

**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF BUNGOMA**

**TENDER DOCUMENT**

**FOR**

**PROVISION OF OUTSIDE CATERING SERVICES AT THE ISOLATION CENTRE**

**TENDER NO: BGM/CNTY/HLT/EF/RT/12/2020-2021**

**CLOSING DATE: Monday 31<sup>st</sup> August 2020 at exactly 10.00 a.m Local  
time.**

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**SECTION I – INVITATION TO TENDER**

**TENDER NO: BGM/CNTY/HLT/EF/RT/10/2020-2021**

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**TENDER NAME: PROVISION OF OUTSITE CATERING SERVICES AT ISOLATION CENTRES.**

You have been selected from the list of registered service providers, category of **Provision of accommodation Services full board** to tender for the above tender. We hereby invite you and other registered tenderers to submit a tender for the provision of the above services.

Interested eligible candidates may download a complete set of tender documents with evaluation criteria from the County Government of Bungoma website [www.bungoma.go.ke](http://www.bungoma.go.ke) using the unique **Tender Number indicated in the tender advert.**

Complete tender documents must be submitted to the Tender box at the entrance of Bungoma supply chain management office in a sealed envelope marked tender number as per the requirements contained in the document so as to be received on or before the **Monday 31<sup>st</sup> August 2020.**)

**NOTE:** Bidders who May experience challenges in accessing the document may contact Supply Chain Management Office located behind H.E the Governor's office County Government of Bungoma for assistance during official working hours.(Monday-Friday 8:00am- 5:00Pm)

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## **SECTION II - INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

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

### **2.2 Eligible Services**

- 2.2.1 All services to be provided under the contract shall have their origin in eligible source countries.
- 2.2.2 The origin of services is distinct from the nationality of the tenderer.

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## **2.4. The Tender Document**

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

- (i) Invitation to Tender
- (ii) Instructions to tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Confidential Business Questionnaire

2.4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **2.5 Clarification of Documents**

2.5.1 To assist in the examination, evaluation and comparison of tenders the County Government of Bungoma may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.5.2 Any effort by the tenderer to influence the County Government of Bungoma in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## 2.6 **Amendment of Documents**

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

## 2.7 **Language of Tender**

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

## 2.8 **Documents Comprising of Tender**

- 2.8.1 The tender prepared by the tenderers shall comprise the following components
- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
  - (b) documentary evidence established in accordance with paragraph 2.1 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
  - (c) documentary evidence established in accordance with paragraph 2.2 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
  - (d) tender security furnished in accordance with paragraph 2.14

## 2.9 **Tender Forms**

2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the services to be provided, a brief description of the services and prices.

**2.10 Tender Prices**

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

**2.11 Tender Currencies**

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

**2.12 Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to paragraph 2.1. The tenderer shall furnish, as part of its Tender, documents establishing the tenderers eligibility to tender and Its qualifications to perform the contract if it's tender are accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity's satisfaction;

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya



equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

### **2.13 Service Eligibility and Conformity to Tender Documents**

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the services shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the services to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the services;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the services for a period of two (2) years, following commencement of the use of the services by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

### **2.14 Tender Security**

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

- 2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7
- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
  - (b) in the case of a successful tenderer, if the tenderer fails:
    - (i) to sign the contract in accordance with paragraph 2.27Or
    - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting

its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **2.16 Format and Signing of Tender**

2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each “**ORIGINAL TENDER**” and “**COPY OF TENDER,**” as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **2.17 Sealing and Marking of Tenders**

2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “**ORIGINAL**” and “**COPY.**” The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

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

(a) Bear, tender number and name in the Invitation for Tenders and the words, “**DO NOT OPEN BEFORE Monday 31<sup>st</sup> August 2020.**” The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.17.3 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

(a) Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later **Monday 31<sup>st</sup> August 2020**

(b) The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring

entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## **2.19 Modification and Withdrawal of Tenders**

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

## **2.6 Opening of Tenders**

- (c) The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on Monday **Monday 31<sup>st</sup>** August 2020 And in the location specified in the Invitation to Tender.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

- 2.6.1 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.6.2 The Procuring entity will prepare minutes of the tender opening.

## **2.7 Clarification of Tenders**

- 2.7.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The

request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

- 2.7.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.8 Preliminary Examination**

- 2.8.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.8.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail
- 2.8.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
- 2.8.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.8.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

## **2.9 Conversion to Single Currency**

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

## **2.10 Evaluation and Comparison of Tenders**

- 2.10.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22
- 2.10.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 2.10.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

**2.11 Preference**

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

**2.12 Contacting the Procuring entity**

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

**2.13 Award of Contract**

**(a) Post-qualification**

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

**(b) Award Criteria**

- 2.13.4 The Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined

to be the lowest evaluated tender as per moderated price, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

**(c) Procuring entity's Right to Vary quantities**

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

**(d) Procuring entity's Right to accept or Reject any or All Tenders**

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

**2.14 Notification of Award**

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

- 2.14.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

- 2.14.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

**2.15 Signing of Contract**

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

- 2.15.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

- 2.15.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

**2.16 Performance Security**

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

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

## **2.17 Corrupt or Fraudulent Practices**

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;

2.17.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

2.17.3 Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

## **Appendix to Instructions to Tenderers**

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



INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	i. The name of the client is: County Government of Bungoma ii. <b>RESTRICTED to all RESIDENTS OF BUNGOMA COUNTY WEBUYE TOWN</b> the eligible firms capable of <b>providing catering services specification-section v.</b>
2.2.1	<i>All countries are eligible sources except those under United Nations Sanctions</i>
2.3.2	<i>There is no fee charged for a complete set of documents downloaded from the <b>county website</b> <a href="http://www.bungoma.go.ke">www.bungoma.go.ke</a> free of charge.</i>
2.10.5	<i>Tender validity period:- <b>120</b> days from Tender Submission/Opening date.</i>
2.11.1	<i>Prices quoted shall be in <b>Kenyan Shillings.</b></i>
2.16	<i>Submit Tender documents in <b>original and copy</b> and in the recommended format.</i>
2.18.1	<i>Submission dateline; on or before; - <b>Monday 31<sup>st</sup></b> August 2020</i>
2.20.1	<i>Opening of Tenders; - ;- <b>Monday 31<sup>st</sup></b> August 2020</i>
2.14.1	<i>Tender security is not required for this tender</i>
2.16.2	<i>The bidder must provide an appropriate written power of attorney establishing the authorization to of the signatory to the tender documents to bind the bidder.</i>
2.24	<i>The bid evaluation will take into account technical factors in addition to cost factors.</i>
2.25	<i>The county will grant a margin of preference for the purpose of bid comparison in accordance with the current laws</i>
2.27.4	<i>The evaluation of the responsive bids will take into account technical factors, in addition to cost factors. An evaluated bid score (B) will be the lowest evaluated price for each responsive bid. Delivery period will be a critical Evaluation factor. Delivery of the stationery must be affected within two weeks from the date of the order.</i>
2.31	<i>The county will require a supplier of goods and/ or services to swear an affidavit to the effect they will not have offered or been requested to pay an inducement to any member of staff to influence the outcome of the bid.</i>

### SECTION III: GENERAL CONDITIONS OF CONTRACT

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## **SECTION III: GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “**The services**” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the CGB under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer’ means the individual or firm supplying the Goods under this Contract.
- (f) “**CGB**” means the organization sourcing for the services under this Contract.
- (g) “**The contractor**” means the individual or firm providing the services under this Contract.
- (h) “**GCC**” means general conditions of contract contained in this section
- (i) “**SCC**” means the special conditions of contract
- (j) “**Days**” are calendar days
- (k) “**Months**” are calendar months.

### **Application**

These General Conditions shall apply to the extent that they are not superseded by provisions of other part of contract.

### **3.3 Standards**

The services provided under this Contract shall conform to the standards mentioned in the Schedule of requirements.

### **3.4 Patents Rights**

The tenderer shall indemnify the CGB against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

### **3.5 Use of Contract Documents and Information**

**3.6** The tenderer shall not, without the County Government of Bungoma's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the County Government of Bungoma in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

**3.6.1** The tenderer shall not, without the County Government of Bungoma's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

**3.6.2** Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the County Government of Bungoma and shall be returned (all copies) to the County Government of Bungoma on completion of the Tenderer's performance under the Contract if so required by the County Government of Bungoma.

### **3.7 Performance Security**

**3.7.1** Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the County Government of Bungoma the performance security in the amount specified in Special Conditions of Contract.

**3.7.2** The proceeds of the performance security shall be payable to the County Government of Bungoma as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

**3.7.3** The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the County Government of Bungoma and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the County Government of Bungoma, in the form provided in the tender documents.

**3.7.4** The performance security will be discharged by the County Government of Bungoma and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

- 3.8.1** The CGB or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The CGB shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2** The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the CGB.
- 3.8.3** Should any inspected or tested services fail to conform to the Specifications, the CGB may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the CGB.
- 3.8.4** Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Payment**

- 3.9.1** Payment will be on submission of an invoice after certification by an authorized officer of the CGB that services have been offered.

### **3.8 Prices**

- 3.8.1** Prices charged by the contractor for services performed under the Contract shall not vary from the prices by the tenderer in its tender or in the CGB's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

### **3.9 Assignment**

- 3.9.1** The tenderer shall not assign, in whole or in part, its obligations to perform under this contract, except with the CGB's prior written consent.

### **Termination for Default**

3.10.1 The CGB may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part:

a) if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the CGB

b) if the tenderer fails to perform any other obligation(s) under the Contract.

c) if the tenderer, in the judgment of the CGB has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event the CGB terminates the Contract in whole or in part, it may procure, upon such terms and in such manner, as it deems appropriate, services similar to those undelivered, and the tenderer shall be liable to the CGB for any excess costs for such similar services.

#### **Termination of Insolvency**

3.11.1 The CGB may at the anytime terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

#### **Termination for Inconvenience**

3.12.1 The CGB by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

#### **Resolution of Disputes**

3.13.1 The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

3.13.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

### **3.14 Governing Language**

3.14.1 The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

### **3.15 Force Majeure**

3.15.1 The contractor shall not be liable for forfeiture of its performance security, 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.

### **3.16 Applicable Law.**

3.16.1 The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC

### **3.17 Notices**

3.17.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address as may be specified by both parties.

A notice shall be effective when delivered or on the notices effective date, whichever is

## **SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

4.1 These Special Conditions of contract shall apply in regard to this contract. Whenever there is a conflict between the General Conditions of Contract (GCC) and the Special Condition of Contract (SCC), the provision herein shall prevail and supersede over those in the General Conditions of Contract.

### **4.2 Contract Documents**

The following documents shall constitute the Contract documents

- a) Agreement,
- b) General Conditions of Contract and Special Conditions of contract
- c) Technical Specifications,
- d) Price Schedule
- e) Letter of Award and Acceptance,
- f) Contractors Tender Document

### **4.3 Employer's Representative's Decisions**

4.3.1 Except where otherwise specifically stated, the Employer's Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

### **4.4 Instructions**

4.4.1 The Contractor shall carry out all instructions of the CGB's Representative which are in accordance with the Contract.

4.4.2 All verbal instructions to the Contractor shall as soon as possible after such instructions have been made be confirmed in writing by the CGB Manager/ Representative.

### **Duration of Contract**

4.6.1 The resulting contract/Agreement would run for a from the commencement date.

### **4.7 Termination**

4.7.1 CGB may without prejudice to any other remedy accruing to it terminate this Agreement in writing in whole or in part if:



- (i) By Breach of Contract
- (ii) The Contractor frequently fails to provide services of acceptable standards set by CGB in the performance of this Agreement and
- (iii) The Contractor fails to perform any other obligation under this Agreement.

### **By Agreement**

Either party may terminate the Agreement by giving to the other party three (3) months notice in writing or payment of three (3) months to offset fees and charges in lieu of such notice

On termination of this Agreement, whosoever terminated, the Contractor shall be permitted to remove all its equipment which may have been placed by the Contractor upon the employer's premises.

### **4.8 Confidentiality**

4.8.1 The Contractor, its Cleaning Officers, servants and agents shall not at any time during or after termination of this Agreement divulge or allow to be divulged to any person or third party any information relating to the business or affairs of CGB.

### **4.9 Assignment**

4.9.1 The Contractor shall not assign or sub-contract any of its rights or duties under his Agreement

### **4.10 Sub Contract**

4.10.1 The contract shall not be sub-contracted under this agreement.

### **4.11 Payment Terms**

4.11.1 The contractor will promptly be paid upon receipt of certified invoices confirming that the services have been delivered in accordance with the contract.

### **4.13 Performance Security**

4.13.1 The Contractor shall before be executing this agreement furnish CGB with a Performance security whose value shall be equivalent to Ten per cent (10%) of the annual Contract Value. The performance security will have a validity of one year hence be renewed one month before the expiry date for each year of the contract period.

### **4.14 Notice Addresses**

4.14.1 Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party or by facsimile transmission or by Email and shall be deemed to have been received by the addressee within Three (7) working days of posting or 48 hours if sent by facsimile transmission or by electronic mail. Notices shall be served on weekdays and not during weekends and Public Holidays.

#### **4.15 Tender Prices**

4.15.1 The contract price will be fixed during the term of contract and not subject to variation on any account.

#### **Insurance**

4.16.1 The Contractor shall insure its personnel engaged in the performance of this Agreement against injury sustained by them in the course of carrying out their duties in pursuance hereof and unless such injury shall be due to the act of negligence or default of CGB, its servants or agents. The Contractor will indemnify CGB against all actions, claims and demands in respect of such injury.

4.16.2 The Contractor shall be required by CGB to avail the Policy of Insurance in respect thereof and proof of payment of current premium.

#### **4.17 Liquidated Damages**

4.17.1 If the contractor fails to provide any or all of the services within the period(s) specified in the contract, CGB shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to the contract sum of the undelivered services until actual delivery of those services are met. After this CGB may consider terminating the contract.

#### **4.18 Statutory Requirements**

4.18.1 It is important that the Contractor fully understands the statutory duties of the CGB because it will be incumbent upon the Contractor to carry out the Service in accordance with those statutory requirements on behalf of the CGB. Any penalties prescribed by law and any consequential costs resulting from the Contractor failing to carry out those statutory duties shall be paid by the Contractor.

#### **4.20 Tendering Notes**

4.20.1 The Tenderer is required to check the number of pages and should any be found to be missing or in duplicate or the figure or writing indistinct, inform the CGB at once and have the same rectified.

4.20.2 Should the Tenderer be in doubt about the prices, meaning of any item, word or figure for any reason whatsoever or observe any apparent omission of words or figures, they must inform the CGB in order that the correct meaning may be decided upon before the date for submission of the Tender.

4.20.3 No liability whatsoever will be admitted nor is claim allowed in respect of errors in the Tenderer 's Tender due to mistakes which should have been rectified in the manner described above.

4.20.4 It is the sole responsibility of the tenderer to ensure all the documents submitted are well bounded and the CGB shall not take any responsibility or liability for any loss or misplacement of loose documents.

4.20.5 The Tenderer shall not alter or otherwise qualify the text of this Tender Document. Any alteration or qualification made without authority will be ignored and the text of the Tender Document as printed will be adhered to.

**SECTION IV - SPECIAL CONDITIONS OF CONTRACT**  
Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC

herein shall prevail over these in the GCC. Special conditions of contract as relates to the GCC.

4.0 The participating tenderer is expected to furnish the Procuring Entity with the following documents / information **pursuant to clause 2.12 of the Instructions to Tenderers**: -

No	Requirements	YES/NO
MR1	Attach documentary evidence of the company's certificate of incorporation/Registration	
MR 2	Attach copy of the company's valid tax compliance certificate issued by KRA valid up-to at least the date of tender opening	
MR 3	Attach Duly filled Confidential Business Questionnaire as provided in the Tender Document	
MR4	Attach Current Single Business Permit Issued by the relevant County Government	
MR5	Attach standard forms duly filled, stamped/sealed and signed by authorized persons in format provided.	
MR6	Attach Duly filled, signed and stamped Tender form	
MR7	Attach CR12 for Limited Company and copies of I'd for the directories.	
MR8	Attach KRA Pin/VAT Certificate.	

**NB: Failure to submit any of the above requirements shall lead to automatic disqualification from further evaluation.**

### Technical Evaluation

This section (Technical Evaluation) will carry a total of 70% of the whole evaluation

Item	description	Point scored	Max point
1	STATEMENT OF COMPLIANCE----- 5mks Filled,signed and stamped ----- 5mks Signed but not stamped or vice-versa----- 3mks Not signed or stamped-----0mks		5
2	Tender questionnaire form -----5mks Completely filled-----5mks Partially filled-----3mks Not filled-----0mks		5
3	Confidential business questionnaire form----- -----5mks Completely filled-----5mks Partially filled-----3mks Not filled-----0mks		5
4	Audited financial financial report(last 2 years )---- -----20mks Annual turn over greater or equal to 5 times the cost of the service-----20mks Annual turn over greater or equal to 3 times the cost of the service-----10mks Annual turn over greater or equal to the cost of the service-----5mks Annual turn over below the cost of the service---- -----2mks		20
5	Evidence of financial resources----- ---20mks Has financial resources equal or above the cost of the service-----20mks Has financial resources below the cost of the service-----10mks Has not indicated sources of financial resources-- -----0mks		20
6	Services rendered in the last 3 years ----- 20mks Services of similar nature and magnitude( Attach evidence)-----20mks Services of similar nature but lower value ( Attach evidence)-----10mks		20

	Name,Address and Telephone of Banks(Provided)-----10mks Provided-----10mks Not provided -----0mks		10
	Litigation history Filled-----5mks Not filled-----0mks		5
	Sanctity of the document-----10mks Having the document intact (Not tempered with in any way)-----10mks Having mutilated or modified the tender document-----0mks		10
			100

**NB:**

***Bidders shall be required to obtain a minimum of Seventy (60) Marks at the Technical Evaluation to proceed to next Financial Evaluation stage. Those who score below 60 marks will be eliminated at this stage from the entire evaluation process and will not be considered further.***

**c) Financial Evaluation**

Verifying the financials and checking for arithmetical errors, omissions and price comparison among the qualified tenderers in accordance with the evaluation criteria.

**i). Financial Score (F.S.);** Formula for Determining the Financial Score:

The Lowest Financial Evaluated Bid amongst the bidders with score of 70 points and above is to be recommended for award subject to clause (c) (ii) below

**ii). Due diligence**

The tender evaluation committee shall carry out due diligence on the bidder's attributes before making the final recommendation for award

**d) Recommendation (s)**

The tenderer/bidder among the qualified (responsive as per evaluation) with the lowest evaluated tender price as submitted and read out during the tender opening would be recommended for award. In the event there is tie in the lowest evaluated tender price, then the tenderer whose technical score is higher would be recommended.

**Award Criteria:**

Award will be made to the bidder with the lowest evaluated price

**SECTION VI - DESCRIPTION OF SERVICES**  
Provision of Catering Services and Conference Facility



**SECTION VII - PRICE SCHEDULE FOR SERVICE**

**PRICE SCHEDULE FORM PRICE SCHEDULE OF SERVICES**

The service provider should indicate the cost that is necessary to meet the requirements of CGB.

The price quotation shall include all applicable taxes for purposes of the price schedule and shall adhere to itemized Description below upon contract execution.

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

Tender Number; \_\_\_\_\_

<b>Item</b>	<b>Description</b>	<b>No of People</b>	<b>Period</b>	<b>Rate</b>	<b>Total</b>
1	Provision of outside catering services at the Bungoma county isolation centres.	505	120 days		

Signature of tenderer \_\_\_\_\_

Stamp of tenderer \_\_\_\_\_

*Note:* In case of discrepancy between unit price and total, the unit price shall prevail

**SECTION VIII SELF-DECLARATION FORMS**

**8.1 ANTI-CORRUPTION DECLARATION**

We (insert the name of the company/supplier) ..... declare and guarantees that no offer, gift or payment consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by our organization or agent, either directly or indirectly, as an inducement or reward for the award or execution of this procurement.

In the event the above is contravened we accept that the following to apply; -

- a) The person shall be disqualified from entering into a contract for the procurement; or
- b) If a contract has already been entered into with the person, the contract shall be voidable at the option of CGB

The voiding of a contract by the procuring entity under subsection (b) does not limit any other legal remedy that CGB may have.

Name..... Signature.....Date.....

Company Seal / Business Stamp

**8.2 ANTI-FRAUDULENT PRACTICE DECLARATION**

We (insert the name of the company/supplier) .....declares and guarantees that no person in our organization has or will be involved in a fraudulent practice in any procurement proceeding.

Name..... Signature..... Date.....

Company Seal/Business Stamp

**NON-DEBARMENT DECLARATION**

We (insert the name of the company/ supplier)  
.....declares and guarantees that no director or any person  
who has any controlling interest in our organization has been debarred from  
participating in a procurement proceeding.

Name.....Signature.....Date.....

Company Seal/Business Stamp

## LITIGATION HISTORY

Name of Applicant or partner of a joint venture;

.....

Applicants, including each of the partners of a joint venture, should provide information of any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution. If none, please indicate NONE.

	<b>Year</b>	<b>Award FOR or AGAINST Applicant</b>	<b>Name of client, cause of litigation, and matter in dispute</b>	<b>Disputed amount (current value Kshs.)</b>
1.				
2.				
3.				
4.				

8.1 **FORM OF TENDER**

Date \_\_\_\_\_  
Tender No. \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
*[Name and address of procuring entity]*

Gentlemen and/or Ladies:

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

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

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract , in the form prescribed by ..... *(Procuring entity)*.

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[In the capacity of]

Duly authorized to sign tender for an on behalf of \_\_\_\_\_

**8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business .You are advised that it is a serious offence to give false information on this form

<p><i>Part 1 – General:</i>                  Business Name .....                  Location of business premises. ....                  Plot No..... Street/Road .....                  Postal Address ..... Tel No. .... Fax ..... E mail .....                  Nature of Business .....                  Registration Certificate No. ....                  Maximum value of business which you can handle at any one time – Kshs.                  Name of your bankers ..... Branch .....</p>																													
	<p style="text-align: center;"><b>Part 2 (a) – Sole Proprietor</b></p> Your name in full ..... Age ..... Nationality ..... Country of origin ..... <ul style="list-style-type: none"> <li>• Citizenship details                      .....</li> </ul>																												
	<p style="text-align: center;"><b>Part 2 (b) Partnership</b></p> Given details of partners as follows: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 25%;">Name</th> <th style="width: 15%;">Nationality</th> <th style="width: 45%;">Citizenship</th> </tr> <tr> <th>Details</th> <th>Shares</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship	Details	Shares			1.	.....	.....	.....	2.	.....	.....	.....	3.	.....	.....	.....	4.	.....	.....	.....				
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	<p style="text-align: center;"><b>Part 2 (c) – Registered Company</b></p> Private or Public ..... State the nominal and issued capital of company- Nominal Kshs. Issued Kshs. Given details of all directors as follows <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"></th> <th style="width: 25%;">Name</th> <th style="width: 15%;">Nationality</th> <th style="width: 45%;">Citizenship</th> </tr> <tr> <th>Details</th> <th>Shares</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td>1.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship	Details	Shares			1.....	.....	.....	.....	2. ....	.....	.....	.....	3. ....	.....	.....	.....	4. ....	.....	.....	.....	5. ....	.....	.....	.....
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Date ..... Signature of Candidate .....																													

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

### 8.3 TENDER SECURITY FORM

Whereas ..... [Name of the tenderer] (Hereinafter called "the tenderer") has submitted its tender dated ..... [Date of submission of tender] for the supply, installation and commissioning of ..... [Name and/or description of the equipment] (Hereinafter called "the Tender")  
..... KNOW ALL PEOPLE by these presents that  
WE ..... of ..... having our registered office at  
..... (Hereinafter called "the Bank"), are bound unto .....  
[Name of procuring entity] (Hereinafter called "the Procuring entity") in the sum of ..... For which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

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

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

[Signature of the bank] \_\_\_\_\_  
(Amend accordingly if provided by Insurance Company)

## 8.4 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
  - (a) The Tender Form and the Price Schedule submitted by the tenderer
  - (b) The Schedule of Requirements
  - (c) The Technical Specifications
  - (d) The General Conditions of Contract
  - (e) The Special Conditions of contract; and
  - (f) The Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tender hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provisions of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.

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

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

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

*(Amend accordingly if provided by Insurance Company)*



**8.5 PERFORMANCE SECURITY FORM**

To .....  
[Name of procuring entity]

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

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

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

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

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

\_\_\_\_\_  
[Name of bank or financial institution]

\_\_\_\_\_  
[Address]

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

**8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

To .....  
[Name of procuring entity]

[Name of tender] .....

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

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[Name of bank or financial institution]

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[Address]

---

[Date]

**8.7 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

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

To: \_\_\_\_\_

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

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

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

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

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

*(FULL PARTICULARS)* \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

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

**REQUEST FOR REVIEW**

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

- 1.
  - 2.
- Etc.

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

- 1.
  - 2.
- Etc.

SIGNED ..... (Applicant)

Dated on.....day of ...../...20...

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**FOR OFFICIAL USE ONLY**

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

SIGNED  
Board Secretary