



Open International Tender (OIT)

Tender Document

For the

Supply of Computer Tablets

Invitation for Tender (IFT) Number:

GF ATM TB NFM 2021/2022 -OIT-02 SUPPLY OF COMPUTER TABLETS

Tender Closing date: 29th October, 2021

Time: -10.00 a.m. Local time

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TENDER NOTICE

The Kenya Medical Supplies Authority (KEMSA) invites tenders for the supply of Computer Tablets for FY 2021-2022 as follows.

Tender Number	Tender Description
GF ATM TB NFM 2021/2022 -OIT-02	Supply of Computer Tablets

Tender Documents in English detailing the requirements may be obtained from the **Procurement office** situated at:

Kenya Medical Supplies Authority,
13 Commercial Street, Industrial Area
P.O Box 47715-00100, Nairobi
Tel No: +254 719033000/ +254 726618520/1
E-mail: procurement.programs@kemsa.co.ke

on normal working days from between **9.00a.m.** and **4.00p.m.** upon payment of a non-refundable fee of **Kshs. 1,000.00**. Payment shall be in cash or by banker's cheque made out to "Kenya Medical Supplies Authority".

Completed **Serialized/ Paged** tender documents in plain sealed envelopes clearly marked with the **Tender No. and Tender Description** as particularly described in the Tender documents should be addressed and submitted to:

**The Chief Executive Officer
Kenya Medical Supplies Authority,
13 Commercial Street, Industrial Area
P.O Box 47715-00100, Nairobi**

Or be deposited in the Tender Box No.2 marked Global Fund at the Reception on the Ground Floor of KEMSA's Commercial Street Offices in Nairobi on or before **10.00 a.m. on Friday 29th October, 2021**

Tenders will be opened immediately thereafter in the KEMSA Tender Opening Hall at Commercial Street in the presence of tenderers and/or their representatives who choose to attend.

Section A: Invitation for Tenders

INVITATION TO TENDER

PROCURING ENTITY: Kenya Medical Supplies Authority, 13 Commercial Street, Industrial Area, P.O Box 47715-00100, Nairobi. Tel No: +254 719033000/ +254 726618520/1 Email: procurement.programs@kemsa.co.ke

TENDER NUMBER AND DESCRIPTION: GF ATM TB NFM 2021/2022 -OIT-02 SUPPLY OF COMPUTER TABLETS

1. The Government of Kenya has received a grant from the Global Fund to fight AIDS, Tuberculosis and Malaria under New Funding Model (NFM 3) for the Year 2021/2022, which it intends to use part of the proceeds to fund payments under the contract(s) for the Supply of **Computer Tablets**.
2. The Kenya Medical Supplies Authority (KEMSA), on behalf of the Government of Kenya, Ministry of Health and Global Fund herewith invites sealed tender (s) for Supply of Computer Tablets.
3. Bidding will be conducted through the procedures specified in the Public Procurement and Asset Disposal Act (PPADA) 2015 and the Global Fund's Policies on Procurement and Supply Management, June 2021 and is open to all.
4. Interested eligible Bidders may obtain further information from Procurement office situated at:

Kenya Medical Supplies Authority,
13 Commercial Street, Industrial Area
P.O Box 47715-00100, Nairobi
Tel No: +254 719033000/ +254726618520/1
Email: procurement.programs@kemsa.co.ke

On normal working days on Monday to Friday 09.00hrs and 16.00hrs except on Public Holidays or download at the PPIP Portal: tenders.go.ke and KEMSA website. Documents downloaded are free of charge and bidders are advised to register their bid documents at the Procurement Office or via email at procurement.programs@kemsa.co.ke (Refer to registration form in the tender document).

5. A complete set of bidding documents in English may be purchased by interested bidders on the submission of a written application on company letterhead to the address below and upon payment of a non-refundable/non-transferable fee of USD.13 or Kenya Shillings; 1,000/=. The method of payment is i) by Cash or by Bankers cheque payable to "Kenya Medical Supplies Authority" KEMSA and ii) By direct deposit to the following accounts;

Kenya shillings Account
Account Name: Kenya Medical Supplies Authority
Bank Name & Branch: Co-operative Bank, Enterprise Road Branch
Account Number: 01141217405100

United States Dollar Account

Account Name: Kenya Medical Supplies Authority
Bank Name & Branch: Co-operative Bank, Enterprise Road Branch
Account Number: 02120217405100
Swift Code: KCOOKENA

6. Completed serialized/paginated Bidding documents shall be submitted accompanied with a signed declaration of the number of pages. The documents will be One original and a copy in plain sealed envelopes clearly marked on top with the Tender Number and Description and accompanied by a Bid Security of **USD 2,680.00 or KES 294,800.00** or equivalent in a freely convertible currency from Commercial Banks or Insurance Companies Approved by The Insurance Regulatory Authority (IRA) and listed by The Public Procurement Regulatory Authority and should be addressed to:

The Chief Executive Officer
Kenya Medical Supplies Authority
13 Commercial Street, Industrial Area
P.O B Box 47715-00100
Nairobi, Kenya.

7. The bid documents must be deposited in the Tender Box No.2 marked Global Fund at the reception on the Ground floor KEMSA's Commercial Street Office in Nairobi on or before **29th October, 2021**
8. Bulky tenders can be handed over to KEMSA Procurement Director's office for registration and safekeeping till the tender opening date.
9. Bids will be opened promptly in public and in the presence of Bidders' and or representatives who choose to attend the opening of bids at KEMSA's Conference Hall on the dates indicated against each tender.
10. Late bids, portion of bids, Electronic bids shall NOT be accepted for evaluation irrespective of circumstances.

There will be a pre-bid conference at College of Insurance, South C Nairobi on 7th October, 2021 starting 9.00 a.m.

Section B: General Information

Introduction

The Kenya Medical Supplies Authority (KEMSA) invites tenders for the Supply of computer tablets for the financial year 2021/2022.

Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 1.2 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 services under this Invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2. Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of their tender for this service, 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.

The Tender Document

3. Contents

3.1 The tender document comprises the documents listed below and any addenda issued in accordance with clause 4 of these instructions to tenders.

- (a) Invitation for Tenders
- (b) General information
- (c) General Conditions of Contract
- (d) Special Conditions of Contract
- (e) Tender Form and Price Schedules
- (f) Tender Security Form
- (g) Contract Form

3.2 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 tenderer's risk and may result in the rejection of its tender.

4. Clarification of Documents

A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than five (5) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender document.

5. Amendment of Documents

5.1 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.

5.2 All prospective candidates who have received the tender documents will be notified of the amendment in writing or by cable, and such amendment will be binding on them.

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- 5.3 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.

Preparation of Tenders

6. Language of Tender

The tender prepared by the tenderer, 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, 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.

7. Documents Comprising the Tender

The tender prepared by the tenderer shall comprise the following components:

- (a) Tender Form and a Price Schedule completed in accordance with paragraph 8, 9 and 10 below
- (b) documentary evidence established in accordance with paragraph 11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (d) tender security furnished in accordance with paragraph 12

8. Tender Form

The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

9. Tender Prices

- 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.
- Prices indicated on the Price Schedule shall be the cost of the services quoted including all taxes payable:
- Prices quoted by the tenderer shall be fixed during the Term 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 22.

10. Tender Currencies

Prices shall be quoted in Kenya Shillings or any freely convertible currency.

11. Tenderers Eligibility and Qualifications.

- Pursuant to paragraph 1 of section C, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract as outlined in the evaluation criterion below;

12. Tender Securing Declaration

- 12.1 The tenderer shall sign tender securing declaration as part of its tender.
- 12.2 The tender securing declaration is required to protect the Procuring entity against the risk of Tenderer's conduct.
- 12.3 Any tender not secured in accordance with paragraph 12.1 will be rejected by the Procuring entity as non-responsive.

13. Validity of Tenders

- 13.1 Tenders shall remain valid for 120 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 13.2 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 14 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

14. Format and Signing of Tender

- The tenderer 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.
- The original and all copies of price schedules shall be typed or written in indelible ink. Tenders 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.
- 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 initialled by the person or persons signing the tender.

Submission of Tenders

15. Sealing and Marking of Tenders

The Tenderer shall seal and mark the original and copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL and “COPY OF TENDER”. The Original and Copy must be properly bound for ease of handling. The original and copy of the “Schedule of Prices” shall be sealed in a separate envelope, duly marking the envelopes as “Schedule of Prices – ORIGINAL”, “Schedule of Prices – COPY”. The envelopes shall then be sealed in an outer envelope.

15.1 The inner and outer envelopes shall:

(a) Be addressed to the Procuring entity at the following address:

**The Chief Executive Officer
Kenya Medical Supplies Authority
Commercial Street
P.O Box 47715
Nairobi.**

(b) Bear, **GF ATM TB NFM 2021/2022 -OIT-02**, the Invitation for Tenders (IFT) and the words: **“DO NOT OPEN BEFORE 10.00 a.m. Friday 29th October, 2021.**

15.2 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”.

15.3 If the outer envelope is not sealed and marked as required by paragraph 15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

16. Deadline for Submission of Tenders

16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 15.2 not later than **10.00 a.m. on Friday 29th October, 2021.**

16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

17. Modification and Withdrawal of Tenders

17.1 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 prior to the deadline prescribed for submission of tenders.

17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

17.3 No tender may be modified after the deadline for submission of tenders.

17.4 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 12.7.

Opening and Evaluation of Tenders

18. Opening of Tenders

18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.00 a.m. on Friday 29th October, 2021** at the **KEMSA Tender opening Hall, Commercial Street, Nairobi.**

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

18.3 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.

18.4 The Procuring entity will prepare minutes of the tender opening.

19. Clarification of Tenders

19.1 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.

19.2 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.

20. Preliminary Examination

- 20.1 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.
- 20.2 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 may be forfeited.
 - If there is a discrepancy between words and figures, the amount in words will prevail.
- 20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 20.4 Prior to the detailed evaluation, pursuant to paragraph 21, 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.
- 20.5 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 nonconformity.

21. Evaluation and Comparison of Tenders

- 21.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 20.
- 21.2 The comparison shall be of the price to including all costs, as well as duties and taxes payable on all the materials to be used in the provision of the services.
- 21.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 21.4 and in the technical specifications:
- (a) operational plan proposed in the tender;
 - (b) deviations in payment schedule from that specified in the Special Conditions of Contract;
- 21.4 Pursuant to paragraph 23.3 the following evaluation methods will be applied:

(a) *Operational Plan:*

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements.

Payment schedule:

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price.

22. Contacting the Procuring entity

- 22.1 Subject to paragraph 19, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.
- 22.2 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.

Award of Contract

23. Post-qualification

- 23.1 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.
- 23.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 11, as well as such other information as the Procuring entity deems necessary and appropriate.
- 23.3 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.

24. Award Criteria

Subject to paragraph 9, 21 and 26 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

25. Procuring entity's Right to Vary quantities

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

26. Procuring entity's Right to Accept or Reject Any or All Tenders

The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers.

27. Notification of Award

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- 27.1 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.
- 27.2 The notification of award will constitute the formation of the Contract.
- 27.3 At the same time, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 12.

28. Signing of Contract

- 28.1 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.
- 28.2 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.

29. Performance Security

- 29.1 Within twenty -eight (28) 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.
- 29.2 Failure of the successful tenderer to comply with the requirement of paragraph 28 or paragraph 29 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.

30. Corrupt Fraudulent Practices

- 30.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Procuring entity:-
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i). "corrupt practice" means the offering, giving, receiving or soliciting of any thing 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;
- (b) 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;

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- (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract

30.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

Section C: General Conditions of Contract

1. Definitions

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 tenderer to the Procuring entity under the Contract.
- (d) "The Procuring entity" means the organization sourcing for the services under this Contract, in this case Kenya Medical Supplies Authority (KEMSA).
- (e) "The tenderer" means the individual or firm providing the services under this Contract.

2. Application

2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement of services.

4. Standards

4.1 The services provided under this Contract shall conform to the standards mentioned in the Technical Specifications.

5. Use of Contract Documents and Information

5.1 The Candidate shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or

information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

- 5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 5.1 above.
- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity.

6. Patent Rights

- 6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services or any part thereof in the Procuring entity's country.

7. Performance Security

- 7.1 Within twenty -eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security of 10% of the contract amount.
- 7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity 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 or a guarantee from an insurance company approved by the Public Procurement Oversight Authority, acceptable to the Procuring entity, in the form provided in the tender documents.
- 7.4 The performance security will be discharged by the Procuring entity 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.

8. Inspection and Tests

- The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the goods, and the tenderer shall either replace the rejected goods or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9. Payment

- The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.
- Payments shall be made promptly by the Procuring entity as specified in the contract.

10. Prices

Prices charged by the tenderer under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

11. Assignment

The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent.

12. Subcontracts

The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

13. Termination for Default

13.1 The Procuring entity 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 Procuring entity
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

13.2 In the event the Procuring entity 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 Procuring entity for any excess costs for such similar services.

14. Liquidated Damages

If the tenderer fails to provide any or all of the services within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the price of the unperformed services up to a maximum deduction of 10% of the unperformed services. After this the procuring entity may consider termination of the contract.

15. Resolution of Disputes

15.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

15.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute the provisions of the Arbitration Act of the Laws of Kenya shall apply.

16. Language and Law

The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

17. Force Majeure

The tenderer 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.

Section D: Special Conditions of Contract

Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

1. Clarification of Documents

The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than Seven (7) days prior to the deadline for the submission of tenders.

2. Bidders Eligibility

The documentary evidence of the Bidders eligibility to tender shall include **proof of tax compliance** from the relevant tax authorities.

3. Validity of Tenders

Tenders shall remain valid for 120 days.

4. Prices to be quoted in Kenya Shillings or any other freely convertible currency.
5. Each tenderer must attach to the tender document a copy of official receipt issued from the cash office for the purchase of tender document.
6. The documentary evidence of the tenderers eligibility to tender shall include proof of tax compliance from the relevant tax authorities.
7. Provision of the company profile including names of directors and senior managers.
8. Demonstration of a satisfactory management execution plan.
9. Complete set of audited financial statements for the last three years.
10. Specify credit terms to be offered.
11. Provide references of other organisations to which you render similar services.
12. Indicate the number of years the company has been in business.

SPECIFICATIONS

TECHNICAL SPECIFICATIONS FOR COMPUTER TABLETS

Display	10.1" 2560x1600 (WQxGA) TFT
Chipset	Wi-fi/4G: 1.9 GHz Quads + 1.3GHz Quad LTE: 2.3 GHz Quad
Memory	6GB RAM, 128 GB MicroSD upto 128GB
Camera/ Flash	8M w/LED Flash +2M Full HD
Connectors	USB 2.0, 3.5mm Ear jack
Connectivity	WiFi (802.11 a/b/g/n/ac), BT4.0
GPS	GPS + GLONASS
Battery Capacity	8,000 mAh
OS	Android 9
Audio	MP3, AAC, AAC+, eAAC+, AMR~WB, AMR`NB, OGG, M4A, 3GA, WMA, FLAC, WAV, MIDI, SP-MIDI, i- Melody, XMF
Video	MPEG4, H.264, MP43, VC-1, WMV 7/8, Sorenson Spark, H.263, VP8 1080p Full HD video @60fps

N/B

Bidders MUST submit product brochures containing details and Images of the product.

SCHEDULE OF REQUIREMENT

Line Item N°	Description of Goods	Physical unit	Qty	Final (Project Site) Destination as specified in BDS	Pre-delivery sample to be submitted at KEMSA for & inspection	Delivery (as per Incoterms) Date	
						Latest Delivery Date (After Pre-delivery sample approval)	Bidder's offered Delivery date [to be provided by the bidder]
							<i>[insert the number of days following the date of effectiveness the Contract]</i>
1	Computer Tablets	Pieces	150			1 to 16 weeks	

PRICE SCHEDULE FOR GOODS

1	2	3	4			5	6	7	8	9
Product Description	UOM	Quantity Unit Packs Offered	(a) Unit Price FOB port of Loading	(b) Inland transport, insurance and other local costs incidental to delivery	(c) Other incidental cost as defined in the SCC	Total Unit Pack price (4a+b+c)	Total Price (3 x5)	Manufacturer	Delivery Period	Delivery Period Offered by Bidder
Computer tablets	Pieces	150								

NOTE:

1. Incoterm - **DAP KEMSA Warehouse - Nairobi - Kenya**
2. Supplier supplying Goods from abroad shall be entirely responsible for all taxes, stamp, duties, license fees, and other such levies imposed outside the Purchaser’s country. Commodities being procured under this GFATM grant are free of local taxes and duties. The Purchaser will facilitate the tax exemptions upon receipt of the required documentation from the supplier.
3. A Supplier supplying Goods offered locally shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser. The charge of VAT is not applicable for commodities being procured with this GFATM grant. The Purchaser will facilitate VAT exemption upon receipt of the required documentation from the supplier.
4. Margin of Preference not Applicable.

DELIVERY SCHEDULE

One (1) item will be procured under this tender as described above.

Full quantity of all items shall be delivered **between 1-16 weeks** from effective date of contract.

Delivery Terms: DAP KEMSA Warehouse - Nairobi - Kenya

Section E: Tender Forms

FORM OF TENDER

INSTRUCTIONS TO TENDERERS

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

Date of this Tender submission: 29th October, 2021

Invitation to Tender No.: GF ATM TB NFM 2021/2022 - OIT-02 SUPPLY OF COMPUTER TABLETS

Alternative No.: [N/A] *To: Kenya Medical Supplies Authority*

- a) **No reservation:** We have examined and have no reservations to the tendering document, including Add and issued in accordance with Instructions to Tenderers (ITT 8);
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) We have not been suspended nor declared in eligible by the Procuring Entity based on execution of a Tender- Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 4.8;
- 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: [GF ATM TB NFM 2021/2022 - OIT-02 SUPPLY OF COMPUTER TABLETS]
- e) **Tender Price:** The total price of our Tender, is: *[[insert the total price of the Tender in words and figures]*
- f) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 18.1 (as amended if applicable) from the date fixed or the Tender submission deadline specified in TDS 22.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- g) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- h) **One Tender per Tenderer:** We are not submitting any other Tender(s) as an individual Tenderer, and we are not participating in any other Tender(s) as a Joint Venture partner or as a sub-contractor, and meet the requirements of ITT 4.4, other than alternative Tenders submitted in accordance with ITT 13;
- i) **Suspension and Debarment:** We, along with any of our sub-contractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- j) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state-owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.7];*
- k) **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.”)

- l) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- m) **Procuring Entity Not Bound to Accept:** We understand and that you are not bound to accept the lowest evaluated cost Tender, the Lowest Evaluated Tender or any other Tender that you may receive; and
- n) **Fraud and Corruption:** We here by 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.
- o) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent tender Determination” attached below.
- p) 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) We, the Tenderer, have completed fully and signed 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.
- 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 in formed in “Appendix 1-Fraud and Corruption” attached to the Form of Tender.

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

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

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

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

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

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

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

TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

a) Tenderer's details

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

General and Specific Details

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

Name in full _____ **Age** _____ **Nationality** _____
 _____ **Country of Origin** _____ **Citizenship** _____

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company ___

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

Nominal **Kenya** **Shillings** **(Equivalent)**

Issued **Kenya** **Shillings** **(Equivalent)**

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

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

ii) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has a relationship with another tenderer, directly or indirectly, on the same basis, 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.		
4	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.		
5	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
6	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.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
8	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.		
9			

f) **Certification**

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

Full Name _____ **Title or Designation** _____

(Signature)

(Date)

CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

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

Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name _____ Title _____

Date _____

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

SELF- DECLARATION FORMS

FORM SD1

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

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

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

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

Bidder Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive / Managing Director /Principal Officer/Director of.....
.....(insert name of the Company) who is a Bidder in respect of **Tender No.**for.....(insert tender title /description) for.....(insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, it's servants and/or agents/sub-contractors 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 here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

Telephone.....Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness Name
.....

Sign.....

Date.....

APPENDIX 1- FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below high light 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 procure mentor asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
 - a) Shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

-
- c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
 - 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 sub section (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.

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, 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 in to 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 award¹of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal

documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to 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.

FORM OF TENDER SECURITY - (BANK GUARANTEE)

[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.] [Guarantor letterhead or SWIFT identifier code] Beneficiary: [Procuring Entity to insert its name and address] ITT No.: [Procuring Entity to insert reference number for the Invitation to Tender] Alternative No.: [Insert identification No if this is a Tender for an alternative] Date: [Insert date of issue]

TENDER GUARANTEE No.: *[Insert guarantee reference number]*

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

We have been informed that *[insert name of the Tenderer, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members thereof] (herein after called " the Applicant")* has submitted or will submit to the Beneficiary its Tender (hereinafter called " the Tender") for the execution of under Invitation to Tender No. ("the ITT").

Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

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 Form of Tender ("the Tender Validity Period"), or any extension there to provide 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 provide by the Applicant, (i) has 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 Beneficiary's tendering document.

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 issued to the Beneficiary in relation to such contract agreement; 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) twenty-eight days after the end of the Tender Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

[Signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORM OF TENDER SECURITY (TENDER BOND)

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

BOND NO. _____

BY THIS BOND [*name of Tenderer*] as Principal (here in after called "the Principal"), and [*name, legal title, and address of surety*], authorized to transact business in Kenya, as Surety (hereinafter called "the Surety"), are held and firmly bound unto [*name of Procuring Entity*] as Oblige (here in after called "the Procuring Entity") in the sum of [*amount of Bond*]⁵ [*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 as signs, jointly and severally, firmly by these presents.

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*](herein after called the "Tender").

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 Form of Tender ("the Tender Validity Period"), or any extension there to be 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 under takes 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 vents, specifying which event(s) has occurred.

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 30 days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extension thereto provided by the Principal.

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

Principal: _____

Surety: _____

Corporate Seal (where appropriate)

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

⁵*The amount of the Bond shall be denominated in the currency of Kenya or the equivalent amount in a freely convertible currency.*

TENDER - SECURING DECLARATION FORM

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

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

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

To:*[insert complete name of Purchaser]*

I/We, the undersigned, declare that:

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

Signed:.....

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

Name:.....

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Tenderer]*

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

Seal or stamp

MANUFACTURER'S AUTHORIZATION

[The Tenderer shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This Form 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 tendering 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 here by 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]

TAX EXEMPTION PROCESS

- All procurements under GF are exempt from Duty and Taxes.
- All goods must be consigned to KEMSA because tax waiver is granted to KEMSA. Delivery address should be Kenya Medical Supplies Authority, P.O. Box 47715-00100 Nairobi. Notified party is the supplier.
- The following are documents required for purpose of application of Import Declaration Form (IDF) and Import permit by KEMSA through the KenTrade System:
 - a. Proforma/Commercial Invoice
 - b. Retention/Product listing by Pharmacy & Poisons Board (PPB)
- The IDF and Import Permit are used by the supplier to apply for Pre-Export Verification of Conformity to Standards (PVoC). If products conform to standards, a Certificate of Conformity (COC) is issued.
- As per the PVOC Program operations Manual issued on 1st October 2018, there are Six (6) inspection companies (PVoC Agents) namely;
 - a. Messrs Bureau Veritas
 - b. Cotecna
 - c. China Certification & Inspection (Group) Inspection Co. Ltd
 - d. Intertek International
 - e. SGS
 - f. QISJ.

(The PVOC manual can be accessed on the KEBS website: https://www.kebs.org/index.php?option=com_content&view=category&layout=blog&id=59&Itemid=274)

- The supplier should only release shipment (both Sea and air) when the COC has been issued and a copy must be forwarded to KEMSA.

Please note that any goods shipped/arriving in Kenya without the CoC is considered to have not been inspected and therefore subjected to **Destination Inspection by KEBS at a cost of 20% of CIF**. A new directive was enforced by the PS-Trade and Industrialization with effect 23rd January 2019 that any goods arriving in Kenya without inspection at country of origin will be returned back to

country of origin at suppliers cost.

Documents required for application of Tax waiver:

- Certificate of Conformity (COC)
- Draft shipping documents: i.e.
 - a. Air Waybill/Bill of Lading,
 - b. Commercial Invoice,
 - c. Packing List,
 - d. Copy of marine Insurance to KEMSA.
- The process takes approximately 2-3 weeks for a tax waiver to be issued through the Ministry of Health (MOH) and the National Treasury. MOH confirms to the National Treasury that goods are eligible for exemption and National Treasury thereafter forwards documents to Kenya Revenue Authority for issuing of exemption code.
- The supplier/Clearing agent is required to clear consignments within the stipulated days as provided for by the Container Freight Station (CFS).
- For Air shipments, they must be cleared within 48 hours on notification by the CFS.
- Sea shipment must be cleared within 5 days or within the negotiated days between the shipper and the CFS. Suppliers should note that there is mandatory haulage of all imports through Mombasa by SGR to the Inland Container Depot (ICD) Nairobi. If all the goods are meant to be distributed within Coast region, suppliers should consign their goods to Kenya Medical Supplies Authority (KEMSA), Mombasa.
- If the named place of destination is KEMSA warehouse, supplier must arrange for clearing and forwarding through their clearing agent.
- The supplier representative/appointed agent should arrange with KEMSA Warehouse for delivery date and be present to confirm that goods are received in good order and condition.
- It is the supplier's responsibility to arrange for offloading process.

The requirements for submitting a pre-delivery sample;

1. Have a signed contract
2. Copy of Purchase Order
3. Copy of Delivery Note and product/brochure to be evaluated.
4. Certificate of Analysis
5. Delivery Address is KEMSA, Embakasi Warehouse.

Pre-delivery samples form part of the consignment.

SECTION - CONTRACT FORMS

NOTIFICATION OF INTENTION TO AWARD

[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]

[Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form] For the attention of Tenderer's Authorized Representative Name:
.....*[insert Authorized Representative's name]*

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

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

[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

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

Notification of Intention to Award Procuring Entity: *.Kenya Medical Supplies Authority*

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

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

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

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

1. The successful Tenderer

Name:	<i>[insert name of successful Tenderer]</i>
Address:	<i>[insert address of the successful Tenderer]</i>
Contract price:	<i>[insert contract price of the successful Tender]</i>

- 2 **Other Tenderers** [*INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as readout.*]

Name of Tenderer	Tender price	Evaluated Tender price (if applicable)
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]
[insert name]	[insert Tender price]	[insert evaluated price]

3 **Reason/s why your Tender was unsuccessful**

[INSTRUCTIONS: State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include:(a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

5. **How to request a debriefing**

DEADLINE: The deadline to request a debriefing expires at midnight on [the 3rd day after date of notification] (local time).

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

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

Attention:

The Chief Executive Officer
Kenya Medical Supplies Authority (KEMSA)
Commercial Street, Industrial Area
Nairobi/Kenya

Postal address:

P.O. Box: 47715 -00100

Nairobi, Kenya

Tel No: +254 719033000/ +254 726618520/1

E-mail: procurement.programs@kemsaco.ke

If your Invitation to a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request.

The debriefing will be in writing

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

Days from the date of publication of the Contract Award Notice.

5. How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [of the 14th day after date of notification] (local time).

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

The Chief Executive Officer
Kenya Medical Supplies Authority (KEMSA)
Commercial Street, Industrial Area
Nairobi/Kenya

Postal address:

P.O. Box: 47715 -00100

Nairobi, Kenya

Tel No: +254 719033000/ +254 726618520/1

E- mail: procurement.programs@kemsaco.ke

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.

Further information:

Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website info@ppra.go.ke or complaints@ppra.go.ke provides a useful explanation of the process, as well as a sample Form of complaint.

In summary, there are four essential requirements:

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

6. Standstill Period

DEADLINE: The Standstill Period is due to end on the 14th day after date of notification] at midnight on [insert date] (local time).

The Stand still Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended as stated in Section 4 above.

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

Signature: _____ Name: _____

Title/position: _____ Telephone: _____

Email: _____

NOTIFICATION OF AWARD-FORM OF ACCEPTANCE

[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 here by accepted by our Agency.

You are requested to furnish the Performance Security within 30days 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

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]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of... of the Government of Kenya, or corporation in Kenya]* and having its principal place of business at *[insert address of Procuring Entity]* (hereinafter called "the 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]* (herein after called "the Supplier"), of the other part:

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:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail overall other contract documents.
 - a) The Form of Tender
 - b) the Addenda Nos. (if any)
 - c) Special Conditions of Contract
 - d) General Conditions of Contract
 - e) The Specification (including Schedule of Requirements and Technical Specifications)
 - f) the completed Schedules (including Price Schedules)
 - g) The Purchaser's Notification of Award
 - h) Acceptance by the tenderer
 - i) Performance Bond (where applicable)
 - j) Bidders' current CR12 (should have been issued within the last 12 months)
3. 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 conformity in all respects with the provisions of the Contract.
4. The Procuring Entity here by 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.

IN WITNESS where of the parties here to 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]*

PERFORMANCE SECURITY

Bank Guarantee *[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated] [Guarantor letterhead or SWIFT identifier code] Beneficiary: [insert name and Address of Procuring Entity]*

Date:.....*[Insert date of issue]*

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

We have been informed that.....*[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture] (hereinafter called "the Applicant") has entered into Contract No. [insert reference number of the contract] dated [insert date] with the Beneficiary, for the supply of.....[insert name of contract and brief description of Health Goods and related Services] (hereinafter called "the Contract").*

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total amount of.....*[insert amount in figures] (.....) [insert amount 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.

This guarantee shall expire, no later than the.....Day of.....², and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No.758, except that the supporting statement

under Article 15(a) is here by excluded.

[Signature]

Note: All italicized text (including foot notes) is for use in preparing this form and shall be deleted from the final product.

¹The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Form of Acceptance, and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

²Insert the date ~~twenty-eight~~ days after the expected completion date as described in GC Clause 18.4. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed[six months][one year], in response to the Beneficiary's written Invitation to such extension, such request to be presented to the Guarantor before the expiry of the guarantee."



Section N. Tender Questionnaire

PART I: CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give particulars indicated in Part1 and either Part 2(a), 2(b) or 2(c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form

Part 1-General

Business

Name.....

Registration Ref No.....

Location of business premises, i.e.

Building.....

Floor No.....Room No.....

Plot No.....Street/Road.....

Postal Address.....Postal

Code.....

Tel No..... Fax

No.....

Email.....Website.....

Nature of

business.....

Date.....

VAT Certificate Number.....PIN Certificate

No.....

Local Authority License No.....Expiry

Date.....

NB: Attach copies of Registration Certificate, Trade License, and VAT Registration Certificate. PIN Certificate and Local Authority License.

Maximum Value of business which you can handle at any one time

Kshs.....

Name of your Bankers.....

Branch.....

Part 2 (a) Sole Proprietor:

My Name in

full.....Age.....

Nationality.....ID/Passport No.....Country of

Origin.....

Part 2(b) Partnership

Name	Nationality	*Citizenship Details	shares
------	-------------	----------------------	--------

1.....

2.....

3.....

4.....

5.....

Part 2(c) Registered Company

State whether Private or

Public.....

State the nominal and issued Capital of the Company

Nominal Ksh..... Or Other Convertible

currency.....

Issued Ksh..... Or Other Convertible

currency.....

Give Details of all Directors as follows:

Name	Nationality	*Citizenship Details	Shares
------	-------------	----------------------	--------

1.....

2.....

3.....

4.....

Part 3- Names of all Associated or Holding Companies (If any)

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

If more companies are applicable, please give the information on a separate sheet of paper.

Part 4 - Give Details of all Directors of the Companies you have listed above as follows:-

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

*If Kenyan Citizen, indicate under "Citizenship Details", whether by Birth, Naturalization or Registration.

Part 5- Volume of business transacted between the Government of the Republic of Kenya and my company during the last 12 months, if any Ksh.

Part 6 Volume of business transacted with other parastatal organizations during the last12 months, if any, Kshs.....

Part 7 Work performed as a contractor of similar nature and volume over the last five years. List details of contracts under way or committed, including expected completion date.

Client Name	Name of Client Contact Person	Type of services provided and year of completion	Value of Contract

.....

.....

Part 13 – State whether or not you have experienced any problem(s) of non-performance with any contract(s) awarded to you during the last 12 months and gives a brief explanation/ description of the problem(s). Please give the information on a separate sheet of paper.

Part 14 – Give any other information relating to your company which you may consider relevant to your bid to do business with Kenya Medical Supplies Authority.

.....

.....

.....

.....

Part 15 – Give Statement of compliance with the requirements of clause 1.2 of the General instructions to tenderers under section C.

PART II: PERSONNEL

Please enclose copy of the organization chart of the firm indicating the main fields of activity.

Please provide the following information for the key personnel proposed for administration of this Contract.

1. Name.....
2. Age.....
3. Academic
Qualification.....
4. Professional
Qualification.....
5. Work
Experience.....
6. Length of service with the firm and position
held.....
.....
7. Please attach detailed CVs of these personnel.



PART III: FINANCIAL POSITION

1. Attach a copy of firm's two most recent audited financial statements
2. Summary of quick assets and current liabilities as of...../20.....(Date)

Assets.....

.....

- a) Cash in hand
- b) Cash Deposited in Banks (State Details Below)

.....

.....

.....

Total Cash.....

Name of Bank Institution	Location	Deposit in Name of	Amount
i.			
ii.			
iii.			
iv.			

Liabilities.....

.....

3. Deposit with Bids or as guarantees (State details)

.....

.....

Deposited With	Name & Address	Purpose	Date of Recovery	Amount
i.				
ii.				

iii.				
iv.				

4. Due from completed contracts

(Amount receivable within 90 days, exclude claims not approved)

.....

Owner	Name and address of	Contract Sum	Amount Receivable
i.			
ii.			
iii.			
iv.			
v.			
vi.			
vii.			
viii.			
ix.			
x.			

Attach Letters of Reference from the firm's bankers regarding the firm's credit position

PART IV: APPLICANT'S REFERENCES

NAME OF APPLICANT'S OTHER CLIENTS AND VALUES OF CONTRACT/ORDERS IN LAST TWELVE MONTHS

1. First Client (Organization)

- i) Name of 1st client
(Organization).....
- ii) Address of Client
(Organization).....
- iii) Telephone No. of
Client.....
- iv) Facsimile No of
Client.....
- v) E-mail Address of
Client.....
- vi) Name of Contact Person at the Client
(Organization).....
- vii) Value of
Contracts/Orders.....
- viii) Duration of ongoing
Contracts/Orders.....

2. Second Client (Organization)

- i) Name of client
(Organization).....
- ii) Address of Client
(Organization).....
- iii) Telephone No. of
Client.....

-
- iv) Facsimile No of Client.....
 - v) E-mail Address of Client.....
 - vi) Name of Contact Person at the Client (Organization).....
 - vii) Value of Contracts/Orders.....
 - viii) Duration of Contracts/Orders.....

3. Third Client (organization)

- i) Name of client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....
- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii) Duration of Contracts/Orders.....

4. Fourth Client (organization)

-
- i) Name of client
(Organization).....
 - ii) Address of Client
(Organization).....
 - iii) Telephone No. of
Client.....
 - iv) Facsimile No of
Client.....
 - v) E-mail Address of
Client.....
 - vi) Name of Contact Person at the Client
(Organization).....
 - vii) Value of
Contracts/Orders.....
 - viii) Duration of
Contracts/Orders.....

5. Fifth Client (organization)

- i) Name of client
(Organization).....
- ii) Address of Client
(Organization).....
- iii) Telephone No. of
Client.....
- iv) Facsimile No of
Client.....
- v) E-mail Address of
Client.....

vi) Name of Contact Person at the Client

(Organization).....

vii) Value of

Contracts/Orders.....

viii) Duration of

Contracts/Orders.....

(NB: You may include additional large clients as you may wish to support your application)

PART V: JOINT VENTURES

1. The information listed in Parts I-IV above shall be provided for each partner of the joint venture
2. Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture
3. Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners which shows that:
 - (a) All partners shall be jointly and severally liable for the execution of the contract in accordance with contract terms
 - (b) One of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture.
 - (c) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

PART VI: DECLARATION

I certify that all the above particulars are true

Name of Applicant (Officer).....

Signature of Applicant.....

Position in the Company/Title.....

Date.....

NB: Please affix rubber stamp or seal

Section N. Evaluation Criteria

A) PRELIMINARY EXAMINATION

1. Tender documents must be paginated/serialized. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1, 2, 3..... n where n is the last page) **(MANDATORY)**.
2. Provide a copy of Certificate of Incorporation/Registration **(MANDATORY)**.
3. Provide a copy of valid and current Tax Compliance Certificate **(MANDATORY FOR LOCAL BIDDERS)**.
4. Tender form (on a letterhead showing the tenderers complete name and business address) duly **completed and signed**. *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer or authorized representative (attach power of attorney where applicable)* **(MANDATORY)**.
 - i. *Tenderer's Eligibility-Confidential Business Questionnaire* **(MANDATORY)**.
 - ii. *Certificate of Independent Tender Determination* **(MANDATORY)**.
 - iii. *Self-Declaration of the Tenderer* **(MANDATORY)**.
 - a) Duly completed and signed self-Declaration that the person/Tenderer is not debarred in the matter of the PPADA 2015 **(MANDATORY)**.
 - b) Duly completed and signed self-Declaration that the person/Tenderer will not engage in any corrupt/fraudulent practice **(MANDATORY)**.
 - c) Duly completed and signed declaration and commitment to the code of ethics **(MANDATORY)**.
5. Provide Original Bid Security valid for 150 days from date of tender opening. Value of Bid Security should be **USD 2,680.00 or KES 294,800.00 (Two Hundred and Ninety- Four Thousand and Eight Hundred)** or equivalent in a freely convertible currency. **(MANDATORY)**.

NOTE: Failure to comply with Mandatory requirements will lead to disqualification. Only bidders who are successful at this stage will proceed to the next stage of evaluation.

B) TECHNICAL EVALUATION- DOCUMENTS

Bidders are required to submit the following documents:

- a) Manufacturers Authorization which must be on a manufacturer's letterhead and addressed to KEMSA that is both tender and item specific and signed by an authorized signatory (Applicable to bidders who are not manufacturers) **(MANDATORY)**.
- b) Current and valid manufacturing Certificate of Quality issued by an independent recognized body to the manufacturer of the product. The certificate must be item specific. **(MANDATORY)**.

C) PRODUCT EVALUATION

The product evaluation will be done on the brochure submitted by the Bidders and will involve the following:

- A manufacture's catalogue or its section showing the requested specifications and the following parameters: product mark of quality, name of manufacturer, country of origin. The catalogue must have manufacturer's detail

These parameters must be highlighted with a bright marker on the catalogue

- A signed and stamped check list of product compliance with the specifications
- Evaluation of the product labeling criteria based on technical specifications spelt out in this tender document.

The evaluation will be on a "Yes/No" basis;

NOTE: Only bidders who are successful at this stage will proceed to the next stage of evaluation.

D) FINANCIAL EVALUATION

Bidders who are successful at preceding stages of evaluation will have their prices compared and award recommended to the lowest evaluated responsive bid.

E) POST QUALIFICATION

In line with ITT 37 After determining the substantially responsive tender, which offers the lowest-evaluated price, whether the tenderer is a manufacturer or just a supplier: The Procuring Entity shall carry out the post-qualification, if no prequalification was done using the following criteria:

1. The bidder must provide evidence of maximum number of 3 (three) supply contracts for medical commodities within the past 3 years equivalent to the contract sum. The value of one of the contracts must be at least 60 % of the tender sum. The Tenderer should provide documentary evidence in support of the experience of previous supply (Contracts, Purchase Orders, Reference letters and Contact details of previous supply contracts).
2. The bidder must provide evidence of average annual turnover in the last three (3) years that is equivalent to the tender sum. (Provide certified financial statements for the past immediate three (3) years.
3. The bidder must provide statement of annual production capacity by a manufacturing firm, (should be at least three times the quantities specified under the contract).

F) PAST PERFORMANCE

A supplier performance measurement tool with detailed performance indicators has been developed and will be used to measure the performance of contracted suppliers. Suppliers who will have had unsatisfactory past performance on specific items of less than 71% shall not be recommended for award of similar items in subsequent tenders.

PERFORMANCE INDICATORS

The performance of suppliers, contractors, service providers and consultants are monitored at contract level to ensure the terms and conditions of the contract are met. The extent of performance monitoring applied shall be determined by the level of risk and the nature of the items. Good monitoring of suppliers anticipates, identifies and facilitates correction of shortcomings before the relationship with the supplier is adversely affected and before compromising value for money.

1. Time

The time indicator measures the duration in days for the supplier to deliver or complete the task as specified in the contract. The required data to be captured from the source documents into the performance tool shall include: Item code, item description, contract number, purchase order number, supplier name, contract signing date, contract effective date, contractual delivery date, earliest delivery date, extended delivery date, actual delivery date, supplier offered delivery date, and latest delivery date. For each item, the earliest delivery date and the latest delivery date are derived from the issued tender document. The supplier offered delivery date is derived from the bid.

Contract Delivery Period: The number of calendar days from the date of signing the contract to the date the delivery is required per the contract. If a contract is extended, the additional days are confirmed through addendum (letter) to the contract and the duration added to the Contract Delivery Period. In call-off orders under framework contracts, Contract Delivery Period is the number of calendar days from the date of call-off order to the required delivery date.

Actual Delivery Period: The number of calendar days from the contract effective date to the actual delivery date. Where call off orders apply, the Actual Delivery Period is the number of calendar days from the date of call-off order to actual delivery date. For staggered deliveries under definite quantity contracts, actual

delivery period is the number of calendar days from date of notification of the required quantity.

Delivery on Time: Delivery of goods on or within the Contract Delivery Period yields a Delivery on Time indicator score of 100%. Delivery within 2 weeks after Contract Delivery Period still yields a Time indicator score of 100%. Delivery made thereafter yields a time Indicator score of zero (0).

Failure to fully deliver within 8 weeks from lapse of Contract Delivery Period will result in contract termination.

2. Quantity

The supplier is required to deliver the ordered quantity of the product in full. Contractors should deliver the product per the required specifications.

Sometimes, due to practical reasons, a supplier may be requested in writing to deliver a portion of the order. In that event, the measurement will be done after substantial completion of contracted quantity. The quantity indicator measures Delivery in Full, which is the difference between the quantity of the product in the purchase order or contract and the quantity that is certified received.

Delivery in Full: The indicator is measured by the percentage of the ordered quantity which is actually certified received. Example: If the purchase order quantity was 200,000 units. Of this, the quantity received was 190,000 units. The indicator of Delivery in Full is computed as $(190,000/200,000) * 100 = 95\%$. The target performance score for Delivery in Full indicator is 100%.

The required data are order quantity, delivered quantity, and deferred quantity.

3. Cost

The historical unit prices for each item are captured in the ERP system. The Award Price arise from recommendations for award and signed supplier contract. The Final Price is the award price plus the price variation that is approved at contract implementation; excluding those from the application of a price adjustment formula if provided for in the signed contract.

The Price Ratio is defined as $[Award Price \times 100 / Final Price]$; which should be 100% where the Final Price is equal to the Award Price. Where the Final Price is higher than the Award Price, the performance score is prorated. Example: if the Final Price is KES2,700, Award Price is KES2,400, then the Price Ratio is $[2,400 * 100 / 2700 = 89\%]$. The data to be captured in the ERP system include the

following: Item Code, Item Description, Contract Number, Order Number, Supplier Name, Plan Price, Award Price, Price Variation, Final Price.

4. Quality

The contract provides the technical specifications. At the delivery point, the products are inspected and tested to ensure they comply with the quality specifications. Products that do not comply with Quality Specifications will be rejected. However, an assessment shall be made to check if there is suitable product packaging. Percentage of damaged cartons acceptable is 0.5%. Above this %, the damaged cartons will be rejected.

5. Ratings and Scores

The supplier contract performance scores provide a structured way of rating suppliers with an aim of identifying areas of improvement and a basis for future engagement depending on historical performance. The scorecard will be used to measure, rate and rank suppliers with the aim of ensuring suppliers consistently meet and surpass their contractual obligations. Table 3 summarizes the ratings and scores.

Table 1. Ratings and scores measurement system

Rating	Range	Performance Description
1	0-30	Falls far below expectations: Performance jeopardized the achievement of contract requirements, despite contract administrative interventions.
2	31-50	Missed expectations: There are a number of performance issues that required KEMSA to provide additional contract administrative interventions to ensure that contract requirements are met.
3	51-70	Does not fully meet expectations: There are performance issues but supplier has somehow met contract requirements.
4	71-80	Mostly meets expectations: There are minor performance issues but the supplier has largely met the contract requirements
5	81-100	Exceeds Expectations: Supplier has demonstrated a performance level in measurable within contract requirements

6. Performance Index

The Performance Index combines the indices for (1) time, (2) quantity, (3) cost and (4) quality. Each of the four performance indicators is scored out of 100%. The parameters are then weighted using a predefined matrix and the overall Supplier Performance Index is the sum of the weighted scores.

Table 2. Supplier Performance Index (Example)

#	Indicator	Score (%)	Weight	Weighted Score
1	Time	100	0.5	50.00
2	Quantity	95	0.3	28.50
3	Cost	89	0.1	8.90
4	Quality	83	0.1	8.30
	Supplier Performance Index			95.70

6. Performance Decision

A supplier with a Performance Index Score of less than 71% shall not be eligible for award of contracts by KEMSA for a period of ONE YEAR from the date of notification of the performance score.

This information shall form part of the Post Contract Qualification Criteria in the subsequent tender document and evaluation stated as follows:

“Non-performance of a contract did not occur as a result of supplier default since 1 January [insert year] or the bidder has a Performance Score of less than 71% as measured using the KEMSA Supplier Performance Measurement Tool as notified to the supplier or service provider in writing prior to this tender notice.”

The Procurement Directorate shall debrief the supplier and prepare minutes to record the debriefing, which shall form part of the permanent records.

STAGE 2: Technical Evaluation

Bidders that will have passed Technical Evaluation (i.e. those that offered goods which are compliant with the desired technical specifications) will have financial proposals evaluated.

STAGE 3: Financial Evaluation

The bidder with the lowest evaluated financial proposal will be recommended for the award of the contract.