switchboard and function of the same.
- ix. All the acceptance and routine tests shall be carried out in presence of KenGen representative.
- x. Client will give consent for shipping ONLY after ALL the issues discussed in the minutes and noted in the client inspection report have been rectified and evidence given to the client.

8.3 SHIPMENT AND TRANSPORTATION

- i. The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit and temporary storage up to their final destination as indicated in the Contract.
- ii. The packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation. Packing case size and weights shall take into consideration, the Goods' final destination and the absence of heavy handling facilities at all points in transit.
- iii. Indoor electrical equipment must be enclosed in welded polythene envelopes inside packing cases and the envelopes shall be evacuated or have a desiccant inside

9. INSTALLATION AND COMMISSIONING

9.1 ERECTION AND INSTALLATION SUPERVISION

- i. The Contractor shall carry out all erection, testing at site and commissioning of the new equipment specified. The Contractor shall perform all electrical, mechanical, civil works and furnish materials that might be necessary during the installation and mounting of the new equipment.
- ii. All work, methods of work and workmanship, whether fully specified herein or not, shall be of the highest order in all respects; the generally accepted requirements and commonly recognized good practice for first class work of the nature are to be adhered to.
- iii. It shall be Contractor's responsibility to provide all staff, supervisory staff, skilled and unskilled labour necessary to carry out and complete the Contract Works on schedule as specified. Information regarding site staff shall be provided to the project manager
- iv. KenGen shall second skilled labour to carry out the works under supervision of the contractor except for specialized works e.g. welding, non-destructive tests, onsite machining, etc. This secondment shall be free of charge to the Contractor for the number of persons and duration specified. The exact number will be agreed upon at contract negotiations and before commencement of installation. In counterpart, the Contractor shall offer proper on the job training to these personnel.
- v. Work shall only be carried out in the time of day approved by the project engineer. No work shall be carried out in the plant in absence of client personnel
- vi. Prior to machine outage, pre-outage works shall be carried out to minimize the duration of machine outage. Pre-outage works shall include activities such as delivering of cable termination accessories, marking of old cables and equipment meant for removal and any other logistical works that do not require shutting down the machine.
- vii. Disassembly and removal of old equipment such as panels, cables etc. shall be carried out under supervision of the client. No equipment shall be removed without the client representative present and with his/her approval. All existing equipment shall be the property of the client.
- viii. Mounting of wall mounted distribution board and transfer of loads from the existing DB without interrupting supplies while the generating units are running

9.2 SITE ACCEPTANCE TESTING AND COMMISSIONING

- i. All tests shall be done in accordance to IEEE Std 2405-2022. Additional tests may be requested for by the client, at no extra cost, according to the other international standards stated in the earlier sections of this specification.
- ii. All the tests, commissioning tools, materials and equipment shall be provided by the bidder. The test and commissioning report shall form part of the documentation for submission
- iii. For capacity test purposes at site the charger shall be connected to a variable resistive dc load bank. The contractor is expected to have testing equipment for the respective tests
- iv. The current limit test shall be performed with the rated ac input voltage applied to the battery charger, the dc output voltage adjusted to its nominal operating value, and the load adjusted to the full rated load current. The load shall then be increased until the dc output voltage decreases. The technician shall then verify that the charger operates satisfactorily at its current limit and records the voltage level and applied load.
- v. If any special tool/module is required for the operation, maintenance and troubleshooting of the equipment, then such tool will be deemed as part of the equipment and forwarded to KenGen project engineer

9.3 TRAINING

- i. The Supplier shall offer training to Twenty (20) client's staff on battery chargers. The duration of training shall be three (3) days following successful commissioning of the chargers.
- ii. The training shall include (2) days classroom training on the supplied equipment and (1) day practical exercises on testing, operation and maintenance and troubleshooting of the supplied equipment
- iii. The class room training content shall include at a minimum
 - a. Operation principles of rectifiers and chargers
 - b. Thyristor construction and rectification process
 - c. Routine maintenance and diagnosis of rectifiers
 - d. Performance testing of rectifiers
- iv. The training shall be conducted by the original equipment manufacturers staff or trained and certified personnel by the OEM whose costs shall be catered for by the supplier.
- v. The training shall be conducted in English
- vi. For this training, the supplier shall
 - a. Submit the training content for review and approval by client's engineer at least 2 months before commencement of site works
 - b. Provide all materials required to facilitate the training.
 - c. Provide a trainer from the manufacturer's staff.
 - d. Provide training facility

9.4 DEFECTS LIABILITY PERIOD

- i. Upon commissioning there will be a defects liability period of six (6) months during which a 10% retention of the contract sum shall be retained.
- ii. All pending works as identified in the snag lists and supply of material as specified shall be completed in its entirety and a project completion certificate issued by the project engineer to facilitate release of funds withheld for this period

10. SPARES

1. The following spares shall be supplied with the equipment
 - a. 3 pieces of fuses for each set of fuses same as those installed
 - b. One MCCB for each rating same as those installed
 - c. One capacitor for each rating same as those installed
 - d. 2pcs of control cards for each function necessary for operation of the rectifier.
2. Failure to quote for the stated spares shall render the bid unresponsive.

3. All spares MUST be 100% similar to installed components
4. All spares not listed in the scope of works/particular specifications but are critical to equipment proposed by the bidder or are sub components/complementary components of the listed spares MUST be included in the bid offer. Where such spare part / equipment is not listed by the bidder but its considered critical it shall be supplied at no extra cost to the client.
5. All spares shall be tested by the contractor in presence of the client engineer prior to acceptance. These spares shall be tested at site with the installed systems and pre-programmed where applicable. Untested spares shall not be accepted by the client.

11. WARRANTY

1. Electrical characteristics shall be guaranteed by the contractor. In case of failure of materials to meet the guarantee, KenGen shall have right to reject the equipment. Guaranteed Technical particulars are to be submitted by successful bidder during detailed engineering along with submitted drawings/documents.
2. The Contractor shall warrant that goods supplied under the Contract are brand new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract.
3. The Contractor further shall warrant that all Goods supplied under this Contract shall have no defect arising from design, materials, or workmanship or from any act or omission of the Contractor, or that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
4. This warranty shall remain valid for twelve (12) months after the Equipment, or any portion thereof as the case may be, have been commissioned and take over certificate signed by both parties, or for thirty-six (36) months after arrival of equipment at site whichever period concludes earlier.
5. The bidder guarantees supplying maintenance spares and services as well as repairing of the supplied systems where called upon to do so after expiry of the warranty period at employers' cost for a period of 15 years.

12. CONTRACTOR'S RESPONSIBILITY

12.1 RESPONSIBILITIES

- i. Conforming to the requirements of Kenya Electricity Generating Company Ltd, and to deviations there from which are specifically authorized and/or approved in writing by the Client Engineer.
- ii. Approval of deviations will only be given for individual cases and such approval shall not be cited as a precedent for other cases.
- iii. Quality of material, workmanship and apparatus comprising the complete work, shall be in accordance with the specifications and good practice.
- iv. The safety and protection of equipment and materials required for the work while under their sole risk as described hereunder.
- v. The adaptability of all materials to the requirements.
- vi. Rigid adherence to the tender specifications. Unless deviations are specifically authorized in writing by Kenya Electricity Generating Company Ltd.

12.2 Sole Risk

The work shall be at the sole risk of the Supplier against loss or damage thereto up to and including the date of commissioning at the delivery point. It shall in no way be implied or inferred that this arrangement limits the Supplier's responsibility in respect to the materials supplied, workmanship and performance of the work.

12.3 Safety Precautions

The supplier shall be responsible for the safety of all activities on the site. The supplier shall comply to all KenGen safety requirements and to include, proactive safety measures and practice, provision of PPEs and safety equipment

12.4 Insurance

The Supplier shall insure, and keep insured to its full insurable value, the equipment and every part thereof against risk of fire, explosion, accident, or other damage until the work has been completed to the satisfaction of Kenya Electricity Generating Company Ltd.

12.5 Accommodation & Transport for Contractor's Employee

Accommodation and all other living expenses during the site work, including installation and commissioning work for the supplier's/manufacture's employees shall be the responsibility of the supplier. Transport to site and local movements for the supplier's/mannufacturer's staff at the site during the works will also be the responsibility of the supplier.

As well, the costs incurred by the trainer and associated with training of client's staff shall be borne by the supplier. The supplier shall avail standard training premises approved by the project engineer and all required training materials including projectors, flip charts, writing materials, test kits among others. All these shall be availed at supplier's cost.

TECHNICAL SCHEDULE OF GUARANTEED TECHNICAL PARTICULARS

a) Thyristor – Controlled Industrial Rectifier & battery Charger

	Description	Technical Particular	Bidders Response
	General		
1.	Philosophy	Three phase fed, fully digital automatic microprocessor controlled	
		Phase controlled type with input transformer and thyristors mounted on heat sinks	
2.	Topology	6 pulse, full wave-controlled SCR with isolation transformer. Thyristors to have fuse protection	
3.	Charging principle	Constant current-constant voltage	
4.	Design life	> Greater than 20 yrs	
	Input		
1.	Nominal input Voltage	3 x 415Vac 3 phases, 50Hz	
2.	Rectifier Type	Three Phase	
3.	Frequency	50Hz \pm 6%	
4.	Power Factor	0.8 nominal power	
5.	Transformer	Galvanically isolated input isolation transformer	
6.	Protection	Thermal-magnetic over current protection, over voltage protection, soft start, MCCB (based on current value)	
	Output		
1.	Output Voltage (UDC)	Nominal 110VDC but Upto 220VDC	
2.	DC Voltage Settings range	Floating Charge -75%-125% of UDC nominal at full load and nominal mains voltage (\pm 10%)	
		High-rate charge – 75%-135% of UDC nominal at full load and nominal mains voltage (0/+10%)	
3.	Static Voltage Regulation	0 – 100 % DC load variations, input nominal voltage \pm 10 %, frequency \pm 6 %, temp. range 0 °C to +40 °C	
		\pm 1 % at float voltage,	
4.	Dynamic Voltage Regulation	10 – 100 %, 100 % – 10 % load step – deviation 8 %	

5.	Output current	Upto 150A	
6.	Battery Charge mode	3 charge mode levels: Float charge, equalizing charge and boost charge	
7.	Static voltage regulation	1%	
8.	DC Ripple voltage	2 % rms typically of UDC nominal battery not connected	
9.	Current settings range	0 – 100 %	
10.	DC Current Regulation	0 /+2 % of current limit	
11.	Long-term stability	0.15 % per 1000 hrs	
12.	Temperature Co-efficient	<0.02 % per °C	
13.	Charging characteristics	Constant current/constant voltage (I/U as per IEC 478) during float charge	
14.	Insulation Resistance	>200 MΩ/500 VDC	
15.	Input/Output Isolation	2,500 VAC between input/output and electrical earth	
16.	Monitoring options	At least 8 alarms and status dry contacts	
		16 alarm and status LEDs	
		Battery current limitation	
		Analog meters for input voltage	
		Analog meters for output voltage and current	
17.	Communication methods	LED alarm indicators on front panel	
		RS485 Modbus	
		TCP/IP	
18.	Lighting	IEC 61850	
		Cabinet lighting with LED lamp	
Mechanical			
1.	Mechanical hoist	Lifting eye bolts	
2.	Protect degree	IP42 according to IEC 60529	
3.	Cabinet Dimensions	1800mm(max) x 600mm x 600mm	
4.	Colour	RAL 7035, epoxy powder coated, textured paint	
5.	Connections	Bottom entry	
Environmental			
1.	Operating ambient temperature	0-50°C without derating	
2.	Storage temperature	-25 °C to +70 °C	
3.	Type of cooling	Natural convection(standard) or fan forced depending on output power	
4.	Installation height	0 to 1,000 m – de-rating @ 1 % per 100 m above 1,000 m up to 3,000 m	
Standards			
1.	Approvals and Certification	CE marking, IEC60146-1-1, EN50178	
2.	Safety	IEC/EN 60529, EN50178	
3.	EMC	IEC/EN 61000-6-2, IEC/EN 61000-6-4	
4.	Performance	IEC/EN 60146-1-1	

b) Free Standing 110VDC Distribution Board

	Description	Technical Particular	Bidders Response
1.	Dimensions		
	a) Height of complete panel (max)	1800mm	

	b) Width	600mm	
	c) Depth	750mm	
2.	Sheet steel thickness	3 mm (min)	
3.	Grade of insulation level of equipment and wiring	1.1kV	
4.	IP Rating	IP54	
5.	DC change over switch	200A, DC	
6.	Busbar	Copper with current rating $\leq 300A$	
7.	Minimum Number of Feeders, DC MCCBs		
	a) 16A	4 no.	
	b) 32A	6 no.	
	c) 63A	4 no.	
	d) 100A	1 no.	
8.	DC Isolator, 200A	2 no.	

c) Wall Mounted 110VDC Distribution Board

	Description	Technical Particular	Bidders Response
1.	Dimensions		
	a) Height of complete panel	300mm	
	b) Width	600mm	
	c) Depth	300mm	
2.	Sheet steel thickness	3 mm (min)	
3.	Grade of insulation level of equipment and wiring	1.1kV	
4.	IP Rating	IP54	
6.	Busbar	Copper with current rating $\leq 300A$	
7.	Minimum Number of Feeders, DC MCCBs		
	a) 16A	4 no.	
	b) 32A	6 no.	
	c) 63A	2 no.	
	d) 100A	1 no.	
8.	DC Isolator	200A, DC	

PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. Definitions

In the Conditions of Contract (“these Conditions”), which include Special Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

- a) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- c) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- d) “Day” means calendar day.
- e) “Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- f) “GCC” means the General Conditions of Contract.
- g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- h) “Procuring Entity” means the Procuring Entity purchasing the Goods and Related Services, as **specified in the SCC.**
- i) “Related Services” means the services incidental to the supply of the goods, such as insurance, delivery, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.
- j) “SCC” means the Special Conditions of Contract.

- k) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- l) “Supplier” means the person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- m) “**Base Date**” means a date 30 day prior to the submission of tenders.
- n) “**Laws**” means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.
- o) “**Letter of Acceptance**” means the letter of formal acceptance, signed by the contractor. Procuring Entity, including any annexed memoranda comprising agreements between and signed by both Parties.
- p) “**Procuring Entity**” means the Entity named in the Special Conditions of Contract.

2. Interpretation

- 2.1. If the context so requires it, singular means plural and vice versa.
- 2.2. Incoterms

- a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms **specified in the SCC**.
- b) The terms EXW and CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

3. Contract Documents

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

- a) the Contract Agreement,
- b) the Letter of Acceptance,
- c) the General Conditions of Contract
- d) Special Conditions of Contract
- e) the Form of Tender,
- f) the Specifications and Schedules of the Drawings (if any), and
- g) the Schedules of Requirements, Price Schedule and any other documents forming part of the Contract.

4. Fraud and Corruption

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

4.1 Entire Agreement

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

4.2 Amendment

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

4.3 Non-waiver

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

4.4 Severability

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

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Procuring Entity, shall be written in the **English Language**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate and certified translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, the English language is translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

6. Joint Venture, Consortium or Association

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

7. Eligibility

- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Sub-contractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, 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.

73 The Tenderer, if a Kenyan firm, must submit with its tender a valid tax compliance certificate from the Kenya Revenue Authority.

8. Notices

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

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

9. Governing Law

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

92 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya:

- a) where, as a matter of law, compliance or official regulations, Kenya prohibits commercial relations with that country or any import of goods from that country or any payments to any country, person, or entity in 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 from that country or any payments to any country, person, or entity.

10. Settlement of Disputes

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

102 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence

arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

102 Arbitration proceedings shall be conducted as follows:

1021 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 10.1 shall be finally settled by arbitration.

1022 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within thirty days of the occurrence or discovery of the matter or issue giving rise to the dispute.

1023 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

1024 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any due payments.

1025 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.

1026 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.

1027 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

103 Arbitration Proceedings

1031 Arbitration proceedings with national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person or persons to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

- i) Kenya National Chamber of Commerce
- ii) Chartered Institute of Arbitrators (Kenya Branch)
- iii) The Law Society of Kenya

1032 The institution written to first by the aggrieved party shall take precedence over all other institutions.

1033 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

104 Arbitration with Foreign Suppliers

1041 Arbitration with foreign suppliers shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

1042 The place of arbitration shall be a location specified in the **SCC**; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

105 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

106 Failure to Comply with Arbitrator's Decision

1061 The award of such Arbitrator shall be final and binding upon the parties.

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

107 Contract operations continue

Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) the Procuring Entity shall pay the Supplier any monies due the Supplier.

11. Inspections and Audit by the Procuring Entity

11.1 The Supplier shall keep, and shall cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time, changes and costs.

11.2 Pursuant to paragraph 2.2 of Instruction to Tenderers, the Supplier shall permit and shall cause its subcontractors to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and

records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Supplier's and its Subcontractors' attention is drawn to Sub- Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

12. Scope of Supply

12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

13. Delivery and Documents

13.1 Subject to GCC Sub-Clause 33.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the List of Goods and Delivery Schedule specified in the Supply Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

14. Supplier's Responsibilities

14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

15. Contract Price

15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the SCC.

15.2 Where the contract price is different from the corrected tender price, in order to ensure the supplier is not paid less or more relative to the contract price (*which would be the tender price*), any partial payment valuation based on rates in the schedule of prices in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tender price X 100*.

16. Terms of Payment

16.1 The Supplier shall request for payment by submitting invoice(s), delivery note(s) and any other relevant documents as specified in the SCC to the Procuring Entity.

16.2 Payments shall be made promptly by the Procuring Entity, but not later than thirty (30) days after submission of an invoice by the Supplier, and after the Procuring Entity has accepted it.

16.3 Where a Procuring Entity rejects Goods and Related Services, in part or wholly, the procuring Entity shall promptly inform the Supplier to collect, replace or rectify as appropriate and give reasons for rejection. The Supplier shall submit a fresh invoice, delivery note and any other relevant documents as specified in the SCC.

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

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

17. Taxes and Duties

17.1 The Supplier shall be entirely responsible for all taxes, duties, license fees, and other such levies

incurred to deliver the Goods and Related Services to the Procuring Entity at the final delivery point.

17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Kenya, the Supplier shall inform the Procuring Entity and the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

18. Performance Security

18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.

18.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Procuring Entity; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another format acceptable to the Procuring Entity.

18.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Procuring Entity directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

20. Confidential Information

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

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

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- a) the Procuring Entity or Supplier need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in **the SCC**;
- b) now or hereafter enters the public domain through no fault of that party;
- c) can be proven to have been possessed by that party at the time of disclosure and which was not

previously obtained, directly or indirectly, from the other party; or

- d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

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

22. Specifications and Standards

- 22.1 Technical Specifications and Drawings
- a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
 - b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.
 - c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

23. Packing and Documents

- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

24. Insurance

- 24.1 Unless otherwise specified in the **SCC**, the Goods supplied under the Contract shall be fully insured—in a freely convertible currency from an eligible country—against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **SCC**.

25. Transportation and Incidental Services

- 25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- 25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in **SCC**:
- a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
 - b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
 - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
 - d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
 - e) training of the Procuring Entity's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services

26. Inspections and Tests

- 26.1 The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Kenya as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.
- 26.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.
- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 26.5 The Procuring Entity may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 26.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost

to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub- Clause 26.4.

26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

27. Liquidated Damages

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

28.4 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

29. Patent Indemnity

29.1 The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and

- b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 29.2 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 29.3 If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.
- 29.4 The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 29.5 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

30. Limitation of Liability

- 30.1 Except in cases of criminal negligence or willful misconduct,
- a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity, and
- b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Procuring Entity with respect to patent infringement.

31. Change in Laws and Regulations

- 31.1 Unless otherwise specified in the Contract, if after the date of 30 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32. Force Majeure

- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 33. Change Orders and Contract Amendments**
- 33.1 The Procuring Entity may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
 - b) the method of shipment or packing;
 - c) the place of delivery; and
 - d) the Related Services to be provided by the Supplier.
- 33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Procuring Entity's change order.
- 33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 33.4 **Value Engineering:** The Supplier may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;
- a) the proposed change(s), and a description of the difference to the existing contract requirements;
 - b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and
 - c) a description of any effect(s) of the change on performance/functionality.
- 33.5 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:
- a) accelerates the delivery period; or
 - b) reduces the Contract Price or the life cycle costs to the Procuring Entity; or
 - c) improves the quality, efficiency or sustainability of the Goods; or
 - d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.
- 33.6 If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Supplier shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or
 - b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in
 - (a) to (d) above, the amount to be paid to the Supplier shall be the full increase in the Contract Price.
- 33.7 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

34. Extensions of Time

- 34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
 - i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;
 - ii) if the Supplier fails to perform any other obligation under the Contract; or
 - iii) if the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.
- b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

35.2 Termination for Insolvency.

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

35.3 Termination for Convenience.

- a) The Procuring Entity, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
 - i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed

Goods and Related Services and for materials and parts previously procured by the Supplier.

36. Assignment

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

37. Export Restriction

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 35.3.

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.

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

GCC 1.1(H)	The Procuring Entity is: <i>/Kenya Electricity Generating Company PLC</i>
GCC 1.1 (o)	The Final Destination(s) is/are: <i>[KAMBURU & MASINGA POWER STATIONS. Power Station</i>
GCC 2.2 (b)	The version edition of Incoterms shall be <i>INCOTERMS 2020</i>
GCC 8.1	For notices , the Procuring Entity's address shall be: Attention: General Manager Supply Chain Postal address: P.O Box 47936 00100 Nairobi, Kenya Physical Address: KenGen Pension Plaza II, 9th Floor, Kolobot Road, Parklands. Telephone: 0711036000 Electronic mail address: contracts@kengen.co.ke ;
GCC 10.4.2	The place of arbitration shall be Nairobi, Kenya. (Nairobi Centre for International Arbitration)
GCC 15.1	The prices charged for the Goods supplied and the related Services performed <i>"shall not,"</i> be adjustable.
GCC 16.1	GCC 16.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows: Payment Terms and Conditions Payment shall be thirty (30) days upon delivery, inspection, and acceptance. Local suppliers shall be paid through Electronic Funds Transfer (EFT). Applicable Milestones Payment shall be as per the following milestones; a) 20% of Contract Price Upon Successful Design approval by KenGen's project Engineer b) 40% of Contract Price on Delivery of all equipment to site after successful FAT witnessed by client engineers. c) 40% of Contract Price upon successful installation and commissioning acceptable to the client for which a Taking Over Certificate has been issued in relation to the works. All the milestones shall have a 10% retention re-imbursible after a Defects Liability Period (DLP) of Six (6) months. The term shall be strictly Delivered and Duty Paid (DDP) to KAMBURU & MASINGA POWER STATIONS. Power Station Advance Payment Advance payment is not applicable.
GCC 18.1	Performance Security Performance security shall be at 10% of the Contract Price where the contract value is above five million shillings. The performance security shall remain valid for 30 days beyond the validity of the contract.

GCC 18.3	<p>The Performance Security shall be in the form of: <i>an on-Demand Bank Guarantee from a bank registered by Central Bank of Kenya</i></p> <p>The Performance security shall be denominated in the currency of the contract or a freely <i>convertible currency acceptable to the Procuring Entity</i>.</p>
GCC 24.1	<p>The insurance coverage shall be as specified in the Incoterms. The term shall be strictly Delivered and Duty Paid (DDP) to KAMBURU & MASINGA POWER STATIONS. Power Station</p>
GCC 25.1	<p><i>“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</i></p>
Framework Contracting terms	N/A
	<p>Contract duration The contract duration shall be Twelve (12) months from the commencement date. The commencement date shall be the date of contract signature or as agreed by both parties in writing.</p>
	<p>Delivery: Delivery period shall be within six (6) months from the contract commencement date.</p>
Prices	Prices shall be quoted inclusive of all applicable taxes.
	<p>Taxes</p> <ol style="list-style-type: none"> a) "Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly. b) Local Taxation <ol style="list-style-type: none"> i. Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. ii. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes. iii. Tax exemption granted under this Contract shall be for an official aid funded project and shall be as provided under the applicable tax laws in Kenya. iv. The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract. This shall include applicable local or foreign withholding tax, excise duty, Value Added Tax (VAT), importation duties, Local government taxes, and any other taxes not mentioned herein. v. In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute

	<p>competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per (i).</p> <p>c) Tax Deduction</p> <p>i. If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.</p> <p>ii. Where payments for the Contract Price are made directly by the financiers to the Contractor, the Contractor and the financiers shall make the necessary arrangements with Employer to ensure that withholding income tax is remitted to the Kenya Revenue Authority.</p> <p>d) Tax Indemnity</p> <p>i. The Contractor shall indemnify and hold the Employer harmless from and against any and all tax liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.</p> <p>ii. The Contractor warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.</p> <p>iii. Where the amount in (ii) above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.</p>
GCC 26.1	<p>The inspections and tests shall be:</p> <p>Pre-shipment inspection</p> <ul style="list-style-type: none"> • All consignments subject to Pre-Export Verification of Conformity (PVoC) to Standards Programme must obtain a Certificate of Conformity (CoC) issued by PvoC Country Offices Prior to shipment. The Certificate is a mandatory Customs Clearance document in Kenya; • Consignments arriving at Kenyan Ports without this document will be denied entry into the Country. • Since PVoC is a conformity assessment process to verify that products imported to Kenya are in compliance with the applicable Kenya standards or approved equivalents, regulations and technical requirements before shipment, it is the sole responsibility of the supplier (i.e., exporter) to demonstrate the same and hence meet any associated costs of verification.
GCC 26.2	The Inspections and tests shall be conducted at: KAMBURU & MASINGA POWER STATIONS. <i>power station stores</i>
GCC 27.1	The liquidated damage shall be: 0.5 % per week .
GCC 27.1	The maximum amount of liquidated damages shall be 10 %
GCC 28.3	<p>The period of validity of the Warranty shall be: <i>[12 months]</i> from date of acceptance</p> <p>For purposes of the Warranty, the place(s) of final destination(s) shall be: <i>/KAMBURU & MASINGA POWER STATIONS. power station stores/</i></p>

GCC 28.5, GCC 28.6	Rectification period shall be within Four (4) months from defect notification date. The delivery terms shall be to KAMBURU & MASINGA POWER STATIONS, <i>power station stores</i>
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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.

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 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 at midnight 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]
 - III. Agency: _____ [insert name of Employer]
 - IV. Email address: _____ [insert email address]
 - d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
 - e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
 - f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.
6. How to make a complaint
 - a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [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 or email complaints@ppra.go.ke.

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

- e) There are four essential requirements:
 - i) **You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.**
 - ii) **The complaint can only challenge the decision to award the contract.**
 - iii) **You must submit the complaint within the period stated above.**
 - iv) **You must include, in your complaint, all of the information required to support your complaint.**

7. Standstill Period

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

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

FORM NO 2: NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

[letterhead paper of the Employer]

_____ *[date]*

To _____ *[name and address of the Contractor]*

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

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Employer: _____

Attachment: *Contract Agreement*: _____

NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

[use letterhead 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 and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract Agreement

FORM NO 3 - CONTRACT AGREEMENT

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

THIS AGREEMENT made the _____ *[insert number]* day of _____ *[insert month]*, *[insert: year]*. BETWEEN (1) _____ *[insert complete name of Procuring Entity]* and having its principal place of business at *[insert: address of Procuring Entity]* (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.

3. WHEREAS the Procuring Entity invited Tenders for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Tender by the Supplier for the supply of those Goods and Services, the Procuring 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 Procuring Entity to the Supplier as specified in this Agreement, the Supplier hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the 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.
5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

For and on behalf of the Procuring Entity

Signed: _____ *[insert signature]*

in the capacity of _____ *[insert title or other appropriate*

designation] In the presence of _____ *[insert*

identification of official witness] **For and on behalf of the**

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. 4 - 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 _____
(hereinafter 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)*,¹ such sum being
payable in the types and proportions of currencies in which the Contract Price is payable, upon
receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement,
whether in the demand itself or in a separate signed document accompanying or identifying the
demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the
Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the Day of, 2.....², and any demand for
payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six
months] [one year]*, in response to the Beneficiary's written request for such extension, such
request to be presented to the Guarantor before the expiry of the guarantee."

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

FORM No. 5 - PERFORMANCE SECURITY [Option 2- Performance Bond]

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

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of*

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, 20 _____, for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the 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:
 - i. complete the Contract in accordance with its terms and conditions; or
 - ii. 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
 - iii. 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.
 - iv. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
 - v. 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.
 - vi. 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. 6 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____ *[Insert name and Address of*

Employer] **Date:**___ *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.:_____ *[Insert guarantee reference number]* **Guarantor:**_____ *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (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)* _____)¹ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - a) has used the advance payment for purposes other than the costs of mobilization in respect of the 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.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number __ at _____
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the _____ day of _____, 2____, ² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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

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

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

FORM NO. 7 BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

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

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

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

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

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

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

Details of beneficial ownership

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

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)	
address				Direct.....	exercised directly or indirectly?	
Telephone number						
Email address						
Occupation or profession				Indirect.....	Direct..... .. Indirect..... ...	
2.	Full Name		Directly-- ----- % of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes -----No-----	1. Exercise s significant influence or control over the Company body of the Company (tenderer) Yes -----No-- --
	National identity card number or Passport number			Indirectly---- -----% of voting rights		
	Personal Identification Number (where applicable)		Indirectly- ----- % of shares			
	Nationality(ies)				2. Is this right held directly or indirectly?:	2. Is this influence or control exercised directly or indirectly?
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address				Direct.....	
	Telephone number					
	Email address				Indirect.....	Direct..... ..
	Occupation or profession					Indirect..... ...
3.						
e.f						

	Details of all Beneficial Owners	% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
.c					

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

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

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

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

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

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

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

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

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

Bidder Official Stamp